

FILED

August 18, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-41084
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CLAUDIO ZARATE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-9-01

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Claudio Zarate appeals his guilty-plea conviction and sentence for possession with the intent to distribute marijuana. Zarate contends that the sentencing scheme of 21 U.S.C. § 841 is facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). This argument is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). Zarate raises the issue only to preserve it for Supreme Court review. The judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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