

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-50137  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN ANTONIO RODRIGUEZ, also known as  
Juan Anthony Rodriguez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-00-CR-48-ALL

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September 27, 2001

Before JOLLY, JONES and SMITH, Circuit Judges.

PER CURIAM:\*

Juan Antonio Rodriguez appeals from his guilty-plea conviction and sentence for armed robbery, 18 U.S.C. § 2113, and using and carrying a firearm during a crime of violence, 18 U.S.C. § 924(c)(1)(A). Rodriguez argues that 18 U.S.C. § 924(c)(1)(A)(iii), which prohibits discharging a firearm in furtherance of a crime of violence, states an element of a separate, aggravated criminal offense and that it was unconstitutional to apply the 10-year mandatory minimum sentence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

under 18 U.S.C. § 924(c)(1)(A)(iii), when the indictment failed to allege as an element of the offense that Rodriguez discharged the firearm.

We have reviewed the record and the briefs of the parties, and we discern no reversible error. Rodriguez's arguments are foreclosed by the Supreme Court's decision in McMillan v. Pennsylvania, 477 U.S. 79, 81 (1986), and by this court's recent decision in United States v. Barton, 257 F.3d 433 (5th Cir. 2001). Accordingly, his conviction and sentence are AFFIRMED.