

June 25, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41661
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOE ERLINDO MEDRANO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-89-CR-89-1

Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

This appeal by Joe Erlindo Medrano is from a judgment revoking his supervised release and resentencing. We AFFIRM.

Although Medrano's notice of appeal states he is appealing the revocation judgment and sentence, he also challenges the validity of his underlying conviction of conspiracy to possess and distribute marijuana. This challenge is based on his contention that the statute of conviction, 21 U.S.C. § 841, is facially unconstitutional in the light of Apprendi v. New Jersey,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

530 U.S. 466 (2000). However, he seeks only to preserve the claim for further review.

Medrano may not use this appeal from his new sentence for the supervised-release violation as a vehicle to challenge the language of the indictment or the drug quantity used in calculating his original sentence. United States v. Moody, 277 F.3d 719, 720 (5th Cir. 2001). Accordingly, the district court's judgment is AFFIRMED.