

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8290
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DAVID LEE QUINLAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(A-91-CR-76-03)

(January 8, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

David Quinlan appeals his conviction and sentence following a plea of guilty of conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. Concluding that Quinlan waived his right to appeal, we dismiss the appeal.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

A waiver of the right to appeal is enforceable as long as it is informed and voluntary. United States v. Melancon, 972 F.2d 566, 567 (5th Cir. 1992). As part of his plea agreement, Quinlan waived his right to appeal except if the sentencing court departed upward from the guideline calculation. The court, in fact, departed downward.

Quinlan's attorney stated at the arraignment that she did not doubt Quinlan's competence to stand trial or plead and that Quinlan rationally and factually understood the proceedings. Quinlan agreed that he was sane and mentally competent to understand the proceedings against him and to assist his attorney. Quinlan, moreover, stated that he did not have any impairments that would affect his ability to understand fully the charge against him or the consequences and effect of his plea. He also acknowledged that his plea resulted from a plea agreement.

During the arraignment, Quinlan informed the court that he had had ample opportunity to discuss the case with his attorney, and he expressed satisfaction with his attorney's representation. The district court, moreover, informed Quinlan of the constitutional and statutory rights he would waive by pleading guilty; Quinlan stated that he understood and still wished to plead guilty.

Quinlan received a sentence of 160 months' incarceration and five years' supervised release. He acknowledged that he understood that he faced a possible prison sentence of forty years. He also stated that he understood that he faced a mandatory minimum

sentence of five years for which he would not be eligible for probation. He admitted that he pleaded freely and voluntarily and that he had not been threatened, coerced, or forced to plead guilty. He also admitted that no promises other than those in the plea agreement had been made to him. Despite these admonitions, he pleaded guilty.

The record reflects that as part of his plea, Quinlan made an informed and voluntary decision to waive his right to appeal. His appeal, therefore, must be, and is hereby, DISMISSED.