

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50178
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD HOYOS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-92-CR-403
- - - - -

August 22, 1996

Before KING, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:*

Richard Hoyos, federal prisoner #62179-080, appeals from the district court's denial of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Hoyos argues that he was twice punished for the same conduct: first when the property was taken, which occurred when the claim period expired, and then second when he was sentenced on his criminal convictions. A forfeiture under 21 U.S.C. § 881 is civil in

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

nature and is an in rem proceeding; "in rem civil forfeitures are neither `punishment' nor criminal for purposes of the Double Jeopardy Clause." See United States v. Ursery, 116 S. Ct. 2135, 2147-49 (1996).

Hoyos' motion to strike appellee's brief is DENIED. Hoyos' alternative request that the motion serve as his reply brief, however, is GRANTED.

The judgment of the district court is AFFIRMED.