

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEB 6 2002

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ARMANDO PADILLA,

Defendant-Appellant.

No. 00-5128
(D.C. No. 99-CR-66-C)
(N.D. Okla.)

ORDER AND JUDGMENT *

Before **TACHA** , Chief Judge, **PORFILIO** , Circuit Judge, and **BRORBY** , Senior Circuit Judge.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Appellant Armando Padilla pled guilty to a single count of distribution of an unspecified amount of methamphetamine. Based on its findings regarding the quantity of drugs involved, the district court sentenced him to over twenty-four years' imprisonment, in excess of the statutory maximum of twenty years established by 21 U.S.C. § 841(b)(1)(C). Mr. Padilla argues on appeal that his sentence violates *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), which requires that "any fact that increases a penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." The government concedes this error and agrees that Mr. Padilla's sentence should be reversed and the case remanded for resentencing.

Accordingly, the judgment of the United States District Court for the Northern District of Oklahoma is REVERSED, and the matter is REMANDED for resentencing.

Entered for the Court

Deanell Reece Tacha
Chief Judge