

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40864
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUTH BAUTISTA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:03-CR-332-1

Before SMITH, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Ruth Bautista pleaded guilty to one charge of possession of more than 500 grams of cocaine with intent to distribute and was sentenced to serve 60 months in prison and a four-year term of supervised release. Bautista argues for the first time on appeal that the statute of conviction, 21 U.S.C. § 841(a), (b), is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). This argument is, as she concedes, foreclosed. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). The judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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