

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 19, 2008

No. 07-10604
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARTIN PUENTES, JR

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CR-99-3

Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Martin Puentes, Jr., was convicted by a jury of conspiracy, distribution of a controlled substance, possession with intent to distribute a controlled substance, and aiding and abetting. He was sentenced as a career offender to an aggregated sentence of 360 months of imprisonment and 10 years of supervised release.

After briefing was completed in this case, Puentes moved to relieve appointed counsel and have new counsel appointed. Alternatively, he moved to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

proceed pro se on appeal and file a new appellate brief. Puentes's assertion of his right to self-representation is untimely. Cf. *United States v. Wagner*, 158 F.3d 901, 902 (5th Cir. 1998). All of Puentes's outstanding pro se motions are DENIED.

Puentes argues that the district court erred in enhancing his sentence as a career offender pursuant to U.S.S.G. § 4B1.1 based on a finding that his Texas conviction for possession of a controlled substance with intent to deliver was a "controlled substance offense." Puentes correctly concedes that this argument is foreclosed by *United States v. Ford*, 509 F.3d 714, 717 (5th Cir. 2007), and he raises it solely to preserve it for further possible review.

Puentes also raises arguments challenging the constitutionality of 21 U.S.C. §§ 841 and 851 that are, as Puentes concedes, foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). See *United States v. Mata*, 491 F.3d 237, 245 (5th Cir. 2007). The Government has filed a motion for summary affirmance, which is GRANTED. The Government's alternative motion for an extension of time for filing an appellate brief is DENIED, and the judgment of the district court is AFFIRMED.