

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ORLANDO CLEMENT, AKA Rab,
AKA Seal C,
Defendant-Appellant.

No. 12-50189

D.C. No.
2:05-cr-00814-
GAF-3

OPINION

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Submitted July 8, 2013*

Filed July 22, 2013

Before: Alex Kozinski, Chief Judge, William C. Canby, Jr.
and Richard C. Tallman, Circuit Judges.

Per Curiam Opinion

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

SUMMARY**

Criminal Law

Summarily affirming a criminal judgment, the panel held that the defendant's claims are foreclosed by *United States v. Augustine*, 712 F.3d 1290 (9th Cir. 2013), which held that mandatory minimums in the Fair Sentencing Act of 2010 did not apply in 18 U.S.C. § 3582(c)(2) proceedings to defendants sentenced before the Act was enacted.

The panel denied the defendant's petition for initial hearing en banc without prejudice to renewal as a petition for rehearing en banc. The panel noted that since *United States v. Augustine* was decided, an inter-circuit spit has emerged.

COUNSEL

Davina T. Chen, Deputy Federal Public Defender, Federal Public Defender's Office, Los Angeles, California, for Defendant-Appellant.

Jean-Claude Andre and Curtis A. Kin, Assistant United States Attorneys, Office of the United States Attorney, Los Angeles, California, for Plaintiff-Appellee.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

OPINION**PER CURIAM:**

A review of the record indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Appellant's claims are foreclosed by *United States v. Augustine*, 712 F.3d 1290 (9th Cir. 2013). Accordingly, appellee's motion for summary affirmance is granted.

Appellant's petition for initial hearing en banc is denied without prejudice to renewal as a petition for rehearing en banc. In *United States v. Augustine*, this court held that mandatory minimums in the Fair Sentencing Act of 2010 ("FSA"), Pub. L. No. 111-220, 124 Stat. 2372, did not apply in 18 U.S.C. § 3582(c)(2) proceedings to defendants sentenced before the FSA was enacted. *Id.* at 1295. Since *United States v. Augustine* was decided, an inter-circuit split has emerged. See *United States v. Blewett*, Nos. 12-5226, 12-5582, 2013 U.S. App. WL 2121945 (6th Cir. May 17, 2013) (holding defendants sentenced prior to the enactment of the FSA are entitled to reductions).

AFFIRMED.