

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50889
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRENT HUGHES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-03-CR-52

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Brent Hughes appeals the sentence imposed following his guilty plea conviction of sexual abuse of a minor in violation of 18 U.S.C. § 2243(a). Hughes argues that under the reasoning of Apprendi v. New Jersey, 530 U.S. 466 (2000), a fact must be alleged in the indictment before it may be used to increase the maximum guideline sentence. Hughes acknowledges that his contention is foreclosed by this court's decision in United

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 v. Randle, 304 F.3d 373 (5th Cir. 2002), but he seeks to preserve his argument for possible further review.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that an appellee's brief not be required. The motion is GRANTED. The judgment of the district court is AFFIRMED.

AFFIRMED; MOTION GRANTED.