

FILED

August 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40845
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER ENRIQUE PATINO, also known
as Javier Enrique Patino-Reyes,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-03-CR-272-ALL

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Javier Enrique Patino appeals from his guilty-plea conviction for possession with intent to distribute in excess of five kilograms of cocaine. Patino contends for the first time on appeal that 21 U.S.C. § 841(a) and (b) are facially unconstitutional in view of Apprendi v. New Jersey, 530 U.S. 466 (2000). Patino acknowledges that his argument is foreclosed by United States v. Slaughter, 238 F.3d 580 (5th Cir. 2000), but he seeks to preserve his argument for further review.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In Apprendi, 530 U.S. at 490, the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." This court has rejected the argument that Apprendi rendered the sentencing provisions of 21 U.S.C. § 841 facially unconstitutional. See Slaughter, 238 F.3d at 582. As Patino concedes, the court's opinion in Slaughter forecloses his argument. See id.

The judgment of the district court is AFFIRMED.