

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-10338  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ORCENES MASON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:01-CR-157-1-A  
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October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Orcenes Mason appeals his guilty plea conviction and sentence for possessing with the intent to distribute more than five grams of a mixture and substance containing a detectable amount of cocaine base. Mason argues that 21 U.S.C. § 841 was rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Mason concedes that his argument is foreclosed by our opinion in United States v. Slaughter, 238 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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 that statute. 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, Mason's argument is indeed foreclosed. The judgment of the district court is AFFIRMED.

The Government has filed a motion for leave to forego the filing of an appellee's brief. The motion is GRANTED.

AFFIRMED; MOTION GRANTED.