

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1581
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH WALKER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:93-CR-6-A
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Kenneth Walker alleges that the trial court erred in assessing a fine. He is mistaken. Walker failed to object to the Presentence Report (PSR) and to the imposition of the fine at sentencing. Thus, he may not raise this issue for the first time on appeal absent plain error. United States v. Matovsky, 935 F.2d 719, 722 (5th Cir. 1991).

The Sentencing Guidelines require the imposition of a fine unless a defendant establishes that he cannot pay and is not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

likely to become able to pay. U.S.S.G. § 5E1.2(a). A defendant may rely on a PSR to establish an inability to pay a fine.

United States v. Fair, 979 F.2d 1037, 1041 (5th Cir. 1992).

However, "[n]either the Constitution, nor applicable sentencing statutes and guidelines . . . categorically prohibit a court from ever imposing a fine after the defendant has proven his inability to pay." United States v. Voda, 994 F.2d 149, 154 n.13 (5th Cir. 1993). A finding that a defendant who has pleaded guilty has no present or future ability to pay a fine does not preclude the imposition of that fine. United States v. Altamirano, 11 F.3d 52, 52-53 (5th Cir. 1993).

Walker's argument is frivolous. The PSR, which he did not dispute, indicates that Walker owns 10 acres of real estate and a \$1,000 life insurance policy. Walker, unlike the defendants in either Altamirano or Matovsky, has not demonstrated an inability to pay. Even if he had, the district court could still impose a fine. See Altamirano, 11 F.3d at 53. Walker has not shown plain error. See Matovsky, 935 F.2d at 722.

AFFIRMED.