

August 20, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41680
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO DAMIAN MARTINEZ-CARRILLO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-520-ALL

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Pedro Damian Martinez-Carrillo ("Martinez") appeals his guilty-plea conviction and sentence for possession of more than 100 kilograms of marijuana with intent to distribute, a violation of 21 U.S.C. § 841(a)(1) and (b)(1).

Martinez argues that the district court improperly assessed criminal-history points under the Sentencing Guidelines for his two prior uncounseled federal convictions of illegal entry, for which he was sentenced to terms of stand-alone probation.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

He contends that use of these uncounseled convictions was prohibited by Alabama v. Shelton, 535 U.S. 654 (2002).

As Martinez acknowledges, this argument is foreclosed by United States v. Perez-Macias, 335 F.3d 421, 427-28 (5th Cir. 2003). He raises the argument only to preserve it for possible further review.

Martinez also maintains that the sentencing scheme of 21 U.S.C. § 841 is facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). As Martinez concedes, his argument is foreclosed by this court's decision in United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). He raises the issue only to preserve it for possible further review.

The judgment of the district court is AFFIRMED.