

FEB 27 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

OSWALDO ZUNIGA-SANCHEZ, a.k.a.
Oswaldo Sanchez,

Defendant-Appellant.

No. 16-30028

D.C. No. 2:09-cr-00023-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted February 14, 2017**

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Oswaldo Zuniga-Sanchez appeals pro se from the district court's order granting in part Zuniga-Sanchez's motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court reduced Zuniga-Sanchez's sentence to 120 months, which reflects the mandatory minimum for his offense. *See* 21 U.S.C. § 841(b)(1)(A). Zuniga-Sanchez contends that he is entitled to a further reduction. We review de novo a district court's refusal to depart below the mandatory minimum. *See United States v. Sykes*, 658 F.3d 1140, 1144 (9th Cir. 2011). Because the mandatory minimum applies in section 3582(c)(2) proceedings, the district court correctly concluded that it could not reduce Zuniga-Sanchez's sentence any further than it did. *See Sykes*, 658 F.3d at 1148.

Zuniga-Sanchez's challenge to the district court's denial of safety valve relief under 18 U.S.C. § 3553(f) is not cognizable in this proceeding. *See Dillon v. United States*, 560 U.S. 817, 831 (2010) (only aspects of the sentence affected by the amendment may be raised in section 3582(c)(2) proceedings).

AFFIRMED.