

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41657
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY DALE KOCEVAR,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-185

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Larry Dale Kocevar pleaded guilty to possession with intent to distribute eleven kilograms of marijuana and was sentenced to 24 months of imprisonment, three years of supervised release, a \$50 fine, and a \$100 special assessment. Kocevar argues for the first time on appeal that the provisions found at 21 U.S.C. § 841(a) and (b) are unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). Kocevar's appeal waiver, contained in his plea agreement, does not bar review of this issue because

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

he did not waive his right to appeal the conviction.

Nevertheless, as he concedes, this issue is foreclosed. See
United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000).

Therefore, the judgment of the district court is AFFIRMED.