

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20718
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

versus

RICHARD DAVIS,

Defendant-Appellant,

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-94-CR-51-2
- - - - -
June 30, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

The 18-month sentence imposed by the district court on Richard Davis for being an illegal alien in possession of a firearm is within the Guideline range whether the correct offense level is 14, 15-21 months, or 15, 18-24 months. When the number of months of a prison sentence that is imposed as a result of an incorrect application of the Guidelines is also the number of months that properly could be imposed by a correct application of the Guidelines, the sentence must be vacated and the case

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

remanded for resentencing, unless we are persuaded that the district court would have imposed the same sentence absent the erroneous factor. United States v. Tello, 9 F.3d 1119, 1131 (5th Cir. 1993).

The district court explicitly stated its determination that 18 months is the appropriate sentence, regardless whether the offense level was 14 or 15. The court had earlier noted the small difference between the guidelines ranges. Because we are confident that the district court would have imposed the same sentence whether the applicable offense level was 14 or 15, any error in applying the guidelines was harmless. We therefore do not decide whether Davis's offense level should have been adjusted on the basis of the third gun found in his roommate's closet.

AFFIRMED.