

August 20, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-21237
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRE MILLS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-244-1

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Andre Mills appeals his guilty plea conviction for aiding and abetting the possession of more than five grams of cocaine base with intent to distribute. Mills argues that 21 U.S.C. §§ 841 (a) and (b) were rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Mills concedes that his argument is foreclosed by our opinion in 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

broad Appendi-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, Mills's argument is foreclosed.

AFFIRMED.