

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2011

Lyle W. Cayce
Clerk

No. 10-51149
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

NOE JAIMES,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:10-CR-385-1

Before HIGGINBOTHAM, DAVIS and ELROD, Circuit Judges.

PER CURIAM:*

Noe Jaimes appeals his guilty plea conviction for possession with intent to distribute five grams or more of cocaine base. The district court sentenced Jaimes to 292 months of imprisonment.

Jaimes first argues that the district court erred in denying his motion to dismiss the indictment in light of the enactment of the Fair Sentencing Act of 2011, Pub. L. No. 111-220, 124 Stat. 2372. Jaimes's voluntary and unconditional guilty plea waived any challenge to the denial of his motion to dismiss the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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indictment. *See United States v. Brice*, 565 F.2d 336, 337 (5th Cir. 1977); *United States v. Sealed Appellant*, 526 F.3d 241, 242 (5th Cir. 2008).

Next, Jaimes contends 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 with intent to manufacture and deliver cocaine was a “controlled substance offense.” Jaimes correctly concedes that this argument is foreclosed by *United States v. Ford*, 509 F.3d 714, 717 (5th Cir. 2007), but he argues that *Ford* was wrongly decided. One panel of this court may not overrule the decision of a prior panel in the absence of en banc decision or a superseding Supreme Court decision. *See United States v. Lipscomb*, 299 F.3d 303, 313 n. 34 (5th Cir. 2002). The judgment of the district court is affirmed.

AFFIRMED.