

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10484
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TODD WILLIAM GAY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CR-494-G-1

- - - - -
February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Todd William Gay, federal prisoner # 23676-077, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on Amendment 599 to U.S.S.G. § 2K2.4 (relating to use of a firearm in relation to a crime of violence). Gay argues that the five-year consecutive sentence he received for his conviction under 18 U.S.C. § 924(c), and the presentence report's five-level enhancement pursuant to U.S.S.G. § 2B3.1(b)(2)(C) for brandishing a firearm, resulted in double counting.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Because the weapon enhancement applied only to the February bank robbery, which was not the basis for the 18 U.S.C. § 924(c) conviction, there was no double counting/Amendment 599 violation. See U.S.S.G. § 2K2.4, comment. (n.2).

AFFIRMED.