

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-11266  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BOBBY LEWIS LEINBAUGH,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:00-CR-36-1-C  
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April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Bobby Lewis Leinbaugh appeals the 151-month sentence imposed following his plea of guilty to a charge of possession of a firearm by a felon, a violation of 18 U.S.C. § 922(g)(1). He contends that the prior violent felony convictions that subjected him to an enhanced sentence under 18 U.S.C. § 924(e) were elements of the offense that should have been charged in the indictment.

Leinbaugh acknowledges that his argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in light of the decision in Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000).

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at \_\_\_, 120 S. Ct. at 2362; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed, (U.S. Jan. 26, 2001)(No. 00-8299). Leinbaugh's argument is foreclosed. The judgment of the district court is AFFIRMED.