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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff-Appellee,</p> <p>v.</p> <p>KEVIN DOUCETTE,</p> <p>Defendant-Appellant.</p>
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No. 12-50370

D.C. No. 09-217-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Argued and Submitted October 9, 2013
Pasadena, California

Before: REINHARDT, KLEINFELD, and CHRISTEN, Circuit Judges.

Kevin Doucette appeals the district court’s order denying his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo whether a district court may modify an

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

otherwise final sentence under § 3582. *United States v. Wesson*, 583 F.3d 728, 730 (9th Cir. 2009). We affirm.

Section 3582(c)(2) allows modification of a term of imprisonment when: (1) the sentence is based on a sentencing range that has subsequently been lowered by the Sentencing Commission; and (2) such reduction is consistent with applicable policy statements issued by the Sentencing Commission. *Id.* Doucette argues that he is eligible for a sentence reduction under Amendment 750, which made permanent earlier modifications to the drug quantity table in United States Sentencing Guideline (“U.S.S.G.”) § 2D1.1 for offenses involving crack cocaine. But Doucette was sentenced as a career offender pursuant to U.S.S.G. § 4B1.1. Therefore, his sentence was not based on a Guideline range that has been lowered, and was ineligible for modification under § 3582. *See* 18 U.S.C. § 3582(c)(2); *Wesson*, 583 F.3d at 731–32.

Because Doucette cannot satisfy the first requirement for a sentence modification under § 3582(c)(2), we need not consider Doucette’s ex post facto challenge to U.S.S.G. § 1B1.10—the Guideline that sets out the policy statements relevant to the second requirement for a sentence modification under § 3582(c)(2).

AFFIRMED.