

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 21, 2002

Before

Hon. Joel M. Flaum, *Chief Judge*

Hon. John L. Coffey, *Circuit Judge*

Hon. Daniel A. Manion, *Circuit Judge*

No. 00-3242

Rene Rodriguez,

Petitioner-Appellant,

v.

United States of America,

Respondent-Appellee.

Appeal from the United States
District Court for the Eastern
District of Wisconsin

No. 97 C 426

Thomas J. Curran, Judge.

ORDER

The opinion of this court issued on April 11, 2002 is amended as follows:

A footnote is added at the end of the carryover paragraph at the top of p.13 of the slip opinion, to read:

Rodriguez's *Apprendi* claim does not benefit from our recent decision in *Ashley v. United States*, 266 F.3d 671 (7th Cir. 2001), where we held that the one-year statute of limitations in §2255 does not apply to *Apprendi* claims brought in initial motions for collateral review. Rodriguez's *Apprendi* claim is not an initial motion for collateral review as it was raised in post-judgment motion to amend his initial claim which the district court denied in a proper exercise of discretion. *Ashley* does not apply in this case because Rodriguez's *Apprendi* claim is a successive collateral attack triggering AEDPA's gate-keeping functions. See 28 U.S.C. § 2255, ¶ 8.1.

Petitioner-Appellant filed a petition for rehearing *en banc* on April 25, 2002. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all of the judges on the panel have voted to deny rehearing. The petition is therefore DENIED.