

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 16-30169

Plaintiff-Appellee,

D.C. No. 4:07-cr-00019-SEH

v.

MEMORANDUM*

LEWIS LYNN MITCHELL,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted April 11, 2017*

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Lewis Lynn Mitchell appeals pro se from the district court's order denying his 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.

Mitchell contends that he is entitled to a sentence reduction under

* 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). Mitchell's request for oral argument is denied.

Amendment 782 to the Sentencing Guidelines. We review de novo whether a defendant is eligible for a sentence reduction. *See United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009). Mitchell was sentenced as a career offender under U.S.S.G. § 4B1.1. Thus, his sentence was not “based on” a Guidelines range that was lowered by Amendment 782 and he is ineligible for a reduction. *See* 18 U.S.C. § 3582(c)(2); *United States v. Wesson*, 583 F.3d 728, 731 (9th Cir. 2009). Accordingly, contrary to Mitchell’s contention, the district court had no cause to consider the 18 U.S.C. § 3553(a) factors. *See Dillon v. United States*, 560 U.S. 817, 826-27 (2010).

Mitchell’s contention that he should not have been sentenced as a career offender is not cognizable in a section 3582(c)(2) proceeding. *See United States v. Waters*, 648 F.3d 1114, 1118 (9th Cir. 2011).

AFFIRMED.