

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60049
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GENE ARMOND BERTHIAUME,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:95CR40LN-2
- - - - -

October 23, 1996

Before POLITZ, Chief Judge, and JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Gene Berthiaume appeals his sentence for bank robbery, contending that the two-level enhancement in his base offense level for obstruction of justice violates double jeopardy. Our review of the record and the briefs of the parties convinces us that double jeopardy is not implicated. Berthiaume's indictment on the escape-from-custody offense cannot constitute former jeopardy barring sentencing for the instant bank-robbery

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

offense because, at the time he pleaded guilty to the bank robbery charges and was sentenced therefor, Berthiaume had not been tried for escape. See Serfass v. United States, 420 U.S. 377, 390-91 (1975). Thus, double jeopardy is not implicated. Berthiaume's sentence is affirmed.

AFFIRMED.