

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-30747  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DANA H. SAVARISTE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 99-CR-130-ALL

- - - - -  
April 10, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Dana H. Savariste appeals his conviction and sentence for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). He contends that the district court abused its discretion in denying his motion to withdraw his guilty plea. He bases this contention on the affidavit of Lynette Felder, his girlfriend and the woman responsible for having him arrested on the instant charge after he had assaulted her. Felder's affidavit was submitted ten months after the incident leading to Savariste's arrest, and after she and Savariste had reconciled.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

The statements in the affidavit differ from statements given to the police by both Felder and Savariste at the time of the incident. Moreover, the totality of the circumstances indicates that Savariste's decision to plead guilty was a tactical one, made with the assistance of competent counsel, and that he later decided that he had made a bad choice. Thus, he has not shown a fair and just reason for withdrawal of his guilty plea. See Fed. R. Crim. P. 32(e); United States v. Carr, 740 F.2d 339, 343-44 (5<sup>th</sup> Cir. 1984). The district court did not abuse its discretion in denying Savariste's motion to withdraw his guilty plea.

AFFIRMED.