

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1773
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONGELIO RAMOS RODRIGUEZ,

Defendant-Appellant.

- - - - -
Appeals from the United States District Court
for the Northern District of Texas
USDC No. 5:92-CR-043-C
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Rongelio Ramos Rodriguez pleaded guilty to one count of distribution and possession with intent to distribute heroin, and was sentenced to 168 months imprisonment, 5 years supervised release, and a \$50 special assessment. Rodriguez now seeks to withdraw his guilty plea.

Fed. R. Crim. P. 11 is intended to ensure that the defendant's guilty plea is knowing and voluntary. United States v. Martirosian, 967 F.2d 1036, 1038-39 (5th Cir. 1992). The rule addresses three core concerns: (1) whether the guilty plea was

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

coerced; (2) whether the defendant understands the nature of the charges; and (3) whether the defendant understands the consequences of the plea. United States v. Adams, 961 F.2d 505, 510 (5th Cir. 1992). If the district court completely fails to address one of these core concerns Rule 11 requires automatic reversal. Id. An incomplete inquiry, however, is reviewed for harmless error. Id. at 510-11; Fed. R. Crim. P. 11(h).

Rodriguez contends that the district court failed to address the first core concern. To satisfy this requirement the district court must determine that the plea is voluntary and not the result of promises other than the disclosed plea agreement. Fed. R. Crim. P. 11(d). At the plea hearing the district court reviewed the entire plea agreement. Rodriguez agreed that the plea agreement accurately summarized his entire agreement with the Government; that he was pleading guilty because he was in fact guilty; and that his plea was not the result of force or threats by the Government.

Rodriguez argues that this inquiry was incomplete because the district court did not specifically ask whether his plea was the result of discussion between the U.S. Attorney and his attorney. This argument is frivolous because the district court asked if a plea agreement had been reached in the case and further asked if the plea agreement reflected the entire agreement. Although the court did not use the exact language of Rule 11(d), this inquiry adequately addressed whether Rodriguez's plea was the result of discussions between the parties.

However, even assuming that the inquiry was incomplete, the error is subject to the harmless error analysis. Fed. R. Crim. P. 11(h); Adams, 961 F.2d at 511. Rodriguez does not provide any evidence to support the position that his plea was induced by any promises external to the plea agreement, and therefore any error was harmless.

Although Rodriguez argues that he is challenging his guilty plea under Rule 11(d), he is actually attempting to withdraw his guilty plea because the district court failed to inform him that the career offender guideline would apply. This claim is also meritless because this Court has rejected the argument. United States v. Pearson, 910 F.2d 221, 222-23 (5th Cir. 1990), cert. denied, 111 S.Ct. 977 (1991).

AFFIRMED.