

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40822
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS JAVIER SUAREZ-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-97-CR-307-1

December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Luis Javier Suarez-Garcia appeals his guilty plea conviction and sentence for conspiring to possess with the intent to distribute one kilogram or more of heroin. Suarez-Garcia argues that 21 U.S.C. §§ 841 and 846, the statutes under which he was convicted and sentenced, were rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Suarez-Garcia concedes that his argument is foreclosed by our opinion in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000)(revised opinion), cert. denied, 532 U.S. 1045 (2001), which rejected a broad Apprendi-based attack on the constitutionality of those statutes. He raises the issue only to preserve it for Supreme Court review.

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). No such decision overruling Slaughter exists. Accordingly, Suarez-Garcia's argument is indeed foreclosed. The judgment of the district court is AFFIRMED.

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.

AFFIRMED; MOTION GRANTED.