

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-10067  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BILLY RAY LANG, also  
known as Sneaky,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:98-CR-256-1-G  
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April 11, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Billy Ray Lang appeals his guilty-plea conviction for conspiracy to distribute crack cocaine in violation of 21 U.S.C. §§ 841(a), 841(b)(1)(A), and 846. He argues that the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), rendered 21 U.S.C. § 841(b)(1)(A) unconstitutional. However, he concedes that this court rejected an Apprendi-based challenge to the constitutionality of 21 U.S.C. § 841 in United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000), cert. denied,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

532 U.S. 1045 (2001). He asserts that he is raising the issue to preserve it for en banc or Supreme Court review. He did not raise the issue in the district court.

In Slaughter, 238 F.3d at 582, we held that there is "nothing in the Supreme Court decision in Apprendi which would permit [this court] to conclude that 21 U.S.C. § 841(a) and (b) ... are unconstitutional on their face." A panel of this court cannot overrule a prior panel's decision in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the United States Supreme Court. Burge v. Parish of St. Tammany, 187 F.3d 452, 466 (5th Cir. 1999). Moreover, the Ninth Circuit has reversed its decision in United States v. Buckland, 259 F.3d 1157, 1160-68 (9th Cir. 2001), rev'd en banc, 277 F.3d 1173 (9th Cir. 2002), the only circuit-level decision that supported Lang's argument.

AFFIRMED.