

October 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40257
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID M. RIVERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-01-CR-116-1

Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:*

David M. Rivera appeals his guilty-plea conviction for possession with intent to distribute methamphetamine. In his sole argument on appeal, Rivera challenges the constitutionality of 21 U.S.C. § 841 in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). He concedes that his argument is foreclosed by this court's decision in United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000); however,

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 raises the issue in order to preserve it for possible further review.

Rivera's argument regarding the constitutionality of 21 U.S.C. § 841 is indeed foreclosed by Slaughter, which specifically rejected the argument that Apprendi rendered 21 U.S.C. § 841 facially unconstitutional. Id. This court is bound by its precedent absent an intervening Supreme Court decision or a subsequent en banc decision. See United States v. Short, 181 F.3d 620, 624 (5th Cir. 1999). Accordingly, Rivera's conviction is affirmed.

AFFIRMED.