

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1672
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT CHRISTOPHER RACKSTRAW,
a/k/a Pepper,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:92-CR-10-08)

(May 17, 1994)

Before POLITZ, Chief Judge, JOLLY and DUHÉ, Circuit Judges.

PER CURIAM:*

Robert Christopher Rackstraw, and scores of others, were charged in a 35-count indictment alleging a conspiracy to traffic in cocaine and cocaine base and several substantive offenses. In exchange for the government's agreement to dismiss the charges against him, Rackstraw agreed to plead guilty to a superseding

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

information charging the use of a communication facility in furtherance of a narcotics offense in violation of 21 U.S.C. § 843(b), and to provide information to the government about narcotics trafficking in the Fort Worth area. After reviewing the Presentence Report the district court found that the plea agreement was inconsistent with the seriousness of Rackstraw's conduct and declined to accept it. Rackstraw withdrew his guilty plea and, under a second plea agreement, pleaded guilty to a violation of 21 U.S.C. § 841(a)(1). The district court accepted the agreement and plea and, departing downward from the guideline sentence on motion of the government, sentenced Rackstraw to 94 months imprisonment. Rackstraw timely appealed.

Rackstraw contends that the district court abused its discretion in rejecting the first plea agreement. We do not consider the merits of that objection because this challenge is waived by the entry of the second guilty plea. A plea of guilty waives all nonjurisdictional defects in prior proceedings.¹ Rackstraw's complaint is not jurisdictional; the decision whether to accept a plea agreement is committed to the district court's discretion.² The Sentencing Guidelines direct rejection if, after reviewing the Presentence Report, the sentencing court finds that the plea agreement does not adequately reflect the seriousness of

¹**United States v. Smallwood**, 920 F.2d 1231 (5th Cir.), cert. denied, 111 S.Ct. 2870 (1991).

²Fed.R.Crim.P. 11(e)(2); **United States v. Bean**, 564 F.2d 700 (5th Cir. 1977).

the defendant's conduct.³ That rubric prevails despite the fact that Rackstraw may have fulfilled his part of the bargain by cooperating with the government.⁴ We join our colleagues in the Sixth and Tenth Circuits in declining to review objections to the district court's rejection of a prior plea agreement by one who subsequently enters a guilty plea.⁵

AFFIRMED.

³U.S.S.G. §§ 6B1.1(c), 6B1.2(a) (policy statements).

⁴**Bean.** As in **Bean**, Rackstraw was not prejudiced by his cooperation because the information divulged was not used against him.

⁵**United States v. Holman**, 728 F.2d 809 (6th Cir.), cert. denied, 469 U.S. 983 (1984), overruled on other grounds, **United States v. Kemper**, 908 F.2d 33 (6th Cir. 1990); **United States v. Davis**, 900 F.2d 1524 (10th Cir.), cert. denied, 498 U.S. 856 (1990).