

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-1886  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ANTOINE RICHARD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(4:92-CR-039-A)

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(January 19, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Having pleaded guilty to possession of cocaine with intent to distribute it, Richard appeals his sentence. We affirm.

Appellant first argues that the district court did not comply with Rule 11 because it did not inform him of certain of his rights. A transcript of the Rule 11 hearing is not included in the appellate record so this issue cannot be reviewed. United States v. Hinojosa, 958 F.2d 624, 632-33 (5th Cir. 1992). Neither Richard nor his counsel requested a transcript although his former counsel

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

moved for payment for a transcript which motion was granted. No request for the transcript itself, however, was ever made.

Next, Richard complains that the district court did not hold a hearing relative to the crack cocaine reported in the presentence report to have been found in his home and used to calculate his sentence. Appellant, however, never requested an evidentiary hearing on this information in the presentence report nor did he challenge the correctness of the report on this issue. This claim has no merit.

Appellant also argues that before using the amount of crack cocaine shown in the presentence report for sentencing purposes, the district court should have held an evidentiary hearing to determine if it was constitutionally seized. While a motion to suppress that evidence was pending, Appellant pled guilty. The plea was not on condition that the suppression hearing go forward. No subsequent request for a hearing was made. There is, therefore, nothing for this Court to review.

Likewise, we cannot review Richard's claim that the sentence imposed was in violation of a government stipulation that the crack cocaine found in Appellant's home was not part of this offense. There is no such stipulation in the record.

Finally, Richard argues that the evidence is insufficient to support his sentence because the government did not include a transcript of his plea proceeding in the record on appeal. Appellant overlooks the fact that it is his burden to make up the record on appeal, not the government's. Fed. R. App. P. 10(b).

AFFIRMED.