

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10591
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTHONY WAYNE GILMORE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CR-255-1-A

December 6, 2001

Before DUHÉ, EMILIO M. GARZA and DENNIS, Circuit Judges.

PER CURIAM:¹

Anthony Wayne Gilmore appeals from his guilty-plea conviction of possession of more than 50 grams of a mixture containing cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a).

Gilmore contends that the district court erred in denying his motion to suppress evidence seized pursuant to a search to which Gilmore apparently consented. A voluntary and unconditional guilty plea waives an appellant's right to challenge any nonjurisdictional defects in the proceedings leading to his conviction. United States v. Wise, 179 F.3d 184, 186 (5th Cir. 1999). This waiver is applicable to Fourth Amendment claims. See id. In any event,

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Gilmore has fallen far short of demonstrating that the district court abused its discretion in denying his motion to suppress, without a hearing, on the ground that his supporting allegations were conclusory. See United States v. Harrelson, 705 F.2d 733, 737 (5th Cir. 1983).

Gilmore also argues that the district court erred in denying his motion for a continuance on the day of sentencing. Gilmore maintains that his roommate at the trailer where the drugs were found provided an affidavit "tend[ing] to exonerate" him, Gilmore. Gilmore has not established that the district court abused its discretion in denying the motion for a continuance. See United States v. Peden, 891 F.2d 514, 519 (5th Cir. 1989).

The conviction and sentence are

AFFIRMED.