

OCT 02 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NOT FOR PUBLICATION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 - Appellee,

v.

MICHAEL DAMAR SHIRLEY,

Defendant - Appellant.

No. 13-10013

D.C. No. 5:09-cr-00135-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding

Submitted September 23, 2014**

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

Michael Damar Shirley appeals 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. We review de novo whether a district court

* 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).

has authority to modify a sentence under section 3582, *see United States v. Wesson*, 583 F.3d 728, 730 (9th Cir. 2009), and we affirm.

Shirley contends that he is entitled to a sentence reduction under Amendment 750 to the Sentencing Guidelines. This contention fails. Notwithstanding the fact that Shirley was sentenced under a Rule 11(c)(1)(C) plea agreement that calculated the advisory Sentencing Guidelines range by reference to U.S.S.G. § 2D1.1, the “applicable” Guidelines range in his case was U.S.S.G. § 4B1.1, the Career Offender Guideline. *See United States v. Pleasant*, 704 F.3d 808, 811-12 (9th Cir.), *cert. denied*, 134 S. Ct. 824 (2013). Accordingly, the district court lacked authority to reduce Shirley’s sentence. *See id.* at 812.

In light of our decision, we need not reach the government’s contention that Shirley waived his right to file a section 3582 motion in his plea agreement.

Shirley’s unopposed motion to file a late reply brief is granted, and the Clerk shall file the reply brief submitted on July 14, 2014.

AFFIRMED.