

June 29, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-41534  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN HERNANDEZ, also known as Juanito,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:05-CR-43-4  
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Before KING, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Juan Hernandez was convicted of one charge of conspiracy to possess more than five kilograms of cocaine with intent to distribute and sentenced to serve 144 months in prison and a five-year term of supervised release. Hernandez argues on appeal that the district court erred by denying his request for an adjustment to his sentence based on his allegedly minor role in the offense and that 21 U.S.C. § 841(a), (b) is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Hernandez contends that he was significantly less culpable than other participants in the underlying offense and that he should have received a corresponding reduction to his sentence. The district court's conclusion that Hernandez was not entitled to this adjustment is plausible in light of the record as a whole. See United States v. Villanueva, 408 F.3d 193, 203 & n.9 (5th Cir.), cert. denied, 126 S. Ct. 268 (2005). Consequently, Hernandez has not shown that he should receive relief on this issue. Hernandez's contention that § 841 is unconstitutional is, as he concedes, foreclosed. See United States v. Slaughter, 238 F.3d 580 (5th Cir. 2000).

Hernandez has shown no error in the district court's judgment. Consequently, that judgment is AFFIRMED.