IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2761
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS CLINTON MARTIN,

Defendant-Appellant.

- - - - - - - - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-92-090
- - - - - - - - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Thomas Clinton Martin contends that the district court erred by failing to mention supervised release and that its failure to address a Fed. R. Crim P. 11 core concern was not harmless error. Finding his argument unpersuasive, we AFFIRM.

Any claim that a district court has failed to comply with Rule 11 is now viewed for harmless error. United States v. Johnson, 1 F.3d 296, 301-02 (5th Cir. 1993) (en banc). We engage in a two-step inquiry for all Rule 11 claims: 1) did the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court, in fact, vary from the procedures required by Rule 11; and 2) if so, did the variance affect a substantial right of the defendant. See id. at 302. In making this determination, we consider whether the defendant's knowledge and comprehension of the full and correct information would have been likely to affect his willingness to plead guilty. Id. We are free to examine the entire record on appeal, including documentation that itself post-dates the plea hearing (such as the pre-sentence investigation report, objections thereto, and the transcript of the sentencing hearing), but will consider only those temporally relevant matters revealed in the record. Id.

The district court failed to mention supervised release as required by Rule 11. However, the temporally relevant matters in the record indicate that Martin signed a written plea agreement which informed him of a possible three-year period of supervised release and the consequences which would ensue if that period was imposed and subsequently revoked. Furthermore, he was informed by the district court that he could possibly receive a 15-year mandatory minimum sentence on Count One and would receive a consecutive five-year sentence on Count Two. Thus, at the time he entered his plea, and after signing a written plea agreement, Martin was aware of the possibility that he could receive at least a 20-year sentence.

Furthermore, United States v. Bachynsky, 934 F.2d 1349, 1353 (5th Cir.) (en banc), cert. denied, 112 S.Ct. 402 (1991), indicates that any district court error in this case is harmless. Under the Bachynsky "worst case" calculation, the total period of

elapsed time between Martin's first day in prison and his last would be 97 months on Count One, 60 months on Count Two, 36 months of supervised release, and 24 months upon revocation thereof, for a total of 217 months - - a period of time which does not exceed the 240-month statutory maximum explained to him by the district court. See United States v. Hekimain, 975 F.2d 1098, 1102-03 (5th Cir. 1992); 18 U.S.C. §§ 3559(a)(3), 3583(e)(3).

Based on the written plea agreement which Martin signed prior to entering his guilty plea and the district court's admonition as to the possibility of at least a 20-year term of incarceration, and an application of a Bachynsky "worst case" analysis, the district court's improper variance from the mandate of Rule 11 constitutes harmless error only.

AFFIRMED.

Additionally, the Government's motion to redesignate Martin's pro se brief is DENIED.