

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-41504
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

OSCAR MATA-ALVAREZ,

Defendant - Appellant

Appeal from the United States District Court for the
Southern District of Texas, McAllen

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before JONES, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

We reconsider this case on remand from the Supreme Court in light of *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017). Defendant Oscar Mata-Alvarez did not object to his enhanced sentence below, so we review only for plain error. See *United States v. Wikkerink*, 841 F.3d 327, 331 (5th Cir. 2016).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Under this court’s precedent, indecency with a child involving sexual contact “is a crime of violence because it entails a substantial risk that physical force may be used against the victim.” *United States v. Velazquez-Overa*, 100 F.3d 418, 419 (5th Cir. 1996). Given the gravity of Mata-Alvarez’s offense—his victim was seven-years old—the sentence of 48 months does not seriously “affect[] the fairness, integrity or public reputation of judicial proceedings.” See *United States v. Peltier*, 505 F.3d 389, 392 (5th Cir. 2007) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)). Accordingly, we hold that the district court did not plainly err.

IT IS ORDERED that the appellant’s opposed motion to summarily vacate the district court judgment of sentence is DENIED.

IT IS FURTHER ORDERED that the appellant’s opposed motion to remand the case to the district court for resentencing in light of *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017) is DENIED.

IT IS FURTHER ORDERED that the appellant’s opposed motion to issue the mandate forthwith is DENIED.



**Certified as a true copy and issued
as the mandate on Nov 07, 2017**

Attest: *Jyle W. Canyca*
Clerk, U.S. Court of Appeals, Fifth Circuit