

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7540
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN ZAMORA-SANTILLAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-M91-314-S1-01
- - - - -

March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Juan Zamora-Santillan ("Zamora") has appealed his conviction of making false statements in his written application to the Immigration and Naturalization Service for permanent residence, 18 U.S.C. § 1001. We affirm the judgment.

Zamora states, as his first two issues, that the record contains an inadequate factual basis for his guilty plea and that the evidence is insufficient. Sufficiency of the evidence is not a valid issue because Zamora pleaded guilty. See United

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

States v. Broce, 488 U.S. 563, 109 S.Ct. 757, 762, 102 L.Ed.2d 927 (1989). Zamora discusses cases but he has not identified any elements of the offense which he claims not to have admitted during the factual-basis phase.

Rule 11(f), Fed. R. Crim. P., provides that "the court should not enter a judgment upon [a guilty] plea without making such inquiry as shall satisfy it that there is a factual basis for the plea." Stated otherwise, "the prosecutor must present evidence to the subjective satisfaction of the district court which indicates that a defendant actually committed the offense to which he is pleading guilty." United States v. Antone, 753 F.2d 1301, 1305 (5th Cir.), cert. denied, 474 U.S. 818 (1985). The district court's finding that there is an adequate factual basis for the plea is reviewed under the "clearly erroneous" standard. United States v. Adams, 961 F.2d 505, 509 (5th Cir. 1992).

"The elements of an offense under [18 U.S.C.] § 1001 are (1) a statement, that is (2) false (3) and material, (4) made with the requisite specific intent [to deceive or mislead], (5) within the purview of government agency jurisdiction." United States v. Lichenstein, 610 F.2d 1272, 1276 (5th Cir.), cert. denied, 447 U.S. 907 (1980). While "Section 1001 proscribes only deliberate, knowing, willful false statements," it "does not require an intent to defraud -- that is, the intent to deprive someone of something by means of deceit." Id. at 1276, 1277.

In Zamora's case, the factual basis was amply established. Zamora admitted that he gave the false address and that he

falsely represented that he had no children, for the purpose of misleading the Immigration and Naturalization Service, a government agency. He admitted that he knew that the statements were false and that his inclusion of them in his application for permanent residence was illegal. Zamora's contention that the factual basis was insufficient has no arguable merit.

Zamora contends that he is entitled to reversal because the district court denied his pretrial motion to require the Government to provide him with the names of all persons whom it interviewed but did not intend to call as trial witnesses. The court denied the motion except as to any evidence that may have been favorable to Zamora.

"A defendant wishing to preserve a claim for appellate review while still pleading guilty can do so by entering a 'conditional plea' under Rule 11(a)(2) of the Federal Rules of Criminal Procedure." United States v. Bell, 966 F.2d 914, 915 (5th Cir. 1992). If, however, "the record contains no manifestation of a reservation of appellate rights, the plea is presumptively unconditional, and an appellate court may not reach the merits of the defendant's appeal" of a ruling on a pretrial motion unless it involves a jurisdictional defect. Id. at 917 (emphasis in the original), 915. Because no such defect is involved in the ruling on Zamora's motion, this Court will not determine the merits of his challenge to it.

AFFIRMED.