

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-40861  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER LOPEZ CANTU,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-00-CV-154  
USDC No. B-97-CR-20-1  
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December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Javier Lopez Cantu, federal prisoner # 74613-079, appeals the district court's denial of his 28 U.S.C. § 2255 motion, in which he challenged his 1996 sentence for conspiracy to possess with intent to distribute 1,000 kilograms or more of marijuana. Cantu argues that his sentence violates Apprendi v. New Jersey, 530 U.S. 466 (2000), because the jury was not instructed to find a drug quantity.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court granted Cantu a certificate of appealability ("COA") because this court had not yet addressed whether Apprendi can be applied retroactively to an initial 28 U.S.C. § 2255 motion. This court recently concluded that Apprendi does not apply retroactively to cases on initial collateral review. See United States v. Brown, 305 F.3d 304, 310 (5th Cir. 2002). In Brown, we stated that "Apprendi creates a new rule of criminal procedure which is not retroactively applicable to initial petitions under [28 U.S.C.] § 2255." Id. Therefore, Cantu's Apprendi claim fails.

Cantu also argues that his trial and appellate counsel rendered ineffective assistance. We do not reach these issues because Cantu has not expressly sought to expand the district court's grant of COA to include them. See United States v. Kimler, 150 F.3d 429, 431 (5th Cir. 1998)(party must expressly seek a COA on additional issues not certified by the district court).

AFFIRMED.