

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-5717
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JESSE FLORES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
SA 92 CR 69 1

May 13, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:¹

Flores appeals his conviction on weapons offenses. Because the district court erred in denying Flores's request to waive counsel and represent himself, we vacate the judgment of conviction and remand for a new trial.

I.

A jury found Jesse Flores guilty of making firearms (count

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

one), possession of an unregistered firearm (count two), possession of a nonserialized firearm (count three), and possession of firearms by a convicted felon enhanced (count four). The district court imposed concurrent terms of imprisonment of 120 months on counts one, two, and three and 262 months on count four; concurrent terms of supervised release of three years on each count; and a special assessment of \$200.

II.

Flores argues that the district court deprived him of his right to represent himself at trial. He contends that his waiver of his right to counsel was knowing, intelligent, and unequivocal.

A defendant has a constitutional right to waive counsel and conduct his own defense. **Faretta v. California**, 422 U.S. 806, 833-35, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). "To assert his right of self-representation, a defendant must 'knowingly and intelligently' waive his right to counsel, and the request must be 'clear and unequivocal.'" **Burton v. Collins**, 937 F.2d 131, 133 (5th Cir.), **cert. denied**, 112 S.Ct. 642 (1991) (citations omitted). A defendant has a stronger right to self-representation if he makes his request before trial begins. **See Fulford v. Maggio**, 692 F.2d 354, 362 (5th Cir. 1982), **rev'd on other grounds**, 462 U.S. 111 (1983).

On the day the case was set for jury selection and trial, Flores filed a request for leave to represent himself and to permit standby counsel. Counsel argued that Flores had worked as a paralegal and had prepared some of the pleadings in the case.

Under oath, Flores stated that he understood the charges against him, he had been involved in researching his case for several months, he was a paralegal and possessed the necessary skills to conduct his defense, and he had helped many others in prison to draft their pleadings and enjoyed some success. The district court expressed disagreement with Flores' decision, warned him that he would be bound by the rules of procedure and evidence, and advised him to proceed with counsel.

The district court found that Flores had not made an intelligent waiver of his right to counsel and denied his motion to represent himself. This finding was error. A reading of the transcript reveals no reason to question that Flores' waiver of his right to counsel was clear, unequivocal, knowing, and intelligent.

Although the Government contends that Flores did not understand the nature of the charges against him, the record does not support that contention. The Government argues that Flores did not present documentation that he was a paralegal and had not worked in that capacity for ten years. However, assuming that is true, specific details of Flores's paralegal background have limited relevance to the issue before the district court: Did Flores intelligently waive his right to counsel? Flores's technical legal knowledge "was not relevant to an assessment of his knowing exercise of the right to defend himself." **Faretta v. California**, 422 U.S. at 836.

Because Flores made a clear, unequivocal, intelligent, knowing waiver of his right to counsel, the district court erred in denying

him the right to represent himself. Accordingly, the judgment of conviction and sentence is vacated and the case is remanded for a new trial.²

VACATED and REMANDED.

² Flores raised one additional issue which we consider because its resolution may assist in the retrial. Flores contends the district court erred in refusing to furnish him with the name of the confidential informant whose affidavit supported a search warrant. The district court, after an **in camera** hearing, gave adequate reasons for denying Flores' request and the record supports its ruling. Flores also asked for a redacted copy of the affidavit with names and other information that might identify the informant deleted. If Flores renews this motion, the district court should give an explanation for its ruling. **See United States v. Singh**, 922 F.2d 1169 (5th Cir.), **cert denied**, 111 S.Ct. 2066 (1991).