

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40823
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SALVADOR VARGAS NAVARRO,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:00-CV-376
USDC No. 4:96-CR-63-2

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Salvador Vargas Navarro, federal prisoner # 05101-010, appeals the district court's dismissal of his 28 U.S.C. § 2255 motion as untimely. He maintains that because he filed his motion within one year of the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), and because Apprendi effected a substantive change in criminal law, it is applicable to his case. Apprendi

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

is not retroactively applicable to cases on collateral review. See United States v. Brown, 305 F.3d 304, 305-09 (5th Cir. 2002), petition for cert. filed (U.S. Feb. 3, 2003)(No. 02-9606). The argument is foreclosed by the law of this circuit. Id. The judgment of the district court is therefore AFFIRMED.