

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-50427  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL ADAM TREVINO, also known as  
Michael Trevino,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-99-CR-422-ALL  
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December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Michael Adam Trevino appeals his sentence following his guilty-plea conviction for possession with intent to distribute more than 50 grams of cocaine base. Trevino concedes that his plea agreement included a waiver-of-appeal provision, but the Government does not seek to enforce it and the record of arraignment reveals that the district court did not confirm that Trevino understood the appeal waiver. Under these circumstances, the appeal waiver will not be enforced. See Fed. R. Crim. P. 11(c)(6); United States v. Robinson, 187 F.3d 516, 517-18 (5th Cir. 1999).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Trevino contends that 21 U.S.C. § 841(b)(1)(A), which establishes the statutory penalty for the type and quantity of drugs involved, is unconstitutional following Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Trevino concedes that his argument is foreclosed by this court's precedent. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000), cert. denied, 121 S.Ct. 2015 (2001), but he seeks to preserve the issue for Supreme Court review.

AFFIRMED.