

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8385
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

CHARLES LARRY HULETT,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(EP-92-CR-113-H)

(March 12, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Charles Larry Hulett appeals the validity of his guilty plea and resulting sentence. We **AFFIRM**.

I.

On February 25, 1992, Hulett drove an automobile across the border from Mexico to the United States. When questioned at the primary inspection area at the port of entry, Hulett appeared

¹ 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 Pursuant to that rule, the court has determined that this opinion should not be published.

nervous and was unable to produce any identification. The inspector asked him to exit the car and open the hood and trunk. Looking through the rear window, the inspector noticed what appeared to be a compartment of some sort, and referred Hulett for further inspection. It revealed that the compartment contained 59 pounds of cocaine. Hulett told the inspectors he had been paid \$2000 to drive the car across the border.

On March 18, Hulett was charged in a two-count indictment with importation of cocaine (count 1) and possession with intent to distribute the same (count 2). After an initial plea of not guilty, Hulett moved for re-arraignment where he pleaded guilty to count 1 in accordance with a plea agreement. The written agreement stated that Hulett waived his "right to appeal his sentence on any ground" or otherwise "contest his sentence or the manner in which it was determined in any post-conviction proceeding, including, but not limited to, a proceeding under 28 U.S.C. §2255." In return, the government agreed to move for dismissal of count 2 and not to oppose an acceptance of responsibility adjustment should Hulett be found eligible.

At re-arraignment, Hulett testified, under oath, that his plea was being entered voluntarily and that he understood the charge reflected in count 1 and the mandatory minimum (10 years) and maximum (life) sentences. The court explained the government's "promises" as reflected by the plea agreement, but did not discuss Hulett's waiver of his rights to appeal his sentence and to other

post-conviction challenges to "his sentence or the manner in which it was determined".

The factual basis offered by the government included an earlier statement by Hulett that he "denied knowledge of the cocaine in the vehicle". The court clarified:

THE COURT: Mr. Hulett, just so that the record will be clear, you are pleading guilty to knowingly importing a quantity of cocaine. You did know that's what you were doing, didn't you?

MR. HULETT: Yes, Your Honor.

The court entered a judgment of guilty on count 1. At sentencing, the base offense level was adjusted for acceptance of responsibility, despite the PSR's recommendation to the contrary. Hulett was sentenced at the bottom of the Guidelines range to, *inter alia*, 121 months of incarceration.

II.

Hulett filed a timely notice of appeal, challenging the voluntariness of his plea and the validity of his waiver of his rights "to appeal his sentence on any ground" and to other post-conviction challenges to his sentence or the manner in which it was determined.

A.

Hulett acknowledges that the right to direct appeal can be waived, but claims that this is not the case for post-conviction relief based on violation of a constitutional right. However, Hulett is here on direct appeal, not appeal from a ruling in a post-conviction proceeding, such as under 28 U.S.C. § 2255. Therefore, his right *vel non* to seek post-conviction relief, such

as under § 2255 (he claims he wants to assert a Sixth Amendment violation because of ineffective assistance of counsel) does not present us with an actual case or controversy and is not ripe for our review. See U.S. Const. art. III, § 2; **Halder v. Standard Oil Co.**, 642 F.2d 107, 110 (5th Cir. Unit B April 1981).

B.

The plea agreement provided that Hulett "waive[d] the right to appeal his sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742." Hulett maintains for several reasons this was not a valid waiver, in part because it was not addressed by the court at his plea hearing. Because his contentions on the other substantive issues are totally without merit, we need not decide the waiver issue and simply assume, without deciding, that Hulett did not waive his right to a direct appeal.

We have identified three "core concerns" in determining the validity of a guilty plea: whether the plea was coerced, whether the defendant understands the nature of the charges, and whether he understands the consequences of the plea. **United States v. Bachynsky**, 934 F.2d 1349 (5th Cir.) (en banc), *cert. denied*, ___ U.S. ___, 112 S. Ct. 402 (1991). Hulett contends that these concerns were not addressed for essentially three reasons: 1) the proceedings and the written agreement were in English, and his command of the language is "very weak", 2) the court failed to determine whether the plea was the result of coercion, and 3)

Hulett only "suspected" that he was importing cocaine² and therefore should not have been subjected to the mandatory minimum sentence. We find no support in the record for any of these contentions.

The transcripts of Hulett's re-arraignment and sentencing hearings demonstrate that he easily conversed with the court. Indeed, at sentencing, he made a somewhat lengthy, wide-ranging and articulate statement in his own behalf, which the court said reflected "good thoughts". Although it appears that Hulett did request an interpreter after his initial appearance, he did not assert that need at any phase of his plea or sentencing; and it is clear from the record that he was not in need of such assistance.

As stated, Hulett's sworn statements at his re-arraignment reflect a clear understanding of both the charge in count 1 and the consequences of his plea.³ He stated that no one had threatened him or forced him to plead guilty and that the plea was being entered "of [his] own free will."

Finally, Hulett pled guilty to the offense of importation of cocaine. As another example, at sentencing, he was given a reduction for acceptance of responsibility because he reiterated that there was "really [no] doubt in [his] mind that [he was] bringing [cocaine] across". It is more than clear that Hulett

² Hulett admits that he knew he was importing illegal drugs. He contends, however, that he was not sure whether the car contained cocaine or marijuana.

³ We refer to the plea as it determines the issue of guilt. As noted, we do not reach Hulett's understanding of the agreement as regards waiver of his right to appeal his sentence.

knowingly and voluntarily pleaded guilty to the charge of importation of cocaine.

III.

Accordingly, the judgment and sentence are

AFFIRMED.