

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40351
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MACSIMIANO RIOS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:03-CR-250-2

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Macsimiano Rios ("Rios") appeals his guilty-plea conviction and sentence for aiding and abetting in the possession with intent to distribute nine kilograms of cocaine. He argues that 21 U.S.C. § 841(a) and (b) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Rios raises an issue that he concedes is foreclosed but seeks to preserve for further review.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

This argument is foreclosed by our decision in United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). Accordingly, Rios's conviction and sentence are AFFIRMED.