

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-16379

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT DEC 08, 2010 JOHN LEY CLERK

D. C. Docket No. 09-00132-CR-ORL-22GJK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS K. TANNER,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(December 8, 2010)

Before BARKETT and MARTIN, Circuit Judges, and HUNT,* District Judge.

PER CURIAM:

* Honorable Willis B. Hunt, Jr., United States District Judge for the Northern District of Georgia, sitting by designation.

Thomas K. Tanner appeals his 262-month sentence following a plea of guilty for distribution of child pornography in violation of 18 U.S.C. § 2252A(a)(2)(B). Tanner seeks reversal of his sentence arguing that the district court erred in finding that he had a prior conviction that subjected him to an increased minimum and maximum sentence under 18 U.S.C. § 2252A(b)(1). On this record, we find no reversible error. In evaluating Tanner's prior conviction for sentencing purposes, the district court did not err in considering the state court indictment for his prior conviction in light of the ambiguity in the state court's final judgment in that case. See United States v. Aguilar-Ortiz, 450 F.3d 1271, 1273-74 (11th Cir. 2006). Based thereupon, the district court did not err in determining that Tanner had a prior conviction in state court for the felony exposure of his sexual or genital parts to a child under Virginia Code § 18.2-370, which supports the sentence imposed within the increased statutory range of 15 to 40 years as set forth in § 2252A(b)(1).

AFFIRMED.