

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-4193**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD OLISLAGER,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (5:07-cr-00030-F-1)

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Submitted: November 25, 2008

Decided: December 15, 2008

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Before MICHAEL, TRAXLER, and SHEDD, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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Geoffrey W. Hosford, HOSFORD & HOSFORD, P.C., Wilmington, North Carolina, for Appellant. George E. B. Holding, United States Attorney, Anne M. Hayes, Banumathi Rangarajan, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard Oislager appeals his forty-year sentence following a guilty plea to one count of receiving child pornography, in violation of 18 U.S.C.A. § 2252(a)(2) (2006). The government concedes--and our review of the record confirms--that, by failing to make a recommendation that Oislager's sentence not exceed 180 months, the government breached the terms of its plea agreement with Oislager. Accordingly, we remand to the district court for resentencing. We direct that a different district judge conduct the resentencing proceedings. See United States v. Peglera, 33 F.3d 412, 415 (4th Cir. 1994). 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.

VACATED AND REMANDED