

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 17 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 13-50534

Plaintiff-Appellee,

D.C. No.

v.

3:12-cr-00236-IEG-11

JOSE ARANDA, AKA Vicious,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Argued and Submitted June 9, 2017
Pasadena, California

Before: LIPEZ,** BEA, and HURWITZ, Circuit Judges.

Jose Aranda pleaded guilty to a conspiracy in violation of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(d)), a drug trafficking conspiracy (21 U.S.C. §§ 841 and 846), and discharge of a firearm in relation to a crime of violence and drug trafficking crime (18 U.S.C. § 924(c)). We have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Kermit V. Lipez, United States Circuit Judge for the First Circuit, sitting by designation.

jurisdiction of Aranda's appeal of his sentence under 18 U.S.C. § 3742 and 28 U.S.C. § 1291.¹

The government concedes that the district court erred in applying a discharge of firearm enhancement under U.S.S.G. § 2B3.1(b)(2), because Aranda was also sentenced for discharging a firearm in violation of 18 U.S.C. § 924(c). *See United States v. Aquino*, 242 F.3d 859, 863–65 (9th Cir. 2001). We agree, and therefore vacate Aranda's sentence and remand for resentencing on an open record. *See United States v. Matthews*, 278 F.3d 880, 885–86 (9th Cir. 2002) (en banc).

VACATED and REMANDED for resentencing.

¹ Aranda's appeal was consolidated with the appeals of four codefendants: Jesus Barragan (No. 13-50516), Hector Fernandez (No. 13-50518), Francisco Gutierrez (No. 13-50525), and Pablo Franco (No. 13-50531). These appeals remain pending.