

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10531
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO GARCIA SANTOLLO,
also known as Mago,
also known as Antero Estrada,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:00-CR-266-16-X

April 10, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Mario Garcia Santollo appeals his conviction and sentence for conspiring to distribute and possess with the intent to distribute a mixture or substance containing a detectable amount of methamphetamine in excess of 500 grams and to distribute and possess with the intent to distribute a mixture or substance containing a detectable amount of cocaine in excess of five kilograms. Santollo argues that 21 U.S.C. §§ 841 and 846, the statutes under which he was convicted and sentenced, were

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Santollo's argument is foreclosed by our opinion in United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000)(revised opinion), cert. denied, 532 U.S. 1045 (2001), which rejected a broad, Apprendi-based, attack on the constitutionality of those statutes. 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). Santollo has identified no such decision. The judgment of the district court is AFFIRMED.

In lieu of filing an appellee's brief, the Government has filed a motion asking us to dismiss this appeal or, in the alternative, to summarily affirm the district court's judgment. The Government's motion to dismiss is DENIED. The motion for a summary affirmance is GRANTED. The Government need not file an appellee's brief.

MOTION TO DISMISS DENIED; MOTION FOR SUMMARY AFFIRMANCE GRANTED; AFFIRMED.