

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10905
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FERNANDO ESPINOZA AGUIRRE,
also known as Gallina,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:99-CR-429-1-H

June 14, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Fernando Espinoza Aguirre appeals his guilty-plea conviction and sentence for conspiracy to distribute an unspecified quantity of amphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. He argues, for the first time on appeal, that following Apprendi v. New Jersey, 530 U.S. 466 (2000), the sentencing scheme in 21 U.S.C. §§ 841 and 846 is unconstitutional on its face and that, because the statutes are unconstitutional, the district court lacked jurisdiction. He contends that the statutes should be

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

stricken, his conviction should be reversed, and the indictment should be dismissed. This argument is reviewed for plain error. See United States v. Slaughter, 238 F.3d 580, 583 (5th Cir. 2000).

As Aguirre concedes, this court has specifically rejected his argument. See id. at 582 ("We see nothing in the Supreme Court decision in Apprendi which would permit us to conclude that 21 U.S.C. §§ 841(a) and (b), 846, and 860(a) are unconstitutional on their face"). Because Aguirre has failed to show any error, plain or otherwise, in the district court's judgment, the judgment is AFFIRMED.