

December 10, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40508  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL RICHARD DEMPSKI, III,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-96-CR-271-1  
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Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Michael Richard Dempski, III, appeals the revocation of supervised release on his conviction for possession with intent to distribute marijuana. He seeks to challenge the constitutionality of 21 U.S.C. § 841(a) and (b) in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Because a challenge under Apprendi is not jurisdictional, see United States v. Longoria, 298 F.3d 367, 372 (5th Cir. 2002)(en banc), Dempski may not present this claim in an appeal following the revocation of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

supervised release. See United States v. Teran, 98 F.3d 831, 833 n.1 (5th Cir. 1996); see also United States v. Moody, 277 F.3d 719, 720-21 (5th Cir. 2001). Moreover, as Dempski concedes, his Apprendi argument is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000).

Accordingly, the judgment of the district court is  
AFFIRMED.