

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4244
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT TRACY BERG,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:92CR144-1
- - - - -

August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Robert Tracy Berg pleaded guilty to bank robbery and was sentenced pursuant to the Sentencing Guidelines. Berg contends that the Sentencing Guidelines are unconstitutional because they prohibit individualized sentencing. He argues that due process requires individualized sentencing and that the guidelines violate equal protection guarantees because they bear no rational relationship to the enabling legislation. Berg concedes that the

*Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

due process issue was resolved to the contrary in United States v. Guajardo, 950 F.2d 203, 206-07 (5th Cir. 1991). Because the constitution does not require individualized sentences, "[t]he sentencing guidelines do not violate due process." Id. at 206. Berg does not elaborate on his contention that the guidelines bear no rational relationship to the enabling legislation.

Berg urges the Court to reconsider its holding, arguing that individualized sentencing is constitutionally required in capital cases and that there is no reason to distinguish between capital cases and non-capital cases. In this Circuit, one panel cannot overrule another in the absence of an en banc reconsideration or a superseding decision of the Supreme Court. Pruitt v. Levi Strauss & Co., 932 F.2d 458, 465 (5th Cir. 1991). Moreover, "[t]here is no question that death as a punishment is unique in its severity and irrevocability." Gregg v. Georgia, 428 U.S. 153, 187, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976). To the extent that sentences imposed under the guidelines do not involve the same degree of individualization, there is a rational reason for treating those convicted of capital crimes differently and the disparity in treatment does not offend due process or equal protection principles.

AFFIRMED.