

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-8606
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS MONCADA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-90-CR-258-H

- - - - -
March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

Moncada asserts that he remained a part of the conspiracy during the time that he was in custody; therefore, he is being prosecuted twice for the same offense. The essential issue in the double jeopardy analysis respecting conspiracy is whether the alleged conspirators entered into a single agreement or multiple agreements. United States v. Deshaw, 974 F.2d 667 (5th Cir. 1992). The arrest of one member of a conspiracy does not necessarily terminate the conspiracy. See United States v. Goff,

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

847 F.2d 149, 170 (5th Cir.), cert. denied, 488 U.S. 932 (1988).

A person's participation in a conspiracy ends when that person is arrested for his role in the conspiracy. See United States v. Postal, 589 F.2d 862, 888 (5th Cir.), cert. denied, 444 U.S. 832 (1979). Moncada's participation in the conspiracy ended in 1989 when he was first prosecuted for his role in the conspiracy. The second superseding indictment charges that Moncada rejoined the conspiracy in 1990, after his initial participation in the conspiracy had ended.

Further participation in an old conspiracy after being charged with that crime becomes a new offense for purposes of a double jeopardy claim. United States v. Dunn, 775 F.2d 604, 607 (5th Cir. 1985). The district court acknowledged that Moncada was previously convicted of a conspiracy that "was clearly a part of the same conspiracy" with which he was charged in the second indictment. The court concluded that when Moncada was arrested and charged with the first offense and thereafter jumped bond and rejoined the old conspiracy, he formed a new agreement and committed a new offense. The judgment of the district court is AFFIRMED.