

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 2, 2012

Lyle W. Cayce
Clerk

No. 11-41103
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BENIGNO AYALA-JUAREZ, also known as Benigno Juarez-Ayalanull also known as Benigno Juarez Ayala,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:11-CR-330-1

Before BENAVIDES, STEWART, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Benigno Ayala-Juarez (Ayala) appeals the sentence he received after he pleaded guilty to possession of a firearm by a convicted felon and to possession of ammunition by a convicted felon. Each count charged a violation of 18 U.S.C. § 922(g)(1). Ayala argues that under *United States v. Berry*, 977 F.2d 915, 919-20 (5th Cir. 1992), his conviction and sentence on one of his counts must be vacated because his two convictions and sentences are multiplicitous and violate

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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the Double Jeopardy Clause. The government agrees and has filed an Unopposed Motion for Summary Remand in lieu of Filing Appellee's Brief.

The government's motion is GRANTED. Ayala's sentences are VACATED, and the case is REMANDED for dismissal of the multiplicitous count and for resentencing on the count selected by the government. *See Berry*, 977 F.2d at 919-20; *United States v. Osunegbu*, 822 F.2d 472, 481 (5th Cir. 1987).