FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 12-30104
Plaintiff - Appellee,	D.C. No. 3:08-cr-05604-RJB
v.	
ANDREW HOUSTON POINTER,	MEMORANDUM[*]
Defendant - Appellant.	

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted May 14, 2013[**]

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Andrew Houston Pointer 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.

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

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

Pointer contends that he is entitled to a sentence reduction based on retroactive amendments to the Sentencing Guidelines that lowered the penalties for crack cocaine offenses. We review de novo whether the district court had jurisdiction to modify a defendant's sentence under section 3582(c)(2). *See United States v. Austin*, 676 F.3d 924, 926 (9th Cir. 2012). Pointer is not eligible for a sentence reduction because his sentence was based on the parties' stipulation in a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C), and not on a sentencing range that has been subsequently lowered by the Sentencing Commission, as required by section 3582(c)(2). *See Freeman v. United States*, 131 S. Ct. 2685, 2695-96 (2011) (Sotomayor, J., concurring). Contrary to Pointer's contention, no sentencing range is evident from the face of the agreement that could have formed the basis for the specific term of 108 months. *See Austin*, 676 F.3d at 930. Accordingly, the district court lacked jurisdiction to modify Pointer's sentence under section 3582(c)(2). *See id.*

AFFIRMED.