

FILED

August 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40251
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VICTOR PRADO-MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-326-2

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Victor Prado-Martinez (Prado) appeals from his guilty-plea conviction for conspiracy to possess with intent to distribute more than 1,000 kilograms of marijuana. Prado contends for the first time on appeal that 21 U.S.C. § 841(a) and (b) are facially unconstitutional in view of Apprendi v. New Jersey, 530 U.S. 466 (2000). Prado acknowledges that his argument is foreclosed by United States v. Slaughter, 238 F.3d 580 (5th Cir. 2000), but he seeks to preserve his argument for further review.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In Apprendi, 530 U.S. at 490, the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." This court has rejected the argument that Apprendi rendered the sentencing provisions of 21 U.S.C. § 841 facially unconstitutional. See Slaughter, 238 F.3d at 582. As Prado concedes, the court's opinion in Slaughter forecloses his argument. See id.

The judgment of the district court is AFFIRMED.