

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8639
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT W. JACK,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of
USDC No. A-92-CA-197

- - - - -
August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Robert W. Jack argues that his plea was not knowing and voluntary because he relied in making his plea on the Government's promise to make known to the sentencing court that he had provided substantial assistance to the Government. Jack contends that because the Government failed to fulfill this promise and file a § 5K1.1 motion for departure for his assistance to the Government, his sentence must be vacated and he must be allowed to withdraw his guilty plea.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Relief under 28 U.S.C. § 2255 is reserved for constitutional errors and for a "narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice." United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). A guilty plea based on a breached plea agreement is subject to collateral attack under 28 U.S.C. § 2255. United States v. Cates, 952 F.2d 149, 151 (5th Cir.), cert. denied, 112 S.Ct. 2319 (1992). If a guilty plea is induced by promises or threats, it is deprived of the character of a voluntary act, and is void. Id.

The district court sentenced Jack to 60 months of imprisonment, the mandatory minimum sentence. The record indicates that the sentencing court knew of Jack's cooperation and took it into consideration when sentencing him. The district court judge who sentenced Jack had also presided over the trial of one of Jack's co-defendants, and therefore, knew of Jack's cooperative testimony in the case. Additionally, the plea agreement did not require the Government to file a U.S.S.G. § 5K1.1 motion for departure. Consequently, the Government did not breach the terms of the plea agreement, and Jack's guilty plea is valid. The district court's denial of Jack's 28 U.S.C. § 2255 motion is AFFIRMED.