

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3191
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES H. BROWN, M.D.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 87-356-H-4
- - - - -
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Pursuant to a written plea agreement, Dr. James H. Brown voluntarily surrendered his DEA Certificate of Registration with respect to schedules I and II controlled substances. The DEA then sought to administratively revoke Brown's prescription privileges with respect to schedules III, IV, and V. Brown filed a motion in district court to enjoin the DEA administrative proceeding on the grounds that his plea agreement prohibited administrative revocation, but the motion was denied.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." Santobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971). The content of a plea agreement is a factual issue to which the clearly erroneous standard of review is applied. United States v. Quigley, 631 F.2d 415, 416 (5th Cir. 1980); see United States v. Williams, 809 F.2d 1072, 1079 (5th Cir.), modified on other grounds, 828 F.2d 1 (5th Cir.), cert. denied, 484 U.S. 987 (1987). Whether the Government's conduct violated the terms of a plea agreement is a question of law. United States v. Hernandez, 996 F.2d 62, 64 (5th Cir. 1993); United States v. Valencia, 985 F.2d 758, 760 (5th Cir. 1993). In determining whether the terms of a plea agreement have been violated, the Court must determine whether the Government's conduct is consistent with the parties' reasonable understanding of the agreement. Hernandez, 996 F.2d at 64; Valencia, 985 F.2d at 760.

Neither the affidavits nor the testimony offered by Brown suggested that the Government offered any promise or assurance that it would refrain from pursuing administrative revocation. To the contrary, the Government negotiator testified that the written agreement constituted the entire plea agreement and that there were no side agreements, promises, or representations. It was not clear error for the district court to find that the written agreement constituted the entire plea agreement.

Brown contends that the district court erred because it failed to consider his understanding of the plea agreement. This argument is meritless as the district court's finding that the written agreement constituted the entire plea agreement is not clearly erroneous. Although the district court did not make a determination with respect to the parties' reasonable understanding of the agreement, the district court's findings as to the terms of the agreement necessarily lead to the conclusion that the agreement cannot be reasonably understood to prohibit administrative revocation.

Under the express terms of the agreement, Brown agreed to voluntarily surrender his schedules I and II prescription privileges. In return, the Government agreed to dismiss the underlying indictment at the time of sentencing. The written terms of the agreement evince no other obligation incurred by the Government. Given the facts that Brown knew the Government wanted him to surrender all of his prescription privileges, that Brown did not or was unable to negotiate an agreement that the Government refrain from pursuing administrative revocation, and that the Government made no written or oral promise to refrain from pursuing administrative revocation, Brown could not reasonably expect that the written terms of the plea agreement prohibited administrative revocation. As the Government's conduct is not in conflict with the parties' reasonable understanding of the plea agreement, denial of the motion to enforce the plea agreement is AFFIRMED.