

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-51294
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TROY JERMAINE HOWELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-01-CR-900-1-DB

October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Troy Jermaine Howell appeals the sentence imposed following his guilty plea conviction of conspiring to possess with the intent to distribute marijuana. Howell argues that 21 U.S.C. § 841(b)(1)(B) was rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Howell concedes that his argument is foreclosed by our opinion in United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000)(revised opinion),

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

cert. denied, 532 U.S. 1045 (2001), which rejected a broad Apprendi-based attack on the constitutionality of that statute. 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, Howell's argument is indeed foreclosed.

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. The judgment of the district court is AFFIRMED.

AFFIRMED; MOTION GRANTED.