

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40702
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ABEL FRANCO RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-01-CR-62-1

October 8, 2002

Before JONES, STEWART, and DENNIS, Circuit Judges

PER CURIAM:*

Abel Franco Rodriguez was convicted by a jury of possession with intent to distribute less than 50 kilograms of marijuana. He argues 1) that the district court's note to the jury to continue deliberations in an effort to reach a verdict in this case was an impermissible abbreviated Allen** charge, and 2) that 21 U.S.C. §§

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** See Allen v. United States, 164 U.S. 492 (1896).

841(a) and (b) are unconstitutional in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000).

The district court's note to jury to continue deliberations was not an abuse of discretion, and Rodriguez's challenge with respect to the note is without merit. See United States v. Warren, 594 F.2d 1046, 1050 (5th Cir. 1979); United States v. Staach, 987 F.2d 232, 242 (5th Cir. 1993).

As conceded by Rodriguez, this court has determined that his Apprendi challenge to the constitutionality of the federal drug statutes is without merit. See United States v. Slaughter, 238 F.3d 580, 581-82 (5th Cir. 2000), cert. denied, 532 U.S. 1045 (2001).

AFFIRMED.