

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 15-4159**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HECTOR MANUEL CASTANEDA GASTELO, a/k/a Frankie, a/k/a Felix,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:13-cr-00264-FDW-1)

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Submitted: January 29, 2015

Decided: February 24, 2016

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Before KING, GREGORY, and HARRIS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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William D. Auman, AUMAN LAW OFFICES, Asheville, North Carolina, for Appellant. Jill Westmoreland Rose, United States Attorney, Anthony J. Enright, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Hector Manuel Castaneda Gastelo appeals his 240-month sentence after pleading guilty to conspiracy to distribute and possess with the intent to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 (2012). Gastelo argues that his trial counsel rendered ineffective assistance and that prosecutorial misconduct occurred. We decline to consider Gastelo's ineffective assistance claim on direct appeal because the record does not conclusively establish his counsel's ineffectiveness. See United States v. Baptiste, 596 F.3d 214, 216 n.1 (4th Cir. 2010). We also reject his claim of prosecutorial misconduct because the Government's statement that it would seek to enforce a provision of the plea agreement if Gastelo sought to withdraw his guilty plea – a statement made in response to an inquiry from the district court – was not improper. See United States v. Kennedy, 372 F.3d 686, 696 (4th Cir. 2004) (stating standard).

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 this court and argument would not aid the decisional process.

AFFIRMED