

SEP 04 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>VIKTOR SAVCHENKO,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 07-50451

D.C. No. CR-01-01652-JTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Viktor Savchenko appeals from the 300-month sentence imposed on re-sentencing, following his jury-trial conviction for conspiracy to possess cocaine on

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

board a vessel, and possession of cocaine with intent to distribute on board a vessel, both in violation of 46 U.S.C. § 1903(a)(c)(1)(C)(f), and aiding and abetting, in violation of 18 U.S.C. § 2. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Savchenko contends that the district court violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), by enhancing his sentence based on its own factual findings regarding: (1) the quantity of drugs; and (2) his role as the captain of a vessel carrying a controlled substance. This contention is foreclosed because none of the district court's factual findings raised the statutory maximum sentence set forth in 21 U.S.C. § 960(b). See *United States v. Booker*, 543 U.S. 220, 233-34 (2005); *United States v. Moreland*, 509 F.3d 1201, 1219-21 (9th Cir. 2007).

Savchenko further contends that this Court cannot review his sentence for reasonableness without itself violating *Apprendi*. This contention lacks merit. See *Booker*, 543 U.S. at 261-64; see also *United States v. Dare*, 425 F.3d 634, 641 (9th Cir. 2005) (explaining that an intermediate appellate court cannot overrule a decision of the Supreme Court or even anticipate an overruling by the Supreme Court).

Finally, Savchenko contends that his sentence is unreasonable because the district court incorrectly focused on imposing a sentence that was “reasonable,”

rather than one that was “sufficient, but not greater than necessary” to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2). We conclude that the district court did not commit procedural error and that Savchenko’s sentence is reasonable. *See United States v. Carty*, 520 F.3d 984, 994-95 (9th Cir. 2008) (en banc); *see also Gall v. United States*, 128 S. Ct. 586, 600-02 (2007).

AFFIRMED.