

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4018

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE MANUEL MOLINA,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., Chief District Judge. (1:06-cr-0122-JAB)

Submitted: March 17, 2008

Decided: April 7, 2008

Before NIEMEYER, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Anna Aita, LAW OFFICES OF AITA & MURPHY, Glen Burnie, Maryland, for Appellant. Anna Mills Wagoner, United States Attorney, Sandra J. Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jose Molina pled guilty pursuant to a written plea agreement to conspiracy to distribute five kilograms or more of cocaine hydrochloride, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846 (2000). The district court sentenced Molina to the statutory mandatory minimum of 120 months' imprisonment, and Molina timely appealed. Molina contends on appeal that the district court's imposition of the statutory minimum sentence was improper because the court erroneously denied a sentencing reduction under the "safety valve" provision.* See 18 U.S.C.A. § 1335(f) (West 2000 & Supp. 2007); U.S. Sentencing Guidelines Manual ("USSG") § 5C1.2 (2005). We affirm.

A defendant is eligible for an offense level reduction and a sentence below an otherwise applicable statutory minimum if he meets all five requirements set forth in the applicable statute. See United States v. Beltran-Ortiz, 91 F.3d 665, 667 (4th Cir. 1996). After permitting Molina to testify at the sentencing hearing as a verbal proffer of all information and evidence concerning his offenses, see 18 U.S.C.A. § 3353(f)(5) (West 2000 & Supp. 2007); USSG § 5C1.2(a)(5), the court found portions of Molina's testimony were untruthful. We conclude this finding was not clearly erroneous and the denial of a safety valve reduction below the statutory minimum on this basis was proper.

*Molina does not contest his conviction on appeal.

Accordingly, we affirm Molina's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED