

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-1627

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

OLIVERIO RAMOS, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-132-P)

(March 4, 1994)

Before GOLDBERG, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:¹

The district court did not err in denying Ramos's motion for a downward departure. Ramos argues that the Sentencing Commission did not adequately consider (or consider at all) the "double penalty" that can arise from the interaction between a pre-guidelines sentence and a post-guidelines sentence when it drafted U.S.S.G. § 5G1.3. According to Ramos, a prisoner subject to the

¹Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

parole system who escapes from custody on a pre-guidelines sentence can receive a "double penalty" for his or her escape: (1) a delay of his or her parole date on the pre-guidelines sentence, and (2) (after a conviction for escaping) a punishment for the escape offense under the sentencing guidelines.

The language of U.S.S.G § 5G1.3(a)² and application note 4 to that guideline make it clear that the commission considered this alleged conflict. The commission, in the application note, concluded "[T]he sentence for the instant offense should be imposed to be served consecutively to the term imposed for the violation of probation, parole, or supervised release" (emphasis added).³

²The applicable portion of the sentencing guideline, U.S.S.G. § 5G1.3 reads as follows:

(a) If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.

³Application Note 4 to this guideline provision states in full:

If the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense should be imposed to be served consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release (in accord with the policy expressed in §§ 7B1.3 and 7B1.4).

Thus, because the Sentencing Commission considered this perceived conflict, Ramos's motion for downward departure was meritless and the sentence is proper.

AFFIRMED.