

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10469
Conference Calendar

OZIEL GONZALEZ MARTINEZ,

Petitioner-Appellant,

versus

SAM PRATT, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:02-CV-91-R

October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Ozeil Gonzalez Martinez, federal prisoner # 75159-9000, was convicted in 1993 of conspiracy to import at least one kilogram of heroin, conspiracy to possess with intent to distribute at least one kilogram of heroin, and several counts of possession with intent to distribute heroin. He appeals the district court's denial of his 28 U.S.C. § 2241 petition, wherein he argued that his sentence of concurrent terms of 210 months'

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

imprisonment for each count was in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000), because his sentences were based upon six kilograms of heroin.

The district court determined that Martinez had not met the requirements of 28 U.S.C. § 2255's savings clause and that Martinez could not raise his claim in a 28 U.S.C. § 2241 petition. His sentences were below the lowest statutory maximum for his convictions. See 21 U.S.C. § 841(b)(1)(C). There was no Apprendi violation. See United States v. Clinton, 256 F.3d 311, 314 (5th Cir.), cert denied, 122 S. Ct. 492 (2001); United States v. Doggett, 230 F.3d 160, 166 (5th Cir. 2000), cert. denied, 531 U.S. 1177 (2001). Further, the district court's determination that Apprendi does not apply retroactively to cases on collateral review and that an Apprendi claim does not satisfy the requirements of 28 U.S.C. § 2255's savings clause was correct. See Wesson v. U.S. Penitentiary, Beaumont, TX, 305 F.3d 343 (5th Cir. 2002).

AFFIRMED.