

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40517
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO ALBERTO MUNIZ-TAPIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-8-1

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Mario Alberto Muniz-Tapia appeals his guilty-plea conviction and sentence for possession with intent to distribute over 100 kilograms of marijuana. He contends for the first time on appeal that 21 U.S.C. § 841 is facially unconstitutional in view of Apprendi v. New Jersey, 530 U.S. 466 (2000). He acknowledges that his argument is foreclosed by United States v. Slaughter, 238 F.3d 580 (5th Cir. 2000), but he seeks to preserve his argument 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

In Apprendi, 530 U.S. at 490, the Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” We have rejected the argument that Apprendi rendered the sentencing provisions of 21 U.S.C. § 841 facially unconstitutional. Slaughter, 238 F.3d at 582. As Muniz-Tapia concedes, our opinion in Slaughter forecloses his argument. See id.

The judgment of the district court is AFFIRMED.