

August 28, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20479
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE MAURO SANDOVAL-ALVAREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-492-2

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Jose Mauro Sandoval-Alvarez appeals his conviction for conspiracy to possess with intent to distribute cocaine. For the first time on appeal, Sandoval-Alvarez argues that 21 U.S.C. § 841, the statute of conviction, is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). The Government argues that the waiver provision in Sandoval-Alvarez's plea agreement precludes his attack on the constitutionality of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 841. We assume, arguendo only, that the waiver does not bar the constitutional challenge to 21 U.S.C. § 841.

Sandoval-Alvarez acknowledges that the constitutional challenge is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000), and that he is raising the issue to preserve it for Supreme Court review.

AFFIRMED.