

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40996
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUBEN ROMO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-02-CR-121-1

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

This appeal by Ruben Romo is from a judgment revoking his supervised release and resentencing. We AFFIRM.

Although Romo's notice of appeal states he is appealing the revocation judgment and sentence, he also challenges the validity of his underlying conviction of conspiracy to possess and distribute marijuana. This challenge is based on his contention that one of the statutes of conviction, 21 U.S.C. § 841, is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

facially unconstitutional in the light of Apprendi v. New Jersey, 530 U.S. 466 (2000). However, he seeks only to preserve the claim for further review.

Romo may not use this appeal from his new sentence for the supervised-release violation as a vehicle to challenge the language of the indictment or the drug quantity used in calculating his original sentence. United States v. Moody, 277 F.3d 719, 720 (5th Cir. 2001). Accordingly, the district court's judgment is AFFIRMED.