

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40673
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARNULFO QUINTERO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:03-CR-859-1

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Pursuant to a written agreement, Arnulfo Quintero pleaded guilty to possession of more than five kilograms of cocaine with intent to distribute and unlawful use of a firearm during the commission of a drug trafficking crime. Quintero argues for the first time on appeal that the district court abused its discretion when it imposed a condition of supervised release that requires him to cooperate in the collection of his DNA. This claim is not ripe for review. See United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Riascos-Cuenu, 428 F.3d 1100, 1100-01 (5th Cir. 2005), petition for cert. filed (Jan. 9, 2006) (No. 05-8662). Therefore, this court lacks jurisdiction to review this claim, and this portion of the appeal is dismissed.

Quintero argues for the first time on appeal that his conviction for possession of more than five kilograms of cocaine with intent to distribute should be reversed because 21 U.S.C. § 841 is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). This issue is foreclosed, as Quintero concedes, by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). Quintero's conviction is affirmed.

JUDGMENT AFFIRMED; APPEAL DISMISSED IN PART.