

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40002
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MURPHY JOHN FRANK,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:96-CR-49-2
- - - - -

August 15, 1997

Before KING, HIGGINBOTHAM, and DUHÉ, Circuit Judges.

PER CURIAM:*

Murphy John Frank argues that the district court erred in increasing his offense level under U.S.S.G. § 2K2.1(b)(4) because the firearms involved in his offense were not stolen prior to his commission of the offense. Frank also argues that the rule of lenity should be applied in construing the language contained in § 2K2.1(b)(4).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Frank's base offense level was properly determined under § 2K2.1(a)(6). Therefore, the district court did not err in applying the adjustment authorized by § 2K2.1(b)(4). See § 2K2.1, comment. (n.12); United States v. Armstead, 114 F.3d 504, 509 (5th Cir. 1997).

Frank has not shown that the rule of lenity should be applied in construing the language of § 2K2.1(b)(4) because he has not demonstrated that the wording of the guideline is ambiguous. See United States v. Singleton, 946 F.2d 23, 24 (5th Cir. 1991).

AFFIRMED.