

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40362
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALBERT GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-CR-441-1

February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Albert Garcia appeals his guilty-plea conviction and sentence for conspiring to possess with the intent to distribute 1,000 kilograms or more of marijuana. Garcia contends that 21 U.S.C. §§ 841(b)(1)(A) & (B) are facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), and that the two prior felony convictions used to enhance his sentence are elements of his offense that had to be alleged in the indictment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

As Garcia concedes, his arguments are foreclosed by binding precedent. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000), cert. denied., 121 S. Ct. 2015 (2001); Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). The judgment of the district court is AFFIRMED.