

FILED

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50015
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEJANDRO ALBERTO MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:03-CR-140-ALL

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Alejandro Alberto Martinez appeals his guilty-plea convictions for making a knowingly false claim of citizenship and failure to appear. Martinez argues that the district court violated his constitutional rights by ruling that he could not testify regarding his belief that he was a citizen of the United States. The Government asserts that Martinez waived his right to appeal this issue by entering an unconditional guilty plea.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

An erroneous pretrial evidentiary ruling is a non-jurisdictional defect that is waived by a guilty plea. See United States v. Wise, 179 F.3d 184, 186 (5th Cir. 1999). By entering an unconditional guilty plea, Martinez waived his right to appeal the district court's evidentiary ruling, and this court may not consider the merits of his appeal. See United States v. Bell, 966 F.2d 914, 915-17 (5th Cir. 1992).

AFFIRMED.