

August 20, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-50068  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SALVADOR ZAMORA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-02-CR-1158-01-DB  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Salvador Zamora pleaded guilty of conspiring to import and importing into the United States a mixture containing 500 grams or more of methamphetamine in violation of 21 U.S.C. §§ 952(a), 963, 960(a)(1) and 960(b)(1)(H) and of conspiring to possess and possessing, with the intent to distribute, a mixture containing 500 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii), and 846. For the first time on appeal, Zamora argues that he was improperly sentenced under the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

penalty provisions in 21 U.S.C. §§ 841(b)(1)(A)(viii) and 960(b)(1)(H) because those portions of 21 U.S.C. §§ 841 and 960 were rendered facially unconstitutional by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Zamora concedes that his argument is foreclosed by Fifth Circuit precedent, but seeks to preserve the issue for further review.

In United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000), this court held that 21 U.S.C. §§ 841(a) & (b) and 846 were not unconstitutional. The reasoning in Slaughter applies by analogy to 21 U.S.C. § 960 because 21 U.S.C. §§ 841 and 960 are similar in structure and content. As no decision overruling Slaughter exists, Zamora's argument is indeed foreclosed.

Because Zamora's argument is foreclosed, the Government has moved for a summary affirmance of the district court's judgment. The motion is GRANTED. The judgment of the district court is AFFIRMED.

AFFIRMED; MOTION GRANTED.