

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

Case No. 06-20021-JWL

Alberto Perez-Jacome,

Defendant.

MEMORANDUM & ORDER

In May 2006, Mr. Perez-Jacome was indicted for various drug crimes and ultimately was convicted of multiple drug offenses. He was sentenced to 132 months' imprisonment. Mr. Perez-Jacome appealed his conviction to the Tenth Circuit and his conviction was affirmed in December 2009. Mr. Perez-Jacome subsequently filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, challenging his conviction and sentence on various grounds. The court denied that motion in August 2011.

In January 2012, Mr. Perez-Jacome filed a motion to dismiss the Indictment under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). In March 2012, this court denied the motion to dismiss on the grounds that the motion was procedurally barred. Specifically, the court concluded that the motion was not timely filed pursuant to Federal Rule of Criminal Procedure 12(b)(3) because the motion was filed over three years after judgment was entered, two years after the conclusion of his appeal and even after habeas proceedings. *See United States v. Carranza-Hurtado*, 2012 WL 75961, at *2 (10th Cir. Jan. 11, 2012) (affirming district court's

conclusion that motion to dismiss Indictment under *Apprendi* was untimely filed when it was filed “long after final judgment was entered” in the case).

This matter is now before the court on yet another motion to dismiss the Indictment under *Apprendi* (doc. 712) in which Mr. Perez-Jacome asserts the same arguments as his previous *Apprendi* motion. Mr. Perez-Jacome, however, does not address or in any way explain how this motion, unlike his previous motion, might be deemed timely filed. For the same reasons, then, that the court denied Mr. Perez-Jacome’s prior *Apprendi* motion, the court denies this motion as well.

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Perez-Jacome’s motion to dismiss the Indictment under *Apprendi* (doc. 712) is **denied**.

IT IS SO ORDERED.

Dated this 2nd day of January 2013, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge

