

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-40023
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ANGEL CORTEZ-VASQUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-03-CR-213-ALL

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Angel Cortez-Vasquez appeals his guilty plea conviction for importation of more than 5 kilograms of cocaine. Cortez-Vasquez argues that the Government was obliged to, but did not, establish as a factual basis for his guilty plea that he knowingly possessed the particular type of controlled substance at issue in this case. He concedes that this argument is foreclosed by our opinion in United States v. Gamez-Gonzalez, 319 F.3d 695, 700 (5th Cir.), cert. denied, 123 S. Ct. 2241 (2003),

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

which held that knowledge of the drug type and quantity is not an element of the offense. Cortez-Vasquez also argues that 21 U.S.C. §§ 952 and 960 were rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). He concedes that this argument is foreclosed by our opinion in United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000), which rejected a broad Apprendi-based attack on the constitutionality of 21 U.S.C. § 841. He raises these issues only to preserve them 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 Gamez-Gonzalez and Slaughter exist. Accordingly, Cortez-Vasquez's arguments are indeed foreclosed. 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.