

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-41040  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS GEORGE KRUECK,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-00-CR-1155-ALL  
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September 6, 2002

Before JOLLY, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Thomas George Krueck has appealed his conviction for possession with intent to distribute 50 kilograms or more of marijuana, in violation of 21 U.S.C. § 841(a) & (b)(1)(C). Krueck contends that, Apprendi v. New Jersey, 530 U.S. 466 (2000), the Government was required to prove that he knew the quantity of the drug involved in his offense. Krueck contends that the Government failed to prove that he knowingly possessed

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

more than 50 kilograms of marijuana. Prior to Apprendi, the Government was not required to prove that the defendant knew the precise quantity or type of the drug he possessed. See United States v. Valencia-Gonzales, 172 F.3d 344, 345-46 (5th Cir. 1999). Apprendi did not overrule this jurisprudence. See United States v. Cazares-Ramirez, No. 01-40835 (5th Cir. Apr. 22, 2002) (unpublished); United States v. Puente-Vasquez, No. 01-40767 (5th Cir. Mar. 27, 2002) (unpublished); see also United States v. Collazo-Aponte, 281 F.3d 320, 326 (1st Cir. 2002), petition for cert. filed, No. 01-10893 (May 29, 2002); United States v. Barbosa, 271 F.3d 438, 459 (3d Cir. 2001); United States v. Sheppard, 219 F.3d 766, 768 n.2 (8th Cir. 2000), cert. denied, 531 U.S. 1200 (2001); United States v. Carrera, 259 F.3d 818, 830 (7th Cir. 2001).

Krueck contends for the first time on appeal, that 21 U.S.C. § 841 is facially unconstitutional under Apprendi. He concedes that this contention is foreclosed by the jurisprudence of this court, but he seeks to preserve the issue for Supreme Court review. See United States v. Slaughter, 238 F.3d 580, 581 (5th Cir.), cert. denied, 532 U.S. 1045 (2001). The judgment is

AFFIRMED.