

JAN 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADAN GUERRERO-FLORES,

Defendant - Appellant.

No. 08-50520

D.C. No. 3:08-cr-00718-W-1

MEMORANDUM\*

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

ADAN GUERRERO-FLORES,

Defendant - Appellee.

No. 08-50581

D.C. No. 3:08-cr-00718-W-1

Appeal from the United States District Court  
for the Southern District of California  
Thomas J. Whelan, District Judge, Presiding

Argued and Submitted January 15, 2010  
Pasadena, California

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: GOODWIN, SCHROEDER and FISHER, Circuit Judges.

Adan Guerrero-Flores appeals from his 27-month sentence, which the district court imposed after making an eight-level aggravated felony enhancement for his prior North Carolina conviction for taking indecent liberties with a child in violation of North Carolina General Statute § 14-202.1. Guerrero-Flores contends the enhancement should have been only four levels because the record did not support the aggravated felony enhancement. The government cross appeals, claiming that the district court should have imposed a sixteen-level enhancement for a “crime of violence.”

The government commendably acknowledged in oral argument that the eight-level enhancement was fair under the circumstances. Were we to vacate the sentence and remand for resentencing, Guerrero-Flores would face the risk of a sixteen-level enhancement, even though the prison term of the existing sentence has almost expired.

We have carefully reviewed the record below and the arguments presented to us on appeal. We conclude there is no sound reason to vacate the sentence and remand for resentencing or to grant the government’s motion that this court take judicial notice of matters outside this record.

The motion for judicial notice is **DENIED** and the judgment and sentence of the district court is **AFFIRMED**.