

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-41282
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID MATA-DELGADO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-CR-202-1

June 26, 2002

Before DAVIS, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

David Mata-Delgado pleaded guilty to possession with intent to distribute marijuana and was sentenced to 18 months of imprisonment. On direct appeal, this court vacated Mata-Delgado's judgment of conviction, and remanded the matter to the district court for resentencing. United States v. Mata-Delgado, No. 00-41008 (5th Cir. Aug. 6, 2001) (unpublished). In acting on the remand from this court, the district court did not enter a new judgment of conviction nor did it reinstate the prior

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

judgment. The district court found that "the matter is moot inasmuch as [Mata-Delgado] has served his sentence and is deported from the United States."

Mata-Delgado's case presents the peculiar circumstance in which an individual has served his sentence and been deported based on a judgment of conviction that has been vacated and remanded for resentencing. There is no dispute that it is illegal for Mata-Delgado, who has been deported, to reenter the United States without the permission of the Attorney General of the United States. 8 U.S.C. § 1326(a). Mata-Delgado may not reenter the United States to be present for resentencing, the only relief possible in this case. As there is no relief we can grant Mata-Delgado, his appeal is moot. United States v. Clark, 193 F.3d 845, 847-8 (5th Cir. 1999). Accordingly, this appeal is DISMISSED as moot.

APPEAL DISMISSED.