

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

February 6, 2009

Charles R. Fulbruge III
Clerk

No. 08-10447
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

HOMBERTO CASTRO-ORPINEDA

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:07-CR-56-1

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Pursuant to a written plea agreement, Homberto Castro-Orpineda pleaded guilty to possession with intent to distribute 100 kilograms or more of marijuana and possession of a firearm in furtherance of a drug trafficking crime. Castro-Orpineda appeals the district court's denial of his motion to withdraw his 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

We review for an abuse of discretion. *United States v. Washington*, 480 F.3d 309, 316 (5th Cir. 2007). Because the district court accepted Castro-Orpineda's guilty plea, Castro-Orpineda could withdraw it only if he could "show a fair and just reason for requesting the withdraw." FED. R. CRIM. P. 11(d)(2)(B); *United States v. Still*, 102 F.3d 118, 124 (5th Cir. 1996).

Castro-Orpineda argues that the district court erred by denying his motion solely on the ground that his guilty plea was knowing and voluntary. He reviews each of the factors set out in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984), and argues that all but one (close assistance of counsel) weigh in favor of the grant of his motion to withdraw his guilty plea. However, in support of his motion, Castro-Orpineda raised, at most, only the innocence factor. "[A] defendant cannot fail to invoke any of the Carr factors in support of his motion and then argue that the district court abused its discretion by failing to consider arguments that he had the burden to raise." *Washington*, 480 F.3d at 317 (internal quotation marks and citation omitted). Moreover, the district court was not required to make specific findings on every Carr factor. *Id.* Under the facts of this case, Castro-Orpineda failed to demonstrate a fair and just reason for the withdrawal of his guilty plea, and the district court did not abuse its discretion by denying the motion. See *id.*

AFFIRMED.