

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 6, 2023

Lyle W. Cayce
Clerk

No. 22-40511
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAZIEL GUAJARDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:22-CR-318-2

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:*

Pursuant to a plea agreement, Jaziel Guajardo pleaded guilty to knowingly making, and aiding and abetting the making of, a false statement and representation in connection with the acquisition of a handgun in violation of 18 U.S.C. §§ 922(a)(6), 924(a)(2), and 2 (“Count Two”). A probation officer prepared a presentencing report, adding to Guajardo’s base

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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offense level an additional four levels because Guajardo engaged in trafficking firearms, U.S.S.G. § 2K2.1(b)(5), and four more levels because Guajardo possessed or transferred a firearm with knowledge, intent, or reason to believe it would be used or possessed in connection with another felony offense, *id.* § 2K2.1(b)(6)(B). Over Guajardo's objections, the district court approved both enhancements and sentenced him to seventy months of imprisonment. Guajardo timely appealed.

In an unopposed motion, the United States requests that we affirm Guajardo's conviction on Count Two but vacate his sentence and remand the case to the district court for resentencing on the basis that the sentencing guidelines expressly prohibit applying both enhancements on the same gun-trafficking offense. We GRANT the United States' unopposed motion and AFFIRM Guajardo's conviction on Count Two, VACATE Guajardo's sentence, and REMAND the case for resentencing.