

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50481
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIMMY JOHN SABALA, also known as Big Jim,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-99-CR-228-ALL-JN

December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jimmy John Sabala appeals the sentence imposed following his guilty plea to possession with the intent to distribute 100 grams or more of methamphetamine and failure to appear. He argues that he was sentenced in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000), when the district court's findings of drug quantity, based only on a preponderance of the evidence, were used to increase his base offense level under the Sentencing Guidelines.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Appendi does not invalidate the sentence because Sabala's 30-year sentence for methamphetamine possession did not exceed the statutory maximum. See United States v. Doggett, 230 F.3d 160, 166 (5th Cir. 2000), cert. denied, 531 U.S. 1177 (2001); 21 U.S.C. § 841(b)(1)(B)(viii) (40-year maximum).

AFFIRMED.