

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1910
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GLYNN CLINTON STEELE,
a/k/a Theodore George Spinos,
David Mason,
Clinton G. Steele,
"Doc" Steele,
and Marion Teal,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CR-401-H-01
- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Glynn Clinton Steele argues that his conviction must be reversed because the district court did not personally advise him on the range of punishment, the effect of supervisory release, restitution, and the constitutional rights that he was waiving by pleading guilty. Steele argues that these were violations of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

core concerns and other aspects of Fed. R. Crim. P. 11 requiring automatic reversal of his conviction.

Rule 11 requires that, before accepting a guilty plea, the district court personally determine whether the guilty plea was coerced and whether the defendant understood the nature of the charges and consequences of his plea. Fed. R. Crim. P. 11(c). This Court reviews all violations of Rule 11, including a failure to address a core concern, for harmless error. United States v. Johnson, 1 F.3d 296, 301-03 (5th Cir. 1993) (en banc). The district court's failure to comply with Rule 11 requires reversal and vacatur only if the error affects the defendant's "substantial rights." Id. at 298 (quoting Fed. R. Crim. P. 11(h)). The Court will find that a substantial right has been affected if "the defendant's knowledge and comprehension of the full and correct information would have been likely to affect his willingness to plead guilty." Id. at 302. An affirmative misstatement by the district court is more likely to be harmful to the defendant than an error of omission. United States v. Whyte, 3 F.3d 129, 131 (5th Cir. 1993).

The transcript of arraignment shows that the district court did not personally inform Steele of the range of punishment, the effect of supervisory release, or restitution; however, the Assistant U.S. Attorney (AUSA) did address all of those points in open court. Although it appears that this procedure was not in compliance with Rule 11, see United States v. Dayton, 604 F.2d 931 (5th Cir. 1979), cert. denied, 445 U.S. 904 (1980), Steele has not argued that any of the complained of failures affected

his decision to plead guilty. At arraignment, both Steele and his counsel agreed that the AUSA's statements were accurate and that Steele wished to make no changes. Additionally, the issues of which the district court did not personally inform Steele were covered in the plea agreement. Considering all of the foregoing along with Steele's failure to allege any affect on his decision to plead guilty, the district court's courts errors, if any, were harmless. See Johnson, 1 F.3d at 302.

AFFIRMED.