IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10086
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FELIX HARPER,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:93-CR-97-A-1

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(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

Felix Harper argues that the district court committed error by denying him a downward adjustment for acceptance of responsibility because he violated the drug-use conditions of his pretrial release. Relying on United States v. Morrison, 983 F.2d 730, 735 (6th Cir. 1993), Harper contends that the 1992 amendments to U.S.S.G. § 3E1.1 allow a sentencing court to consider only whether a defendant accepted responsibility for the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conduct underlying the offense of conviction and restrict the court from evaluating other relevant conduct of the defendant.

In United States v. Portwood, No. 93-1505 (5th Cir. May 6, 1994) (unpublished; copy attached), Harper concedes, "this Court addressed the identical issue, [and] rejected the Morrison rationale," and he "recognizes that the panel deciding this case has no authority but to follow Portwood as "it is the firm rule of this circuit that one panel may not overrule the decisions of another." Although Harper "recognizes that the Court might choose to revisit this issue en banc," he does not so move the Court. See Fed. R. App. P. 35. Harper correctly recites the Court's rule that this panel may not overrule the Court's precedent, see U.S. v. Zuniga-Salinas, 952 F.2d 876, 877 (5th Cir. 1992) (en banc). This appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. 5th Cir. R. 42.2.

DISMISSED.