

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-51313
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BOBBY JOE REED, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-03-CR-166-ALL-SS

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Bobby Joe Reed, Jr., appeals his guilty plea conviction for possessing a stolen firearm in violation of 18 U.S.C. §§ 922(j) and 924(a)(2). Reed argues that 18 U.S.C. § 922(j), which prohibits the possession of a stolen firearm, is unconstitutional in light of the Supreme Court's decision in United States v. Lopez, 514 U.S. 549 (1995). Reed concedes that this issue is foreclosed by our opinion in United States v. Luna, 165 F.3d 316

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 1999), and he raises the issue only to preserve it for possible Supreme Court review.

A panel of this court cannot overrule a prior panel's decision 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 (5th Cir. 1999). No such decision overruling Luna exists. Accordingly, Reed's argument is indeed foreclosed. The judgment of the district court is AFFIRMED.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that an appellee's brief not be required. The motion is GRANTED.

AFFIRMED; MOTION GRANTED.