

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-11426
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD FLORES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:01-CR-93-1-A
- - - - -

June 19, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Richard Flores appeals his sentence following his guilty-plea conviction for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Flores' sole argument on appeal is that the district court erred by denying him credit for acceptance of responsibility under U.S.S.G. § 3E1.1 based on conduct that was unrelated to the offense to which he pleaded guilty. The district court's decision was based on Flores' violation of prison rules while incarcerated prior to sentencing.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

As Flores concedes, this issue was decided adversely to him in United States v. Watkins, 911 F.2d 983, 985 (5th Cir. 1990) (affirming denial of acceptance of responsibility based on criminal conduct by defendant that was unrelated to the underlying conviction). Absent an intervening decision to the contrary by the Supreme Court or the en banc court, "[o]ne panel of this Court may not overrule another." Hogue v. Johnson, 131 F.3d 466, 491 (5th Cir. 1997). Flores acknowledges that his argument is foreclosed by Watkins but raises it to preserve it for possible review by the Supreme Court. The judgment of the district court is AFFIRMED.

The Government's motion for leave to forego filing a brief is GRANTED.

AFFIRMED; MOTION GRANTED.