

United States Court of Appeals  
FOR THE EIGHTH CIRCUIT

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No. 97-2340

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United States of America,

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Appellee,

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v.

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Appeal from the United States  
District Court for the  
Eastern District of Missouri.

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Carlos Fuentez,

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[UNPUBLISHED]

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Appellant.

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Submitted: September 17, 1997

Filed: September 22, 1997

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Before WOLLMAN, LOKEN, and HANSEN, Circuit Judges.

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PER CURIAM.

In 1991, Carlos Fuentez was convicted of conspiring to distribute and possess cocaine and distributing cocaine, in violation of 21 U.S.C. §§ 841 and 846, and using and carrying a firearm during a drug-trafficking crime, in violation of 18 U.S.C. § 924(c); Fuentez was sentenced to a total of 295 months' imprisonment. Upon Fuentez's 28 U.S.C. § 2255 motion, the district court<sup>1</sup> vacated his firearm conviction in light of Bailey v. United States, 116 S. Ct. 501, 506 (1995) (defining "use" prong of

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<sup>1</sup>The Honorable Jean C. Hamilton, Chief Judge, United States District Court for the Eastern District of Missouri.

§ 924(c)(1)). The court then resentenced Fuentez to 295 months' imprisonment and five years' supervised release, imposing a 2-level enhancement for possession of a firearm, see U.S. Sentencing Guidelines Manual § 2D1.1(b)(1) (add 2 levels if firearm involved).

Fuentez appeals, arguing that the district court lacked jurisdiction to resentence him on the unchallenged drug conviction; that the "sentencing package" concept does not apply to section 2255 proceedings; and that application of the firearm-possession enhancement violates double jeopardy and due process. Because Fuentez's arguments are foreclosed by United States v. Harrison, 113 F.3d 135, 137-38 (8th Cir. 1997), the judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.