

May 16, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01-50367
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

SALVADOR BEJARANO GUILLEN, also known as Salvator
Bejaraao Guillen,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-98-CR-222-1

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

The Government appeals from the district court's partial grant of the 28 U.S.C. § 2255 motion filed by Salvador Bejarano Guillen, federal prisoner # 84750-080. The district court retroactively applied Apprendi v. New Jersey, 530 U.S. 466 (2000), in granting Guillen 28 U.S.C. § 2255 relief and in reducing his sentence.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We have held that Apprendi "is not retroactive on collateral review of initial § 2255 motions." See United States v. Brown, 305 F.3d 304, 306-10 (5th Cir. 2002). The district court, acting without the benefit of Brown, did not have the authority to correct Guillen's sentence pursuant to Apprendi. The judgment of the district court is VACATED and the case is REMANDED for imposition of the original sentence.

Guillen's motion for the appointment of counsel is DENIED.