

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21141
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE TAMEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-327-4

February 20, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Tamez appeals his guilty-plea conviction and sentence for conspiracy to possess with intent to distribute marijuana and aiding and abetting the possession with intent to distribute marijuana. Tamez contends that 21 U.S.C. §§ 841(a), 841(b), and 846, to the extent that it incorporates 21 U.S.C. § 841, are facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

As Tamez concedes, his argument is foreclosed by this court's decision in United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). He raises the issue only to preserve it for Supreme Court review. The judgment of the district court is AFFIRMED.