

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 29 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-10236

Plaintiff-Appellee,

D.C. No. 2:07-cr-00248-WBS

v.

MEMORANDUM*

RICHARD MENDOZA,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Richard Mendoza 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, and we affirm.

Mendoza contends that the district court erred by failing to calculate and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

consider his amended Guidelines range. The record reflects that the district court considered the amended Guidelines ranges proposed by Mendoza and assumed that Mendoza was eligible for a reduction. The court then considered the pertinent 18 U.S.C. § 3553(a) factors, and determined that a reduction was not warranted under those factors. Contrary to Mendoza's contentions, the court correctly applied the two-step approach set forth in *Dillon v. United States*, 560 U.S. 817, 826-27 (2010).

Mendoza further contends that the district court abused its discretion by relying on clearly erroneous facts and placing undue weight on his post-sentencing conduct in denying the reduction. Considering Mendoza's prison disciplinary record and underlying conviction, the court's finding that Mendoza posed a safety risk to the public was not clearly erroneous. *See United States v. Mercado-Moreno*, 869 F.3d 942, 953 (9th Cir. 2017). Furthermore, the court acted within its discretion when it relied on Mendoza's post-sentencing conduct to deny his motion. *See* U.S.S.G. § 1B1.10 cmt. n.1(B)(ii); *United States v. Lightfoot*, 626 F.3d 1092, 1096 (9th Cir. 2010). In light of the totality of the circumstances, the district court did not abuse its discretion by denying Mendoza's motion. *See United States v. Dunn*, 728 F.3d 1151, 1160 (9th Cir. 2013).

AFFIRMED.