

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40849
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELISA CORAL AVILA-MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:02-CR-981-1

Before SMITH, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Elisa Coral Avila-Martinez (Avila) appeals her guilty-plea conviction and sentence for possession with intent to distribute in excess of 5 kilograms of cocaine in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(A). Avila argues for the first time on appeal that 21 U.S.C. § 841 is unconstitutional in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). As Avila concedes, this argument is foreclosed by our

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

decision in United States v. Slaughter, 238 F.3d 580 (5th Cir. 2000).

AFFIRMED.