

June 23, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50306  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN WALTER CASTRO, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-01-CR-261-1  
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Before DAVIS, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

John Walter Castro, Jr. appeals his conviction for possession with intent to distribute 100 kilograms or more but less than 1,000 kilograms of marijuana and aiding and abetting in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. He argues that the district court erred in denying his motion to withdraw his guilty plea based upon an intervening district court decision that he asserts rendered his claim of unlawful search and seizure more viable.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The protection against illegal searches and seizures is a nonjurisdictional defect in the proceedings before the district court that is waived by the entry of an unconditional, knowing, and voluntary guilty plea. United States v. Smallwood, 920 F.2d 1231, 1240 (5th Cir. 1991). This is not a case "where intervening law has established that a defendant's actions do not constitute a crime and thus that the defendant is actually innocent of the charged offense," thereby justifying an exception to this rule. United States v. Andrade, 83 F.3d 729, 731 (5th Cir. 1996). Castro has failed to carry his burden of proving that he is entitled to withdraw his guilty plea. See United States v. Brewster, 137 F.3d 853, 857-58 (5th Cir. 1998).

Therefore, under the totality of the circumstances, the district court did not abuse its discretion in denying Castro's motion to withdraw his guilty plea. See id.

AFFIRMED.