

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1354
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGER L. GRIER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-106(10)
- - - - -
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Roger L. Grier argues that the district court abused its discretion by overruling his motion to vacate his guilty plea. Rule 32(d) of the Federal Rules of Criminal Procedure allows a district court to permit a defendant to withdraw a guilty plea prior to sentencing upon a showing of "any fair and just reason." Although Rule 32(d) should be construed liberally, there is no absolute right to withdraw a guilty plea. United States v. Benavides, 793 F.2d 612, 616 (5th Cir.), cert. denied, 479 U.S.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

868 (1986). In addition, it is the defendant who has the burden of establishing that withdrawal of the guilty plea is justified. United States v. Daniel, 866 F.2d 749, 752 (5th Cir. 1989). This Court, moreover, will reverse a district court's denial of a motion to withdraw a guilty plea only for an abuse of discretion. United States v. Bounds, 943 F.2d 541, 543 (5th Cir. 1991), cert. denied, 114 S. Ct. 135 (1993).

In United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984), cert. denied, 471 U.S. 1004 (1985), this Court enumerated seven factors that a district court should consider when ruling on a motion to withdraw a guilty plea: (1) whether the defendant has asserted his innocence; (2) whether withdrawal would prejudice the Government; (3) whether the defendant delayed in filing the motion and, if so, the reason for the delay; (4) whether withdrawal would substantially inconvenience the court; (5) whether close assistance of counsel was available to the defendant; (6) whether the plea was knowing and voluntary; and (7) whether withdrawal would waste judicial resources. No single factor or combination of factors mandates a particular result; instead, the district court should make its determination based upon a totality of the circumstances. Id. at 344.

In requesting to withdraw his guilty plea, Grier did not assert his innocence, and he waited more than three months to make the request. Furthermore, nothing indicates that Grier lacked close assistance of counsel, and Grier has failed to show that his plea was not knowing and voluntary. Although it is not clear whether a withdrawal would have prejudiced the Government,

a withdrawal under these circumstances would have amounted to a waste of judicial resources, especially in light of the fact that the district court was ready to proceed with sentencing.

To the extent that Grier argues that he should have been allowed to withdraw his guilty plea at any point before the district court "accepted" the plea at sentencing, that argument fails. The record reflects that the district court accepted his guilty plea at the second arraignment. In addition, there is no absolute right to withdraw a guilty plea once it is made. Benavides, 793 F.2d at 616. In this case, Grier does not dispute that he pleaded guilty.

Relying on United States v. Pressley, 602 F.2d 709 (5th Cir. 1979), Grier asserts that this Court should remand the case "for a fuller record establishing the basis for the Court's denial of his oral motion to withdraw." In Pressley, this Court was unable to determine from the record whether the district court abused its discretion in denying the appellant's motion to withdraw his guilty plea. Id. at 711. Although the district court in this case did not follow the Carr factors systematically, the Carr factors support the district court's ruling. From the record presented in this case, therefore, this Court can determine that the district court did not abuse its discretion in not allowing Grier to withdraw his guilty plea. Accordingly, the judgment is AFFIRMED.