

October 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20009
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH SAUCIER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-305-1

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Kenneth Saucier appeals his conspiracy to possess with intent to distribute 50 grams or more of cocaine base and possession with intent to distribute 50 grams or more of cocaine base. Saucier argues that 21 U.S.C. § 841 was rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Saucier concedes that his 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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.

Saucier has filed a pro se motion seeking to withdraw the filed brief, dismiss his appellate counsel, and represent himself on appeal. However, because counsel has already filed a brief on Saucier's behalf, Saucier's request for the appointment of new counsel is untimely. Cf. United States v. Wagner, 158 F.3d 901, 902 (5th Cir. 1998).

Accordingly, the judgment of the district court is AFFIRMED and the motion DENIED.