

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10498
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDREW ALEX EUBANKS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:91-CR-129-A (1)

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Andrew Alex Eubanks was convicted of possession with intent to distribute marijuana in May 1990. He was sentenced to 15 months imprisonment to be followed by three years of supervised release. In May 1994, Eubanks's supervised release was revoked and he was sentenced to 24 months imprisonment.

Eubanks raises the issue whether the Sentencing Guideline Chapter VII policy statements regarding the revocation of supervised release are mandatory. Eubanks recognizes that we have decided this issue against him. See United States v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Mathena, 23 F.3d 87, 92-93 (5th Cir. 1994) (sentencing judges are required to consider the policy statements, but they are not bound by them). And he also concedes that this Conference Panel is obligated to follow the panel decision in Mathena. See United States v. Taylor, 933 F.2d 307, 313 (5th Cir.) (one panel may not overrule the decisions of another), cert. denied, 112 S. Ct. 235 (1991). Nevertheless, citing to the Supreme Court's decision in Stinson v. United States, ___ U.S. ___, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993), Eubanks contends that the Chapter VII policy statements are binding.

Our decision in Mathena explored the relevance of Stinson and found it inapplicable because the Supreme Court's statement that the policy statements are binding was dictum and because the Chapter VII policy statements "do not interpret or explain a guideline." Mathena, 23 F.3d at 93. Eubanks contends that we should adopt the Seventh Circuit's response to Stinson in United States v. Lewis, 998 F.2d 497, 499 (7th Cir. 1993), determine that the Chapter VII policy statements are binding, and remand the case for resentencing. We have noted the Lewis decision and rejected it. See Mathena, 23 F.3d at 90 n.6. We are not bound by the decision of Seventh Circuit. See United States v. Sanchez, 988 F.2d 1384, 1396 n.20 (5th Cir.), cert. denied, 114 S. Ct. 217 (1993).

The sentencing judge was not obligated to follow the Chapter VII guidelines; Eubanks's sentence is AFFIRMED.