

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED
July 28, 2010

No. 09-50855
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROSARIO DIVINS,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:08-CR-889-1

Before JOLLY, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Rosario Divins appeals her conviction and sentence for seven counts of criminal contempt and seven counts of mail fraud. Within ten days of the entry of judgment of conviction, Divins filed a motion for new trial based on newly discovered evidence in accordance with FED. R. CRIM. P. 33(b)(1). That motion has not yet been ruled upon, and therefore the judgment of conviction is not yet final for appeal purposes. *See* FED. R. APP. P. 4(b)(3)(A)(ii), (b)(3)(B)(i); *United States v. Healy*, 376 U.S. 75, 78-79 (1964); *United States v. Greenwood*, 974 F.2d

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1449, 1466 (5th Cir. 1992). Accordingly, we remand this matter to the district court for a ruling on Divins's motion for new trial.

LIMITED REMAND.