

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 25 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 20-30069

Plaintiff-Appellee,

D.C. No. 3:08-cr-00119-JKS-1

v.

JUAN MANUEL MENDIOLA,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Alaska
James K. Singleton, Jr., District Judge, Presiding

Submitted August 17, 2021**

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

Juan Manuel Mendiola appeals from the district court's order denying his motion for a sentence reduction under § 404 of the First Step Act of 2018. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Mendiola contends that the First Step Act allows for plenary resentencing on

* 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).

all eight counts of conviction because one of those counts was a covered offense under the Act. As Mendiola acknowledges, this argument is foreclosed. *See United States v. Kelley*, 962 F.3d 470, 475 (9th Cir. 2020) (the First Step Act does not authorize a plenary resentencing; instead, the district court must “place itself in the counterfactual situation where all the applicable laws that existed at the time the covered offense was committed are in place,” other than those affected by the First Step Act). Because there is no dispute that any change to Mendiola’s sentence on any covered offense would have no effect on the total sentence, the district court properly denied relief.

AFFIRMED.