UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1290
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD DEWAYNE WILSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
CR2 92 0009 01

April 15, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Appellant Ronald Dewayne Wilson was convicted after a jury trial and sentenced to 21 months imprisonment for passing a forged U.S. Treasury check and aiding and abetting in violation of 18 U.S.C. §§ 510(a)(2), 2. An appeal brief was filed for him by court-appointed counsel, but this court permitted counsel to

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

withdraw and accepted Wilson's pro se brief. Wilson's brief raises a number of issues, none of which merit reversal of his conviction.

It is unnecessary to dwell on the facts underlying his conviction. Although Wilson contends that there was insufficient evidence to show that he passed a forged treasury check originally issued for $617 to U.S. Navy man Richard Thomas Thompson, a police officer testified that Wilson confessed to taking the check from Thompson. Further, Wilson was directly incriminated by the testimony of his accomplice Leon Marshall, who had pled guilty. Under the deferential standard of review that is accorded to jury verdicts, it is clear that a rational jury could have found Wilson guilty of the charged offenses.

Wilson also contends that there is a massive conspiracy among the prosecutors and judicial personnel in the Northern District of Texas to obtain his conviction, and he alleges that the court-appointed attorney who represented him at trial was constitutionally ineffective. We decline to review both of these contentions at this time. There is insufficient evidence in the record from which to gauge the merits of either of these contentions, and the district court did not rule on them. In such a case, it is our practice to defer ruling upon such issues until the filing of a § 2255 petition for habeas corpus relief. United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987).

Wilson also contends that the district court erred in refusing to permit him to file a pro se-authored motion for "change of venue for bias and prejudice" while he was still being

represented by counsel. He adds that the court should have permitted him to discharge appointed counsel, but after a hearing, the magistrate judge ruled that Wilson had presented no facts in support of his motion. Until Wilson either retained his own counsel or made an election to proceed pro se, the magistrate judge ruled, he would not dismiss appointed counsel.

For either of two reasons, the district court's action on the venue motion was proper. On one hand, Wilson has no right to hybrid representation, that is, to proceed pro se while he is being represented by court-appointed counsel. United States v. Norris, 780 F.2d 1207, 1211 (5th Cir. 1986). He did not unequivocally state to the magistrate judge, nor has he asserted on appeal, that he wanted to represent himself at trial pro se. Thus, while Wilson continued to be represented by Mr. Howell, the district court had no obligation to permit him to file pro se motions.

But even if the district court should have considered his "motion to change venue for bias and prejudice" on the merits, the motion should not have been granted. As Wilson describes it, the real purpose of the motion to change venue was to recuse the magistrate judge and trial judge, both of whom Wilson believed were prejudiced against him because he had a § 1983 suit pending in the Northern District. Nowhere has Wilson properly alleged or proved facts sufficient to justify recusal of the magistrate or district judges, so there was no basis upon which the filing of this motion could have benefitted Wilson.

Wilson finally contends that the prosecutor severely prejudiced his case by reminding the venire panel and jury five times that co-defendant Marshall, who was testifying for the government, had pleaded guilty, and by referring to Wilson as a "black transvestite prostitute" or words to that effect. Wilson's counsel never objected at trial to any of these comments, so we may review only for plain error, which is defined as "error which, when examined in the context of the entire case, is so obvious and substantial that failure to notice and correct it would affect the fairness, integrity or public reputation of judicial proceedings . . ." United States v. Vontsteen, 950 F.2d 1086, 1092 (5th Cir. 1992) (en banc).

First, the disclosure of an accomplice's guilty plea is permissible as long as it serves a proper evidentiary purpose, and the jury is given a clear cautionary instruction that the plea is to be used to measure the witness's credibility, not to infer guilt against the defendant. United States v. Magee, 822 F.2d 234, 241 (5th Cir. 1987). Here, the district court gave a proper cautionary instruction to the jury at the close of trial. Moreover, we have reviewed each of the five instances in which Marshall's guilty plea was brought out by the government, and even if, taken together, they might be somewhat excessive, we disagree that they could have amounted to plain error. This is particularly true in light of the substantial evidence of Wilson's guilt and the fact that defense counsel cited Marshall's guilty plea twelve times in order to question his motives before the jury.

We similarly find no plain error in the prosecutor's references to appellant's homosexuality and his at least occasional occupation. The references were blunt but limited and not inaccurate.

For the foregoing reasons, the judgment of conviction is AFFIRMED.