

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20452
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE A. DIAZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-99-CR-738-1

March 15, 2001

Before POLITZ, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Jose A. Diaz appeals his conviction and sentence for conspiracy to possess cocaine and for the possession of cocaine with intent to distribute.¹ He contends

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

¹21 U.S.C. §§ 841(a)(1) & (b)(1), 846.

that: (1) there was insufficient evidence to support his conviction; (2) the district court erred in calculating the drug quantity for sentencing purposes; and (3) in light of Apprendi v. New Jersey, 120 S.Ct. 2348 (2000), and Jones v. United States, 526 U.S. 227 (1999), the district court erred in not presenting the drug-quantity issue to the jury.

Our review of the record and briefs of the parties persuades that the evidence was sufficient for a reasonable jury to find Diaz guilty beyond a reasonable doubt.² Further, the district court did not err when it estimated the drug quantity for sentencing based on the facts contained in the presentence investigation report which it adopted.³ Finally, Diaz's contention with respect to the teachings of Apprendi and Jones lacks merit because he obviously was sentenced below the statutory maximum.⁴ Accordingly, Diaz's conviction and sentence are AFFIRMED.

²United States v. Meshack, 225 F.3d 556 (5th Cir. 2000), *cert. denied sub nom. Parker v. United States*, 121 S. Ct. 834 (2001); United States v. Westbrook, 119 F.3d 1176 (5th Cir. 1997).

³United States v. Franklin, 148 F.3d 451 (5th Cir. 1998).

⁴United States v. Doggett, 230 F.3d 160 (5th Cir. 2000), *petition for cert. filed* (Jan. 4, 2001) (No. 00-7819); United States v. Keith, 230 F.3d 784 (5th Cir. 2000), *petition for cert. filed* (Jan. 16, 2001) (No. 00-8077).