

USA v. Hahn

CR-92-68-B

04/21/93

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No.

Robert Hahn

O R D E R

Before the court is the defendant's Motion to Erase from Docket Defendant's Conviction for Conspiracy to Possess and Distribute Marijuana Under Count Four of Superseding Indictment on Double Jeopardy Grounds (document no. 532).

Defendant correctly notes that a defendant may not be convicted on both a continuing criminal enterprise (CCE) count and an underlying conspiracy count which constitutes the predicate offense for the CCE count. United States v. David, 940 F.2d 722, 738 (1st Cir. 1991).

At trial, the court proposed to instruct the jury that if it returned a verdict of guilty on the CCE count and if that verdict was based in part upon a finding that the conspiracy count was the predicate offense necessary for a verdict of guilty on the CCE count, then it should return no verdict on the conspiracy count because the conspiracy count would constitute a lesser included offense to the CCE count. The Government successfully argued that such an instruction was unnecessary since it would

not oppose an order vacating any conviction on the conspiracy count if the defendant was also convicted on the conspiracy count.

The Government now argues that the court should delay the issuance of an order vacating the conspiracy conviction until the defendant has been sentenced and his appeals have been exhausted. While the court will accede to the Government's request, the defendant's conviction on the conspiracy count shall have no effect on his sentence or on any other issue because the Government has agreed that the conspiracy count must be vacated if the CCE count withstands the defendant's challenges on appeal.

Defendant's motion to vacate the conspiracy count is denied as premature.

SO ORDERED.

Paul Barbadoro
United States District Judge

April 21, 1993

cc: Scott L. Hood, Esq.
United States Attorney
United States Probation
United States Marshal