

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 11-4344**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ULICES ALIDER RIVAS-CRUZ,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:10-cr-00247-WO-1)

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Submitted: December 30, 2011

Decided: January 11, 2012

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Before WILKINSON, NIEMEYER, and GREGORY, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Louis C. Allen, Federal Public Defender, William C. Ingram, First Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Ripley Rand, United States Attorney, Michael F. Joseph, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ulices Alider Rivas-Cruz appeals the forty-one month sentence imposed pursuant to his guilty plea to one count of illegally reentering the United States after having been removed as an aggravated felon, in violation of 8 U.S.C. § 1326(a), (b)(2) (2006). Rivas-Cruz argues that the district court erred by including in his criminal history calculation a DWI conviction for which the evidence was insufficient to establish that he was the person convicted of the offense. Finding no error, we affirm.

In calculating the advisory Guidelines range, the district court's factual findings must be supported by the preponderance of the evidence. United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005). This court reviews the district court's factual findings for clear error. United States v. Tucker, 473 F.3d 556, 560 (4th Cir. 2007). Records of the conviction in question showed Rivas-Cruz's name, address, date of birth, and driver's license number. Against this background of reliability, the district court was not required to credit Rivas-Cruz's unsworn explanation that he was the victim of identity theft, especially given the unlikelihood of the thief having returned to court to plead guilty.

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