

FILED

December 2, 2005

IN THE UNITED STATES COURT OF APPEALS

Charles R. Fulbruge III
Clerk

FOR THE FIFTH CIRCUIT

No. 04-60089

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PETER HALAT, JR.,

Defendant-Appellant.

Appeal from the United States District Court for
the Southern District of Mississippi, Hattiesburg

ON PETITION FOR REHEARING

Before REAVLEY, HIGGINBOTHAM and GARZA, Circuit Judges.

PER CURIAM:*

The petition for rehearing is granted, but the judgment of the district court is

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in all respects affirmed for these reasons:

1. We assume the waiver of appeal did not prevent Halat from challenging the sentence as improperly based on an ambiguous verdict where the lesser penalty would have to be assessed per United States v. Conley, 349 F.3d 837 (5th Cir. 2003).
2. The verdict in this case was not ambiguous. It charged the violation of 18 U.S.C. § 1962(c) and the punishment provided for violation of that statute is greater than the sentence given Halat. There was no error.

JUDGMENT AFFIRMED.