

June 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40107
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VICENTE LOPEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-01-CR-877-ALL

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Vicente Lopez appeals his guilty-plea conviction and sentence for possession with intent to distribute in excess of 100 kilograms of marijuana. He argues that: 1) 21 U.S.C. § 841 is facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000); and 2) 21 U.S.C. §§ 841(b) and 851 are unconstitutional in light of Apprendi. Lopez concedes that his arguments are foreclosed by United States v. Slaughter, 238 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

580, 582 (5th Cir. 2000) and Almendarez-Torres v. United States, 523 U.S. 224, 235-47 (1998), respectively.

Lopez also argues that his sentence should be vacated and that his case should be remanded for resentencing because the district court failed to inform him, as required by 21 U.S.C. § 851(b), that Lopez had to collaterally challenge the prior conviction used to enhance his sentence prior to the imposition of sentence in this case or the collateral challenge to that prior conviction would be waived. Lopez has not shown reversible plain error with respect to this issue. See United States v. Cotton, 535 U.S. 625, 631-32 (2002); United States v. Majors, 328 F.3d 791, 796-97 (5th Cir. 2003); United States v. Garcia, 954 F.2d 273, 277-78 (5th Cir. 1992); United States v. Fragoso, 978 F.2d 896, 902-03 (5th Cir. 1992).

AFFIRMED.