

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10499
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK GRANVILLE MELTON, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-095-A

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

On May 9, 1994, the district court revoked Frank Melton, Jr.'s supervised release and sentenced him to 20 months imprisonment for violating the conditions of his release. Melton argues that the sentencing range in the guidelines, U.S.S.G. § 7B1.4(b)(2), p.s., is binding authority for the district court in light of Stinson v. United States, ___ U.S. ___, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993), and that the district court erred in sentencing him to more than 12 months imprisonment. In

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Stinson, the Supreme Court held that *commentary* in the Guidelines Manual that "interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." Id. at 1915.

Melton concedes that the issue of the binding nature of the policy statements in Chapter 7 of the guidelines has been resolved against him in this Court's recent decision in United States v. Mathena, 23 F.3d 87, 93 (5th Cir. 1994). In Mathena, this Court stated that "[t]he Supreme Court's recent opinion in Stinson . . . has no bearing on this case." Id. at 93. The Court distinguished Stinson on the grounds that the policy statements in Chapter 7 of the guidelines do not interpret or explain any statute or guideline, as did the commentary to the guideline at issue in Stinson. Id.

Melton further recognizes that "it is the firm rule of this circuit that one panel may not overrule the decisions of another." United States v. Taylor, 933 F.2d 307, 313 (5th Cir.), cert. denied, 112 S. Ct. 235 (1991). This appeal is without arguable merit and is 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.