

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-5173

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ESTEBAN PENA ZUNIGA, a/k/a Tevo, a/k/a Tejon,

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. (1:08-cr-00366-JAB-3)

Submitted: November 18, 2010

Decided: November 24, 2010

Before SHEDD and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Benjamin D. Porter, MORROW ALEXANDER PORTER & WHITLEY, PLLC, Winston-Salem, North Carolina, 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Unpublished opinions are not binding precedent in this circuit.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:

Esteban Pena Zuniga pled guilty pursuant to a plea agreement to one count of conspiracy to distribute cocaine hydrochloride, in violation of 21 U.S.C.A. § 846 (West Supp. 2010), and one count of possession of firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (2006), and was sentenced to 230 months in prison. Zuniga's sole argument on appeal is that he was improperly assessed one criminal history point for a 1996 conviction for consuming alcohol under the age of twenty-one because he contends that the Government failed to prove he was the person who received that conviction. Finding no error, we affirm.

This court reviews a district court's factual findings underlying its Guidelines range calculation for clear error, and its legal interpretation of the Guidelines de novo. See United States v. Farrior, 535 F.3d 210, 223 (4th Cir. 2008). The district court found by a preponderance of the evidence that Zuniga was the individual who received the North Carolina conviction, and we find no error in this factual finding. See United States v. Manigan, 592 F.3d 621, 632 n.11 (4th Cir. 2010) (reaffirming that a defendant must establish that his presentence investigation report is inaccurate); see also United States v. Love, 134 F.3d 595, 606 (4th Cir. 1998) ("A mere

objection to the finding in the presentence report is not sufficient. Without an affirmative showing the information is inaccurate, the court is free to adopt the findings of the presentence report without more specific inquiry or explanation.”) (internal quotation marks, brackets, ellipses and citation omitted).

Accordingly, we affirm the district court’s judgment. 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