

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-10990  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRED ZAPATA GUERRERO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 6:98-CR-80-2  
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June 13, 2000

Before JOLLY, DAVIS, and STEWART, Circuit Judges.

PER CURIAM:\*

Fred Zapata Guerrero appeals his sentence following a guilty-plea conviction for possession of stolen firearms in violation of 18 U.S.C. §§ 922(j) and 924(a)(2).

This court reviews the sentencing judge's application of the sentencing guidelines de novo and accepts the sentencing judge's findings of fact unless they are clearly erroneous. United States v. Rodriguez-Guzman, 56 F.3d 18, 20 (5<sup>th</sup> Cir. 1995).

Guerrero argues that a 1988 aggravated-assault offense should not be used to calculate his base offense level under

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

U.S.S.G. § 2K2.1 because he was given deferred adjudication for the offense. He argues that, because the deferred adjudication has not been finally adjudicated, it should not be counted as a conviction under § 2K2.1. We have previously determined that a deferred adjudication can be used when calculating a defendant's base offense level under § 2K2.1. United States v. Stauder, 73 F.3d 56, 57 (5<sup>th</sup> Cir. 1996).

Guerrero admits that he is aware of Stauder, but he urges this court to overrule its opinion in that case. One panel of this court may not overrule the decision of a prior panel in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the United States Supreme Court. Burge v. Parish of St. Tammany, 187 F.3d 452, 466 (5<sup>th</sup> Cir. 1999). Therefore, Guerrero's request that this court revisit the decision in Stauder is without merit, and the judgment of the district court is AFFIRMED.