

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-11444
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NORMAN B. CAPPS,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:01-CR-204-1-L

- - - - -
February 21, 2003

Before DAVIS, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Norman B. Capps appeals his guilty-plea conviction for money laundering. Specifically, Capps argues that the factual resume supporting his guilty plea was insufficient since his mere receipt of drug proceeds failed to satisfy the "financial transaction" element of the offense.

Capps has filed an Unopposed Motion For Leave To File A Reply Brief Out-of-Time. In the interest of affording Capps

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

every advantage on appeal, and since his motion is unopposed, the motion is GRANTED.

Because Capps' challenge to the factual basis for his guilty plea is raised for the first time on appeal, we review for plain error. See United States v. Marek, 238 F.3d 310, 315 (5th Cir.) (en banc) (citation omitted), cert. denied, 534 U.S. 813 (2001). Under FED. R. CRIM. P. 52(b), this court may correct forfeited errors only when the appellant shows the following factors: (1) there is an error, (2) that is clear or obvious, and (3) that affects his substantial rights. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc) (citing United States v. Olano, 507 U.S. 725, 731-37 (1993)). We have reviewed the record and the briefs submitted by the parties and hold that Capp's argument fails to survive this standard of review.

AFFIRMED.