

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 01-41131
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ABEL HERNANDEZ-GONZALEZ,

Defendant-

Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-01-CR-151-1

September 4, 2002

Before JONES, STEWART AND DENNIS, Circuit Judges:

PER CURIAM:*

Abel Hernandez-Gonzalez pleaded guilty to count one of an indictment charging him with possession with intent to distribute cocaine, and has appealed his sentence. Hernandez contends that the district court should have sentenced him under the safety-valve provision. The district court did not clearly err in finding that Hernandez had not shown that he had disclosed all

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

information and evidence he had concerning the offense and relevant conduct. See U.S.S.G. § 5C1.2(5) (2000); see also United States v. Miller, 179 F.3d 961, 963-67 (5th Cir. 1999).

Hernandez also contends that 21 U.S.C. § 841(a) is unconstitutional on its face in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Hernandez concedes that this court has held to the contrary but states that he wishes to preserve the issue for further review. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000), cert. denied, 532 U.S. 1045 (2001). The conviction and sentence are

AFFIRMED.