

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40505
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN JOSE HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-836-ALL

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Juan Jose Hernandez (Hernandez) pleaded guilty to possession with intent to distribute more than 100 kilograms of marijuana and was sentenced to 60 months of imprisonment and a five-year term of supervised release. Hernandez argues for the first time on appeal that the provisions found in 21 U.S.C. § 841(a) and (b) are unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). As he concedes, this issue is foreclosed. See United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000).

Therefore, the judgment of the district court is AFFIRMED.