

June 21, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40991
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE PARRA-SOTELO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-36-1

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Jorge Parra-Sotelo pleaded guilty to possession with intent to distribute more than five kilograms of cocaine and was sentenced to 120 months of imprisonment, five years of supervised release, and a \$200 fine. Parra-Sotelo argues for the first time on appeal that the statute of conviction, 21 U.S.C. § 841(a), (b), is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). Parra-Sotelo's appeal waiver does not bar review of this issue because he did not waive his right to appeal his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

conviction. Nevertheless, as he concedes, this issue is foreclosed. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000).

The judgment of the district court is AFFIRMED.