

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

April 19, 2011

Lyle W. Cayce  
Clerk

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No. 09-11221

Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RONALD HERNANDEZ,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:09-CR-72-1

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Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Ronald Hernandez raises arguments that are foreclosed by *United States v. Betancourt*, 586 F.3d 303, 308-09 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 1920 (2010), which reaffirmed the holding in *United States v. Gamez-Gonzalez*, 319 F.3d 695, 700 (5th Cir. 2003), that knowledge of drug type and quantity is not an element of the offense under 21 U.S.C. § 841. He also raises arguments that he concedes are foreclosed by *United States v. Brown*, 920 F.2d 1212, 1216-17 (5th Cir. 1991), *abrogated on*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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*other grounds by United States v. Candia*, 454 F.3d 468, 472-73 (5th Cir. 2006), which held that a district court may order a term of imprisonment to run consecutively with an unimposed state sentence. Finally, Hernandez raises arguments that he acknowledges are foreclosed by *United States v. London*, 568 F.3d 553, 564 (5th Cir. 2009), *cert. denied*, 131 S. Ct. 631 (2010). The Supreme Court adopted the position advanced in *London*. See *Abbott v. United States*, 131 S. Ct. 18, 23 (2010) (holding that a defendant is subject to a mandatory, consecutive sentence for a conviction pursuant to 18 U.S.C. § 924(c) even if the defendant received a higher mandatory minimum on a different count of conviction).

The Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.