

FILED

MAR 20 2012

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NOT FOR PUBLICATION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.

KEVIN FREEMAN,

Defendant - Appellant.

No. 11-50139

DC No. 2:03-cr-0072 PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted March 6, 2012**

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

Kevin Freeman appeals from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence. 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 9th Cir. R. 36-3.

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

Freeman contends that the district court abused its discretion by declining to reduce his sentence based on the retroactive amendments to the Sentencing Guidelines that lowered penalties for crack cocaine offenses. The district court acted within its discretion in denying Freeman a reduction in his sentence. *See* U.S.S.G. § 1B1.10(b)(2)(B) (2010) (“If the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and *United States v. Booker*, 543 U.S. 220 (2005), a further reduction generally would not be appropriate.”); *Dillon v. United States*, 130 S. Ct. 2683, 2691-92 (2010).

AFFIRMED.

FILED

MAR 20 2012

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

United States v. Freeman, No. 11-50139

REINHARDT, Circuit Judge, dissenting:

I dissent.