

ADDENDUM

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This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.

Dominick James **HOWARD**, Defendant-Appellant.

No. 17-30187

Submitted February 8, 2019 * Seattle, Washington

Filed February 13, 2019

Attorneys and Law Firms

Tom Bartleson, Assistant U.S. Attorney, USHE - Office of the US Attorney, Helena, MT, **Leif Johnson**, **Tim Tatarka**, Assistant U.S. Attorneys, Office of the US Attorney, Billings, MT, Cyndee L. Peterson, USMI - Office of the U.S. Attorney, Missoula, MT, for Plaintiff-Appellee

Joslyn Michelle Hunt, FDMT-Federal Defenders of Montana (Helena), Helena, MT, for Defendant-Appellant

Appeal from the United States District Court for the District of Montana, Charles C. Lovell, District Judge, Presiding, D.C. No. CR 16-14-H-CCL

Before: **IKUTA** and **CHRISTEN**, Circuit Judges, and **FREUDENTHAL**, ** District Judge

*520 MEMORANDUM ***

Defendant Dominick James **Howard** appeals his 120-month sentence following his guilty plea for one count of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). We have jurisdiction under 28 U.S.C. § 1291, and affirm.

On appeal, **Howard** challenges the district court's finding that Mont. Code Ann. § 45-5-502 subjected him to the mandatory minimum penalty of ten years pursuant to 18 U.S.C. § 2252A(b)(2). We review de novo whether prior convictions support statutory mandatory-minimum enhancements. *United States v. Sullivan*, 797 F.3d 623, 635 (9th Cir. 2015) (citation omitted). The district court did not err in applying the sentencing enhancement. *United States v. Sinerius*, 504 F.3d 737, 741-42 (9th Cir. 2007) (finding Mont. Code Ann. § 45-5-502 qualified as a prior conviction for sexual abuse). **Howard** claims **Sinerius** should be reconsidered, but this panel has no power to overrule circuit precedent. *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc) (holding that circuit precedent may be overturned only en banc, subject to exceptions not applicable here).

The district court did not err in altering its oral pronouncement at sentencing by imposing restitution in the written judgment. "[W]ithin 14 days after sentencing, the court may correct a sentence that resulted from ... clear error." Fed. R. Crim. P. 35(a). **Howard**'s restitution was mandatory. 18 U.S.C. § 2259(b)(4). The district court was authorized to correct the clear error in its oral pronouncement.

AFFIRMED.

All Citations

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Footnotes

- * The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).
 ** The Honorable Nancy D. Freudenthal, United States District Judge for the District of Wyoming, sitting by designation.
 *** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.