

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-41223  
(Summary Calendar)

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROCKY BERT COZZENS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(USDC No. 1:96-CR-61-1)  
- - - - -

August 1, 1997

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

PER CURIAM:\*

Rocky Bert Cozzens appeals his sentence after being convicted of transporting a stolen motor vehicle in interstate commerce. Cozzens contends that the district court abused its discretion in departing upward. We have reviewed the record and the briefs of the parties and hold that the district court did not follow the proper methodology in departing upward.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

When departing above criminal history category VI, district courts are required to consider guideline ranges for higher offense levels. See United States v. Lambert, 984 F.2d 658, 663 (5th Cir. 1993)(en banc); United States v. Daughenbaugh, 49 F.3d 171 (5th Cir. 1995). Although the district court gave adequate reasons for departing upward, the district court did not explain how it arrived at a sentence of 50 months. The record does not show that the district court considered guideline ranges for higher offense levels before sentencing Cozzens. See generally United States v. Pennington, 9 F.3d 1116 (5th Cir. 1993); United States v. Wright, 24 F.3d 732 (5th Cir. 1994).

It is ordered that the sentence imposed by the district court against Cozzens is VACATED. The case is REMANDED to the district court for resentencing.

VACATED AND REMANDED.