

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10203  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HUBERT BRADLEY, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:91-CR-58-A(2)c/w  
4:91-CR-70-A(1)

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(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Hubert Bradley, Jr., argues that the district court misapplied the guidelines in failing to sentence him following the revocation of his supervised release in accord with the policy statement contained in Chapter 7 of the Sentencing Guidelines.

This Court "will uphold a sentence unless it (1) was imposed in violation of law, (2) resulted from an incorrect application of the guidelines, (3) was outside the guideline range and is

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

unreasonable, or (4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable." United States v Mathena, 23 F.3d at 87, 89 (5th Cir. 1994) (citations omitted).

In sentencing a defendant following the revocation of his supervised release, a district court is required to consider, but is not bound by, the policy statements contained in Chapter 7 of the Guidelines. See id. at 93; United States v. Headrick, 963 F.2d 777, 782 (5th Cir. 1992).

Bradley argues that Stinson v. United States \_\_\_ U.S. \_\_\_, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993) determined that federal courts are bound by policy statements. This Court has previously determined that Stinson did not address whether the Chapter 7 policy statements are binding on the federal courts. Mathena, 23 F.3d at 93.

The district court properly considered the policy statement applicable to Bradley's sentence and determined that the sentencing range provided by the statement was inappropriate in light of Bradley's conduct. The district court's decision not to impose sentence in accord with the recommendation of the policy statement was not a misapplication of the guidelines.

Because Bradley has failed to raise an issue of arguable merit, the appeal is dismissed as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. Rule 42.2.

APPEAL DISMISSED.