

December 9, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10382  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRIAN NOLLEY, also known as B-Nolley,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:02-CR-174-15-A  
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Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Brian Nolley appeals from his guilty-plea conviction for conspiracy to possess with intent to distribute mixtures containing cocaine and cocaine base. Nolley's sentence was increased pursuant to U.S.S.G. § 2D1.1(b)(1) because a firearm was possessed. He argues that the Government's failure to allege his use or possession of a firearm in the indictment rendered his judgment of conviction invalid under Apprendi v. New Jersey, 530 U.S. 466 (2000). Nolley's Apprendi argument is foreclosed by our

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

holding in United States v. Randle, 304 F.3d 373, 378 (5th Cir. 2002), cert. denied, 123 S. Ct. 1748 (2003).

Nolley also contends that his judgment of conviction is invalid on the same ground under Ring v. Arizona, 536 U.S. 584 (2002). He asserts that, despite contrary language in Harris v. United States, 536 U.S. 545 (2002), the holding of Harris is suspect in light of Ring. Nolley's arguments regarding Ring and Harris are wholly lacking in merit.

Accordingly, the district court's judgment of conviction is AFFIRMED.