

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-1804
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

TOMMY B. McCARY,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
3:91 CR 329 D

May 13, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Appellant was convicted and sentenced on his guilty plea to possession of illegal drugs with intent to distribute and he now appeals. We affirm.

Appellant first contends that the district court violated Rule 11(c)(1) when it attributed to Appellant the drugs found on the persons who occupied the pickup truck with him, and the drugs found on the seat of the truck, without having first advised him that it would do so. Rule 11 requires only that the district court

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

determine whether the guilty plea was coerced and whether the defendant understands the nature of the charge and the consequences of his plea. Fed. R. Crim. P. 11. The court read the charge to the Appellant and explained what the Government had to prove in order to obtain a conviction. It then informed him that by pleading guilty he subjected himself to a minimum sentence of not less than ten years and a maximum sentence of life. The district court was not required to "calculate and explain" Appellant's sentence under the Guidelines before accepting his plea. United States v. White, 912 F.2d 754, 756 (5th Cir.), cert. denied, 498 U.S. 989 (1990). Nor was the court required to inform Appellant of the quantity of drugs involved or the consequences that this quantity of drug could have on his sentence. See, United States v. Shacklett, 921 F.2d 580, 583 n.3 (5th Cir. 1991) (failure to inform defendant that he could be sentenced based on a quantity of drugs greater than that mentioned in the plea agreement did not violate Rule 11).

Next, Appellant claims that the district court erred by denying his motion to withdraw his guilty plea. He contends that counsel misinformed him about the possible punishment, and suggests that his plea was not knowing and voluntary because he was under the misapprehension that only the quantity of drugs found on his person could be used in sentencing him. We review for abuse of discretion. In United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984), cert. denied, 471 U.S. 1004 (1985) we enumerated seven factors district courts should consider when ruling on a Rule 32(d)

motion. Applying those factors makes clear that Appellant's argument is meritless. The district court explicitly advised him of the maximum and minimum statutory punishment that he faced. That is all that was required.

Finally, Appellant argues that the district court misapplied the Guidelines by not basing his sentence only on the amount of drugs on Appellant's person. The record makes clear that the district court did not credit Appellant's testimony that he was unaware of the drugs hidden on his companions and in the truck. The court specifically found that each of the three defendants was aware that the others had drugs, that they knew what they were doing and that they were possessing the drugs with intent to distribute. This finding is not clearly erroneous. United States v. Manthei, 913 F.2d 1130, 1133 (5th Cir. 1990). The Guidelines require that the court determine a defendant's offense level based on the relevant conduct which includes "all reasonably foreseeable acts and omissions of others" in furtherance of jointly undertaken criminal activity. U.S.S.G. § 1B1.3(a)(1)(B). It is not necessary that the acts be charged as a conspiracy. Id. This is precisely what the district court did.

AFFIRMED.