

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-20769  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MONICO GARZA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(H-00-CR-484-2)

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September 30, 2002

Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Monico Garza appeals his conviction and sentence following a guilty plea to possession with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). Garza's **Apprendi**-challenge to his indictment, based on the sentence he received, is without merit. **See United States v. Clinton**, 256 F.3d 311, 314 (5th Cir.), *cert. denied*, 122 S. Ct. 492 (2001). Garza's contention that the district court clearly erred when it characterized him as a leader under U.S.S.G. § 3B1.1(c) and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

concomitantly erred in refusing to apply the safety valve provisions set forth in §§ 2D1.1(b)(6) and 5C1.2(4) is likewise without merit, given that Garza recruited Trevino and Guerrero. **See United States v. Giraldo**, 111 F.3d 21, 24 (5th Cir. 1997), *cert. denied* 522 U.S. 925; § 3B1.1(c), comment. (n.4). Last, the district court did not commit reversible plain error when it fined Garza \$3000. **See United States v. Rodriguez**, 15 F.3d 408, 414 (5th Cir. 1994).

***AFFIRMED***