

JAN 17 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

NARCO LOMACK GALLON,

Defendant - Appellee.

No. 12-10580

D.C. No. 4:08-cr-00813-DLJ-1

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
D. Lowell Jensen, Senior District Judge, Presiding

Submitted January 15, 2014**
San Francisco, California

Before: GRABER and NGUYEN, Circuit Judges, and DEARIE,*** Senior District Judge.

The United States of America appeals the district court's order reducing Defendant Narco Gallon's term of imprisonment from 78 months to 66 months.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

*** The Honorable Raymond J. Dearie, Senior United States District Judge for the Eastern District of New York, sitting by designation.

Reviewing de novo the district court's jurisdiction under 18 U.S.C. § 3582 to reduce Defendant's sentence, United States v. Leniear, 574 F.3d 668, 672 (9th Cir. 2009), we reverse and remand.

As Defendant concedes, under our decision in United States v. Pleasant, 704 F.3d 808 (9th Cir. 2013), cert. denied, 2013 WL 4744128 (U.S. Dec. 16, 2013) (No. 13-6147), the district court lacked jurisdiction to reduce Defendant's sentence. The "guideline range applicable to" Defendant for purposes of U.S.S.G. § 1B1.10(a)(1) was the Career Offender Guideline, U.S.S.G. § 4B1.1. Pleasant, 704 F.3d at 812. Because the Sentencing Commission has not lowered that range, "the district court did not have jurisdiction either to hear [Defendant's] § 3582(c) motion or to act sua sponte." Id. Accordingly, we reverse the district court's order and remand with instructions to reinstate Defendant's original sentence.

REVERSED and REMANDED.