

December 14, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-20250  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL MOTA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CR-276-5  
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Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:\*

Rafael Mota pleaded guilty without a plea agreement to aiding and abetting and conspiracy to possess with intent to distribute one kilogram or more of a mixture or substance containing a detectable amount of heroin and was sentenced to 46 months of imprisonment. Mota argues that 21 U.S.C. § 841 is facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). As Mota concedes, his argument is foreclosed by circuit precedent. See United States v. Slaughter, 238 F.3d 580,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

582 (5th Cir. 2000). He raises the issue only to preserve it for Supreme Court review. The district court's judgment is

AFFIRMED.