

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2445  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

GLADYS CAMPBELL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR H 90 256)

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(January 3, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Gladys Campbell appeals her conviction of illegal re-entry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(1). Concluding that the only issue Campbell raises was waived, we affirm.

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\* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

After her release from a federal prison camp,<sup>1</sup> deportation proceedings were initiated against Campbell. On October 31, 1989, she was ordered deported to Nigeria. She was not represented by counsel at the deportation hearing. In his order, the immigration judge noted that Campbell had reserved her right to appeal and that the notice of appeal was due on November 11, 1989. No appeal was filed.

On November 28, 1989, a warrant of deportation was issued. On January 17, 1990, Campbell was placed on a flight to Nigeria. Prior to her departure, Campbell was warned that any deported person who within five years returns without permission is guilty of a felony. Campbell re-entered the United States without permission and was arrested on June 7, 1990.

Campbell was charged with illegal re-entry into the United States after deportation. At trial, she objected to the use of the order of deportation as proof of a lawful deportation and requested a hearing. The district court overruled the objection, and counsel made an offer of proof suggesting that the deportation proceedings were flawed because of the absence of counsel, the refusal to grant a continuance to enable Campbell to obtain counsel, the failure to assert grounds for waiver of deportation because of the absence of counsel, and the failure to advise Campbell of her right to appeal.

Counsel represented that Campbell would testify that she was

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<sup>1</sup> Campbell had been serving a sentence imposed in connection with her conviction for use of and aiding and abetting the use of an unauthorized access device in violation of 18 U.S.C. §§ 1029(a) and 2.

never advised of her right to appeal the deportation order. The district court's ruling was based, in part, upon its conclusion that the objection was untimely and should have been raised prior to the court-imposed motions deadline.

The jury returned a guilty verdict, and Campbell has appealed. As her sole issue on appeal, she contends that the district court abused its discretion by failing to allow her to attack collaterally the deportation order.

## II.

In a prosecution under § 1326, an accused may collaterally challenge a deportation order on due process grounds. United States v. Mendoza-Lopez, 481 U.S. 828, 838-39 (1987). The government correctly argues, however, that Campbell waived her right to challenge the order collaterally, by failing to file a pretrial motion to dismiss the indictment or to suppress. Defenses and objections "capable of determination without the trial of the general issue may be raised before trial by motion." FED. R. CRIM. P. 12(b). A motion to suppress evidence must be raised prior to trial, or it is waived. FED. R. CRIM. P. 12(b)(3), (f). All motions must be filed prior to the deadline set in a scheduling order. United States v. Knezek, 964 F.2d 394, 399 (5th Cir. 1992); United States v. Hirschhorn, 649 F.2d 360, 364 (5th Cir. Unit A July 1981).

The district court found Campbell's challenge to the admissibility of the deportation order untimely:

THE COURT: Have you filed a motion to suppress this?

DEFENSE COUNSEL: No, sir.

THE COURT: Well, it's a little late at the conclusion of the trial to bring up an issue that requires a hearing in the form of suppression . . . .

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THE COURT: . . . Also for purposes of the record, the basis of your objection to exhibit number 3 should have been contained, assuming it has any merit, which I found it does not )) but if it had any merit, it should have been filed before the motion cutoff date which in this case was July 20, 1990, according to my scheduling order. So, I also find that it's untimely.

Having failed to satisfy her obligation to raise the issue timely, Campbell has waived it. The judgment of conviction is AFFIRMED.