

April 12, 2006

Charles R. Fulbruge III
Clerk

THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40877
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL EUGENE SANCHEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-39-1

Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Michael Eugene Sanchez appeals his conviction and sentence for possession with the intent to distribute 801 kilograms of marijuana, in violation of 21 U.S.C. § 841.

Sanchez argues that the evidence was insufficient to show that he knew that he possessed the particular type and quantity of controlled substance in this case. His argument is based on the Supreme Court's ruling in Apprendi v. New Jersey, 530 U.S. 466 (2000). Sanchez states that he is raising this issue to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

preserve it for Supreme Court review. This issue is foreclosed by our opinion in United States v. Gamez-Gonzalez, 319 F.3d 695, 700 (5th Cir. 2003).

Sanchez also argues, for the first time on appeal, that the district court lacked jurisdiction to convict and sentence him because 21 U.S.C. § 841 is unconstitutional under Apprendi. Sanchez also acknowledges that he is raising this issue to preserve it for Supreme Court review. This issue is foreclosed by our opinion in United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000).

AFFIRMED.