

FILED

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41364
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS TAPIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:03-CR-172-2

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Jesus Tapia pleaded guilty to possession with intent to distribute more than 100 kilograms of marijuana in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). Tapia contends that 21 U.S.C. § 841 is unconstitutional in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466, 488 (2000). Tapia acknowledges that his argument is foreclosed by this court's precedent, United States v. Slaughter, 238 F.3d 580, 582

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

(5th Cir. 2000), but he seeks to preserve the issue for Supreme Court review.

Tapia's argument is foreclosed. Slaughter, 238 F.3d at 582; see United States v. Fort, 248 F.3d 475, 482-83 (5th Cir. 2001). Accordingly, the district court's judgment is AFFIRMED.