

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-3343

UNITED STATES OF AMERICA

v.

IFEDOO NOBLE ENIGWE
a/k/a
“DAMIEN”

Ifeddo Noble Enigwe,

Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal Action No. 92-cr-00257-1)
District Judge: Honorable Jan E. DuBois

Submitted Under Third Circuit LAR 34.1(a)
June 30, 2003

Before: SLOVITER, AMBRO and BECKER, Circuit Judges

(Opinion filed: July 15, 2003)

OPINION

AMBRO, Circuit Judge

In 1992, Ifedoo Noble Enigwe was convicted on four counts relating to heroin trafficking. He was subsequently sentenced, inter alia, to 235 months imprisonment and 5 years supervised

release. After the Supreme Court decided Apprendi v. New Jersey, 530 U.S. 46 (2000), Enigwe filed a habeas corpus petition under 28 U.S.C. § 2255. On June 21, 2001, the District Court denied Enigwe's petition, concluding that Apprendi does not apply retroactively to cases on collateral review. After our Court decided United States v. Vasquez, 271 F.3d 93 (3d Cir. 2001), and United States v. Barbosa, 271 F.3d 438 (3d Cir. 2001), Enigwe filed a motion for reconsideration. On July 30, 2002, the District Court denied Enigwe's motion but granted him a certificate of appealability on the issue whether "his trial and/or sentence violated the rule of Apprendi v. New Jersey, 530 U.S. 46 (2000)."

The issue raised in this appeal is whether Apprendi applies retroactively to cases on collateral review. Two very recent decisions have concluded that Apprendi does not so apply. United States v. Swinton, 2003 WL 21436809 (3d Cir. June 23, 2003); see also United States v. Jenkins, 2003 WL 21398812 (3d Cir. June 18, 2003). Following these opinions (as we must absent en banc reversal), we affirm the order of the District Court denying Enigwe's motion.

TO THE CLERK:

Please file the foregoing Opinion.

By the Court,

/s/Thomas L. Ambro
Circuit Judge