

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 8, 2022

Lyle W. Cayce
Clerk

No. 21-30755
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAVONTE DEJEAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CR-120-1

Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Davonte DeJean pleaded guilty to possessing with intent to distribute cocaine base, possessing a firearm during and in relation to a drug-trafficking crime, and possessing a firearm and ammunition after a felony conviction.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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He was sentenced to a total of 190 months in prison with three years of supervised release and now appeals.

DeJean first challenges the district court's denial of his motion to withdraw his guilty pleas. To prevail on his motion, DeJean was required to show a "fair and just reason" for seeking withdrawal. FED. R. CRIM. P. 11(d)(2)(B). This court reviews the denial of such motions for an abuse of discretion. *United States v. Lord*, 915 F.3d 1009, 1013-14 (5th Cir. 2019). DeJean fails to show an abuse of the district court's discretion in light of the record and the factors set forth in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984), and we accordingly affirm the denial of his motion. *See Lord*, 915 F.3d at 1013-17; *United States v. Rivera*, 898 F.2d 442, 447 (5th Cir. 1990).

In his remaining claim, DeJean argues the district court erred by sentencing him based on a finding that an incident in which he denied involvement was relevant conduct. The Government correctly responds that this claim is barred by the plain language of the knowing and voluntary appeal waiver in DeJean's plea agreement. *See United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005). Therefore, this portion of the appeal is dismissed. *See United States v. Story*, 439 F.3d 226, 230-31 & n.5 (5th Cir. 2006).

AFFIRMED IN PART; DISMISSED IN PART.