

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-10917  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PAUL ALLEN MARSCHINKE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:00-CR-40-1-G  
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October 1, 2001

ON PETITION FOR REHEARING

Before KING, Chief Judge, and POLITZ and PARKER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for panel rehearing is GRANTED and the opinion previously filed in this case is WITHDRAWN.

Paul A. Marschinke appeals from his sentence imposed for his guilty-plea conviction of possession of a firearm by a felon, a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He contends that the court erred in increasing his base offense level pursuant to U.S.S.G. § 2K2.1(a)(2), on the ground that he allegedly had prior convictions of at least two "crimes of

violence." He maintains that neither his 1992 breaking-and-entering conviction in New Mexico nor his 1996 Texas conviction of unauthorized use of a motor vehicle ("UUMV") qualified as "crimes of violence" under the applicable definition of that term in § 4B1.2.

We recently held that a Texas UUMV conviction categorically qualifies as a "crime of violence." United States v. Jackson, 220 F.3d 635, 639 (5th Cir. 2000), cert. denied, 121 S. Ct. 1640 (2001). Moreover, the count of conviction underlying Marschinke's New Mexico breaking-and-entering offense expressly charged that Marschinke broke into a private dwelling. Because breaking into a private residence almost always presents a "substantial risk that force will be used," see United States v. Claiborne, 132 F.3d 253, 254 (5th Cir. 1998) (citation omitted), the district court properly considered the New Mexico conviction to be a "crime of violence." See § 4B1.2(a)(2) ("crime of violence" includes offenses that "involve[ ] conduct that presents a serious potential risk of physical injury to another").

AFFIRMED.