

APPENDIX "A"

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 10 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ENRIQUE LOPEZ QUINTERO,

Defendant-Appellant.

No. 19-10009

D.C. No. 5:11-cr-00711-EJD-1

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted March 6, 2020**

Before: FARRIS, Trott, and SILVERMAN, Circuit Judges.

Enrique Lopez Quintero appeals pro se 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 the district court had authority to reduce Quintero's sentence under section 3582, *see United*

* 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).*

States v. Wesson, 583 F.3d 728, 730 (9th Cir. 2009), and we affirm.

Quintero contends that he is eligible for a sentence reduction because Amendment 782 to the Sentencing Guidelines, which amended the drug quantity tables in U.S.S.G. § 2D1.1, lowered the Guidelines range contained in his binding plea agreement. However, even assuming arguendo that Quintero's sentence was "based on" the Guidelines range calculated in the plea agreement, he would still not be eligible for a reduction because Amendment 782 did not lower the Guidelines range "applicable to" him. *See* U.S.S.G. § 1B1.10(a)(2) (sentence reduction is not authorized under section 3582(c)(2) unless a listed amendment lowers the Guidelines range "applicable to" the defendant). The "applicable" Guidelines range is the correctly calculated, pre-variance range. *See* U.S.S.G. § 1B1.10(a)(1) & cmt. n.1(A); *United States v. Pleasant*, 704 F.3d 808, 811-12 (9th Cir. 2013), *overruled on other grounds by* *United States v. Davis*, 825 F.3d 1014 (9th Cir. 2016). Here, there is no dispute that Quintero was properly determined to be a career offender under the Guidelines. Thus, as the district court correctly concluded, the applicable range was the career offender range. Because that range was not lowered by Amendment 782, Quintero is not eligible for a sentence reduction. *See* 18 U.S.C. § 3582(c)(2); *Pleasant*, 704 F.3d at 812.

AFFIRMED.

11-8-18

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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UNITED STATE OF AMERICA,

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Plaintiff,

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v.

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ENRIQUE LOPEZ QUINTERO,

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Defendant.

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Case No. 5:11-cr-00711-EJD

**ORDER DENYING DEFENDANT'S
"UNOPPOSED PETITION AND/OR
MOTION FOR
REDUCTION/MODIFICATION OF
SENTENCE"**

Re: Dkt. No. 45

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On September 4, 2018, Defendant Enrique Quintero pled guilty pursuant to a written plea agreement to four counts charged in two case numbers: two counts of conspiracy to possess with intent to distribute and distribute methamphetamine in violation of 21 U.S.C. § 846; and two counts of possession with intent to distribute and distribution of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii).¹ Defendant was thereafter sentenced to four concurrent custodial terms of 240 months. Judgment was entered accordingly on October 12, 2006.

Defendant now petitions or moves for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 based on Amendment 782. Dkt. No. 45. Defendant argues he is entitled to a reduction because, though the Probation Officer determined he was a career offender, his plea agreement provides for a different calculation that was affected by the amendment. The Government argues otherwise. The Government is correct.

"For purposes of a motion for a sentence reduction, the applicable guideline range is the

¹ The other case number is 5:11-cr-00550-EJD.

Case No.: 5:11-cr-00711-EJD

**ORDER DENYING DEFENDANT'S "UNOPPOSED PETITION AND/OR MOTION FOR
REDUCTION/MODIFICATION OF SENTENCE"**

1 pre-departure, pre-variance range calculated by the court at sentencing.” United States v. Hill, 674
2 Fed. App’x 738 (9th Cir. 2017). This is true even if the defendant’s plea agreement calculates a
3 different sentencing range. See id. (citing United States v. Pleasant, 704 F.3d 808, 811-12 (9th
4 Cir. 2013)). Furthermore, a sentence reduction is inconsistent with the policy underlying § 1B1.10
5 if none of its specified amendments apply to the defendant. U.S.S.G. § 1B1.10(a)(2).

6 Here, the Presentence Investigation Report reveals the pre-departure, pre-variance
7 guideline range of 188 to 235 months was calculated based on the Career Offender provisions in
8 U.S.S.G. § 4B1.1. This is the same guideline range identified by the court at the sentencing
9 hearing (Tr., Dkt. No. 54 in Case No. 5:11-cr-0050-EJD, at 4:19-5:2), and it is this range, not the
10 one calculated in the plea agreement, that is applicable for the purposes of a sentence reduction.
11 See Hill, 674 Fed. App’x at 738. Because § 4B1.1 was unaffected by Amendment 782, Defendant
12 is not entitled to relief by the express terms of § 1B1.10(a)(2).

13 Accordingly, Defendant’s “unopposed petition and/or Defendant’s motion for
14 reduction/modification of sentence” (Dkt. No. 45) is DENIED.

16 **IT IS SO ORDERED.**

17 Dated: November 8, 2018


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19 EDWARD J. DAVILA
20 United States District Judge
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Case No.: 5:11-cr-00711-EJD

ORDER DENYING DEFENDANT’S “UNOPPOSED PETITION AND/OR MOTION FOR
REDUCTION/MODIFICATION OF SENTENCE”

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