

FILED

February 10, 2005

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 04-40852
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MOSES C. SALDUA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(2:03-CR-393-1)

Before JONES, BARKSDALE, and PRADO, Circuit Judges.

PER CURIAM:*

Moses C. Saldua appeals his guilty-plea convictions for the simultaneous possession of a firearm and ammunition under 18 U.S.C. § 922(g)(1), contending the convictions are multiplicitous and violate double jeopardy. The Government does not seek to rely on Saldua's claimed waiver of appeal; therefore, this court will not enforce it. See *United States v. Rhodes*, 253 F.3d 800, 804 (5th Cir. 2001).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

As the Government concedes, simultaneous convictions and sentences for the same criminal act involving possession of a firearm and possession of ammunition violate double jeopardy. *United States v. Berry*, 977 F.2d 915, 919 (5th Cir. 1992). The district court's ordering Saldua's sentences to run concurrently does not change this result. *Id.* at 920; *United States v. Kimbrough*, 69 F.3d 723, 729 (5th Cir. 1995), *cert. denied*, 517 U.S. 1157 (1996). Accordingly, we **VACATE** Saldua's sentences and **REMAND** for dismissal of one of the duplicitous convictions, at the election of the Government, and for resentencing.

VACATED AND REMANDED