

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-31242
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO L. MITCHELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 00-CR-30026-3

June 18, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Antonio L. Mitchell appeals his conviction and sentence for distribution of five or more grams of cocaine base. Mitchell argues that 21 U.S.C. § 841, the statute under which he was convicted and sentenced, was rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Mitchell's argument is foreclosed by our opinion in United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000)(revised opinion),

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

cert. denied, 532 U.S. 1045 (2001), which rejected a broad, Apprendi-based, attack on the constitutionality of that statute. We 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).

Mitchell's argument that 21 U.S.C. § 841(a)(1) is unconstitutional as applied to him also fails. Mitchell has not shown that he was sentenced to more than the statutory maximum of 240 months that is appropriate for five grams or more of cocaine base as charged in the indictment. 21 U.S.C. § 841(b)(1)(C); Apprendi, 530 U.S. at 490.

Mitchell's argument that there is insufficient evidence to support his guilty plea fails because he has not shown that the district court plainly erred in accepting his plea of guilty to distributing five or more grams of cocaine base. United States v. Vonn, 122 S. Ct. 1043, 1046 (2002).

AFFIRMED.