

United States Court of Appeals
For the Eighth Circuit

No. 16-4441

United States of America

Plaintiff - Appellee

v.

Donald E. Gordon, Jr.

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - Cape Girardeau

Submitted: December 11, 2017

Filed: December 27, 2017

[Unpublished]

Before SMITH, Chief Judge, ARNOLD and KELLY, Circuit Judges.

PER CURIAM.

Donald Gordon, Jr., pleaded guilty to being a felon possessing a firearm and to possessing a stolen firearm. *See* 18 U.S.C. § 922(g)(1), (j). Gordon had twice been convicted in Missouri state court of "recklessly caus[ing] serious physical injury to another person." *See* Mo. Rev. Stat. § 565.060.1(3) (now codified at Mo. Rev. Stat. § 565.052.1(3)). When calculating Gordon's base offense level under the Sentencing

Guidelines, the district court determined that Gordon's prior convictions were crimes of violence. *See* USSG § 2K2.1(a)(2). Gordon appeals, maintaining that his prior convictions were not in fact crimes of violence, and so the district court set his base offense level, and his Guidelines range, too high. While Gordon's appeal was pending, a panel of our court held that convictions under the statute that Gordon violated were not crimes of violence. *See United States v. Fields*, 863 F.3d 1012, 1015 (8th Cir. 2017). Because we are bound by the prior panel's decision, *see United States v. Eason*, 829 F.3d 633, 641 (8th Cir. 2016), we vacate Gordon's sentence and remand to the district court for resentencing.
