

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL
11 OR RES JUDICATA.
12

13 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
14 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the
15 21st day of September, two thousand and four.
16

17 PRESENT:

18 HON. GUIDO CALABRESI,
19 HON. SONIA SOTOMAYOR,
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21 *Circuit Judges.*
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23 HON. RICHARD M. BERMAN,
24

25 *District Judge.**
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27

28 UNITED STATES OF AMERICA,
29

30 *Appellee,*
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32 v.
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No. 03-1250
34

35 Rafael Ortiz, also known as Fito,
36

37 *Defendant-Appellant.*
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* The Honorable Richard M. Berman, United States District Court for the Southern District of New York, sitting by designation.

1 For Appellee: JEFFREY A. MEYER, Assistant United States Attorney,
2 for Kevin J. O'Connor, United States Attorney for the
3 District of Connecticut (Alex Hernandez, Assistant United
4 States Attorney, *on the brief*), Bridgeport, CT
5

6 For Defendant-Appellant: GERALD E. BODELL, Westport, CT
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8 Appeal from the United States District Court for the District of Connecticut (Nevas, J.).
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12 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
13 **DECREEED that the judgment of the district court be and it hereby is AFFIRMED.**
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17 Defendant-appellant Rafael Ortiz appeals his conviction and sentence for conspiracy to
18 distribute, and to possess with intent to distribute, cocaine in violation of 21 U.S.C. §§ 841, 846.

19 Ortiz first contends that the district court erred in denying his request to withdraw his
20 guilty plea. Except perhaps as his claim to withdraw his plea could be reworked in light of
21 *Blakely v. Washington*, -- U.S. --, 124 S. Ct. 2531 (2004), it is meritless.

22 Ortiz also claims that the district court erred in enhancing his sentence for assuming a
23 leadership role in the conspiracy, for possessing a firearm, and for trafficking in a specified drug
24 quantity. He argues that such court-determined enhancements are improper after the Supreme
25 Court's decision in *Blakely*.

26 In *United States v. Mincey*, Nos. 03-1419L, 03-1520(CON), -- F.3d --, 2004 U.S. App.
27 LEXIS 16587 (2d Cir. Aug. 12, 2004), our Circuit held, with respect to *Blakely*, that "[u]nless
28 and until the Supreme Court rules otherwise, the law in this Circuit remains as stated" in prior
29 cases upholding the validity of the Guidelines. *Id.* at *11. Following *Mincey*, we reject Ortiz's
30 *Blakely*-based challenge to the constitutionality of his sentence.

