

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-10394  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS JAVIER CANO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:00-CR-256-1  
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February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Carlos Javier Cano was convicted of importing into the United States more than 100 grams of a mixture and substance containing heroin in violation of 21 U.S.C. § 952(a). He was sentenced to 60-months' imprisonment under the terms of 21 U.S.C. §§ 960(a)(1) and (b)(2)(A). Notwithstanding those facts, and for reasons that escape the court, Cano argues that his conviction and sentence are invalid because Apprendi v. New Jersey, 530 U.S. 466 (2000) rendered 21 U.S.C. § 841 unconstitutional.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In lieu of filing an appellee's brief, the Government has filed a motion asking this court to dismiss this appeal or, in the alternative, to summarily affirm the district court's judgment. Inexplicably, the Government's motion fails to bring to this court's attention the complete irrelevance of Cano's argument.

We are seriously disappointed in counsels' failure to exercise greater care in preparing their submissions to this court. We caution counsel for both parties that even apparently straightforward appeals deserve their full attention.

Cano's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because Cano's appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. The Government's motion to dismiss is GRANTED. The motion for a summary affirmance is DENIED.

MOTION FOR SUMMARY AFFIRMANCE DENIED; MOTION TO DISMISS GRANTED; APPEAL DISMISSED AS FRIVOLOUS.