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United States Court of Appeals For the First Circuit

No. 00-2491

JAMES CRUZ,
Petitioner, Appellant,

v.

UNITED STATES,
Respondent, Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. David M. Cohen, U.S. Magistrate Judge]

Before

Torruella, Circuit Judge,
Stahl, Senior Circuit Judge,
and Howard, Circuit Judge.

James Cruz on brief pro se.
Margaret D. McGaughey, Appellate Chief, and Paula D. Silsby,
United States Attorney, on brief for appellee.

January 14, 2003

Per Curiam. James Cruz appeals from the district court's judgment denying his 28 U.S.C. § 2255 motion to set aside his sentence following his jury-trial convictions for conspiracy to distribute crack cocaine, 21 U.S.C. §§ 841 and 846, along with various firearm possession violations. We have reviewed the record, the briefs of the parties, and the applicable law, and we discern no reversible error.

Because neither Cruz's sentence of imprisonment nor term of supervised release exceeded the applicable default statutory maximum, there was no violation of Apprendi v. New Jersey, 530 U.S. 466 (2000). See United States v. Cortes-Claudio, 2002 WL 31681895 at *1 (1st Cir. Dec. 2, 2002). There being no Apprendi violation, the question of the retroactive application of Apprendi becomes unnecessary to resolve here. Similarly rendered moot is the third issue on which a COA was granted -- whether Cruz can establish cause and prejudice to overcome his procedural default of the Apprendi issue.

The district court's judgment denying Cruz's section 2255 motion is AFFIRMED.