

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4787

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE DANIEL CARDENAS-COVARRUBIAS,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:09-cr-00294-NCT-1)

Submitted: January 12, 2011

Decided: January 18, 2011

Before GREGORY, DUNCAN, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Louis C. Allen, III, Federal Public Defender, Mireille P. Clough, Assistant Federal Public Defender, Winston-Salem, North Carolina, for Appellant. John W. Stone, Jr., Acting United States Attorney, Michael F. Joseph, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Appellant Jose Daniel Cardenas-Covarrubias appeals his forty-six month sentence imposed after his guilty plea to unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326 (2006). Cardenas-Covarrubias' sole argument on appeal is that the district court erred in calculating his Guidelines sentencing range when it increased his offense level by sixteen levels pursuant to U.S. Sentencing Guidelines Manual (USSG) § 2L1.2(b)(1)(A)(ii) (2009).

Cardenas-Covarrubias correctly concedes that his argument is foreclosed by our decision in United States v. Diaz-Ibarra, 522 F.3d 343, 352-53 (4th Cir. 2008) (holding that "[s]exual abuse of a minor" - which is listed as a "crime of violence" in USSG § 2L1.2 cmt. n.1(b)(iii) - need not be a crime that requires the use, or threatened use, of physical force against another, but must be a crime that prohibits the "physical or nonphysical misuse or maltreatment of a minor for a purpose associated with sexual gratification"). We may not overrule this court's binding precedent. United States v. Simms, 441 F.3d 313, 318 (4th Cir. 2006) ("A decision of a panel of this court becomes the law of the circuit and is binding on other panels unless it is overruled by a subsequent en banc opinion of this court or a superseding contrary decision of the

Supreme Court." (internal quotation marks and citation omitted)).

Accordingly, we affirm the judgment of the district court. 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