

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41300
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO MARTINEZ-CANIZALES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-03-CR-400-1

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Ricardo Martinez-Canizales appeals his guilty plea conviction for knowingly importing into the United States more than five kilograms of cocaine. He argues that 21 U.S.C. §§ 841, 846, 952, and 960 were rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Martinez-Canizales concedes that his argument is foreclosed by our opinion in United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2000). 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, Martinez-Canizales's argument is foreclosed, and 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.