

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50508
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARK ANTHONY JACQUEZ,

Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. P-00-CR-368-1

March 28, 2002

Before DUHÉ, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Mark Anthony Jacquez (Jacquez) was convicted for aiding and abetting the possession with intent to distribute five or more kilograms of cocaine. 21 U.S.C. § 841(a)(1). For the first time on appeal, Jacquez argues that the Supreme Court's holding in Apprendi v. New Jersey² requires that the Government prove beyond a reasonable doubt that Jacquez knew the precise type and quantity of drugs he possessed. Jacquez's argument is reviewed under a plain error standard. See FED. R. CRIM. P. 52(b).

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

² 530 U.S. 466 (2000).

Jacquez makes no persuasive argument that Apprendi has altered the scienter requirement of 21 U.S.C. § 841(a)(1). See United States v. Valencia-Gonzalez, 172 F.3d 344, 345-46 (5th Cir. 1999); United States v. Carrera, 259 F.3d 818, 830 (7th Cir. 2001). Accordingly, he has failed to establish plain error.

AFFIRMED.