

April 10, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41002
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GURMAIL SINGH,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:02-CR-30-ALL

Before JOLLY, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Gurmail Singh has filed this interlocutory appeal from the district court's order denying his motion to dismiss his re-indictment on several charges after the reversal of an earlier conviction. Singh urges that the Double Jeopardy Clause prohibits retrial both because his first conviction was reversed for improper joinder and because of the unique circumstances surrounding his case.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

However, the prohibition against double jeopardy is not implicated where an original conviction is reversed for reasons other than the indication of innocence (such as insufficient evidence) or prosecutorial misconduct intended to induce a mistrial. United States v. Wharton, ___ F.3d ___ (5th Cir. Feb. 4, 2002, No. 01-30998), 2003 WL 231299 at *3; Shute v. State of Tex., 117 F.3d 233, 238 (5th Cir. 1997). Because Singh has offered no clear evidence that the original prosecutors behaved improperly in order to induce an early termination to the trial, there is no double jeopardy bar to his retrial.

AFFIRMED.