

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1411
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

GEORGE BRADLEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(5:92-CR-39-C)

(May 5, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

PER CURIAM:

Appellant George Bradley represented himself, with appointed counsel to assist, at trial of his indictment for knowingly escaping from custody, in violation of 18 U.S.C. § 751(a). On appeal, he contends that the district court failed to inform him of the dangers and advantages of proceeding pro se and that his indictment was defective. Both assertions are meritless.

Bradley is represented on appeal by the same counsel who acted as stand-by at his trial. Before Bradley was permitted to proceed pro se with the assistance of stand-by counsel, the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court held a hearing, and, among other things, informed Bradley that the court would prefer that he be represented by counsel. Bradley, however, believed that Wischkaemper was unwilling or unable to present the defense Bradley wished to pursue. Wischkaemper filed a written motion indicating that he had explained the dangers of self-representation to Bradley and that Bradley was fully aware of these dangers. Further, Wischkaemper said that Bradley had a working knowledge of the federal rules and federal law and that although he was aware of Bradley's previous psychological problems, he believed Bradley competent to represent himself. The district court considered these matters thoroughly before permitting Bradley to go forward pro se. Bradley's waiver of his right to counsel was therefore knowing and intelligent.

Bradley contends that the indictment was defective because, although it alleged a violation of 18 U.S.C. § 751(a), the government actually prosecuted him under the related statute, 18 U.S.C. § 4082(a), which requires a showing of wilfulness in regard to the escape. Because Bradley's indictment did not allege wilfulness, and he was allegedly prosecuted under section 4082(a), Bradley asserts the indictment was deficient.

Bradley's error is simple. The government prosecuted and convicted him under section 751(a); it was not required to and did not prosecute him under section 4082(a). The indictment was sufficient for purposes of section 751(a), as was the proof. The indictment alleged that Bradley escaped from the Salvation Army Halfway House on January 29, 1992, and it tracked the statutory

language of § 751(a) and cited that provision. Bradley clearly had notice of the circumstances of the alleged offense. Further, the indictment is sufficient to prevent Bradley from being charged again with escape from custody resulting from the January 29, 1992 incident.

For these reasons, the conviction is **AFFIRMED**.