

October 6, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40176
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEONARDO RAMIREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-01-CR-115-1

Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Leonardo Ramirez appeals his guilty-plea conviction for possession with intent to distribute more than five kilograms of cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). He argues that 21 U.S.C. § 841 is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Both Ramirez and the Government have also addressed whether there is a timely notice of appeal presently before this court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Even if jurisdiction exists, Ramirez cannot prevail in this appeal. Ramirez acknowledges that his argument that Appendi rendered 21 U.S.C. § 841 unconstitutional is foreclosed by circuit precedent, but he wishes to preserve the issue for Supreme Court review. Ramirez's argument is foreclosed. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). Accordingly, we pretermitted the jurisdictional issue in this case, and the judgment of the district court is AFFIRMED. See United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000); United States v. Weathersby, 958 F.2d 65, 66 (5th Cir. 1992).