

FILED: August 18, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4739
(8:17-cr-00269-PWG-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LEANDRO ACEVEDO LOZADA, a/k/a Dro

Defendant - Appellant

O R D E R

Upon consideration of the joint motion to remand, the court grants the motion, vacates appellant's plea and sentence, and remands the case to the district court for further proceedings in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), and *United States v. Gary*, 954 F.3d 194, 198 (4th Cir. 2020).

The clerk is directed to attach a copy of the joint motion to remand to this

order and transmit a copy of both to the district court.

Entered at the direction of Judge Quattlebaum with the concurrence of Judge Wilkinson and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,)	Docket # 19-4739
)	
V.		JOINT MOTION FOR REMAND
)	
LEANDRO LOZADA)	
)	

COMES NOW the Appellant, Leandro Lozada, by and through his attorney, Mirriam Z. Seddiq, hereby jointly moves the Court to vacate Lozada's plea and sentencing and remand this case for further consideration in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), and *United States v. Gary*, 954 F.3d 194, 198 (4th Cir. 2020). He states the following in support of his motion:

1. Mr. Lozada is currently serving a sentence of 150 months for one count of Conspiracy to Possession with Intent to Distribute and one count of Possession with Intent to Distribute a Controlled Substance. He was also sentenced to 120 months for a 922(g)(1) charge of Felon in Possession of a Firearm.
2. Mr. Lozada, after negotiations, entered his plea. At the plea hearing the district court did not advise him that, for a conviction under 922(g), the elements were that Mr. Lozada knew he possessed a firearm and also that he knew he had the relevant status when he possessed it. JA 68-69.
3. Additionally, neither the statement of facts nor the body of the plea agreement included this element. JA 22.

4. The superseding information that Mr. Lozada pled guilty to failed to list this critical element as well. JA 25.
5. In *Rehaif v. United States*, the Supreme Court held that a defendant, when pleading guilty to possession of a firearm by prohibited person, must know that he had the relevant status when he possessed the firearm. *Rehaif v. United States*, 139 S. Ct. 2191 (2019).
6. This point was not argued below and therefore Lozada relied on plain-error review in his opening brief. Following *Rehaif*, this Court reviewed an identical “standalone *Rehaif* error.” *United States v. Gary*, 954 F.3d 194, 198 (4th Cir. 2020). In *Gary*, this Court found that a standalone *Rehaif* error satisfies plain error because:

such an error is structural, which per se affects a defendant's substantial rights. We further find that the error seriously affected the fairness, integrity and public reputation of the judicial proceedings and therefore must exercise our discretion to correct the error.

Id.

7. In his opening brief Mr. Lozada argues not only that his plea was involuntary, but he also argues that his waiver of indictment was defective because he was not advised of the nature of the charges since one of the required elements for the offense of felon in possession of a firearm was not explained to him.
8. Here, because the issue is identical to the one in *Gary*, the district court plainly erred in failing to advise Mr. Lozada of the elements for felon in possession of a firearm.

9. The parties agree that the appropriate course of action is to vacate the plea and sentence in this case and remand for the district court to proceed with any plea in light of *Rehaif* and *Gary*.
10. Both Mr. Lozada and the Government have discussed the issues at length in this case and have come to an agreement, subject to approval of the district court.
11. Approval of this consent remand will save this Court countless hours in CJA fees, wasted time by the Court staff, and also offer the quickest route to resolve this error efficiently and fairly to both parties.
12. Undersigned counsel has contacted counsel for the Government, AUSA Gregory Bernstein, regarding the filing of this motion. Mr. Bernstein has authorized counsel for Appellant to represent that the Government joins this motion.

WHEREFORE, Appellant respectfully ask the Court to vacate the plea and sentence in this case, and remand for further consideration in light of *Rehaif* and *Gary*.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing motion was sent via ECF to AUSA Gregory Bernstein and a paper copy was mailed to the client.

_____/s/_____
Mirriam Z. Seddiq