

February 14, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41805
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROLANDO GARCIA-REYES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-104-ALL

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Rolando Garcia-Reyes appeals his guilty-plea conviction and sentence for possession with intent to distribute 686.9 kilograms of marijuana in violation of 21 U.S.C. § 841. Garcia-Reyes argues that the district court erred by imposing a career offender enhancement under U.S.S.G. § 4B1.1 based upon the classification of his Texas convictions for burglary of a habitation as crimes of violence.

As Garcia-Reyes concedes, his argument is foreclosed by United States v. Garcia-Mendez, 420 F.3d 454, 455-57 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2005), cert. denied, 126 S. Ct. 1398 (2006). Although he argues that Garcia-Mendez was incorrectly decided, Garcia-Mendez remains binding. See United States v. Stone, 306 F.3d 241, 243 (5th Cir. 2002).

For the first time on appeal, Garcia-Reyes argues that the penalty scheme in 21 U.S.C. § 841(a) and (b) is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Garcia-Reyes concedes that his argument is foreclosed by United States v. Slaughter, 238 F.3d 580, 582-84 (5th Cir. 2000), but he states that he is raising the issue in order to preserve it for Supreme Court review. In Slaughter, 238 F.3d at 582, we held that there is "nothing in the Supreme Court decision in Apprendi which would permit [this court] to conclude that 21 U.S.C. §§ 841(a) and (b), 846, and 860(a) are unconstitutional on their face." Garcia-Reyes's argument is foreclosed, as he so concedes. Accordingly, the district court's judgment is AFFIRMED.