

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3754

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BENNIE JOSEPH, IV,

Defendant-Appellant.

No. 93-3755

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WALLACE BOURGEOIS, Jr.,

Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of Louisiana
(CR-92-550-F)

(June 3, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

On the night of August 11, 1992, Detective Kenneth Mitchell received information from a confidential informant about possible criminal activity involving a brown Toyota with tinted windows. He proceeded to the location provided him and noticed a vehicle matching the description. The license plate allowed him to identify Bennie Joseph as its registered owner. When Mitchell attempted to effect a traffic stop, the passenger threw an object from the window. Mitchell stopped the vehicle and had other police detain its two occupants, Joseph, who exited from the driver side of the car, and Bourgeois, who exited from the passenger side. Mitchell then recovered 262 grams of crack cocaine from the place where Bourgeois had thrown it. The police also found less than a gram of powder cocaine in the car.

On April 26, 1992, the day Joseph and Bourgeois were scheduled for trial, the two plead guilty to conspiring to possess with the intent to distribute cocaine base in violation of 21 U.S.C. § 846. The court invited the two to ask questions and to consult their lawyers at any point during the discussion prior to the guilty plea. The defendants were read the factual basis of the indictment, including the discovery of the 262 grams of crack cocaine. Before accepting the guilty plea, the court asked the defendants repeatedly whether they understood what was taking place, whether they comprehended the nature of the charge against them, and whether they had committed the crime for which they wished to plead guilty. The defendants answered affirmatively. The court asked whether the defendants had received any assurances

about the sentence they would receive. They responded that they had not.

The defendants' plea agreements provided for a debriefing interview, during which they would have an opportunity to assist the government in its case. An extended period of time passed before the interview could be scheduled and, in the interim, Joseph and Bourgeois moved to withdraw their guilty pleas. After a hearing, the court denied the motions and sentenced the defendants. The defendants challenge on appeal the result of the hearing and their sentences.

Both defendants claim that they were entitled to withdraw their guilty pleas. Joseph first moved to withdraw his guilty plea two months prior to the scheduled date for his sentencing, asserting innocence in regard to the 262 grams of crack cocaine. Because cooperation was no longer a meaningful possibility, the government did not perform a debriefing interview. Joseph later argued, and claims on appeal, that he should have been allowed to withdraw the plea because he had no opportunity to assist the government. As he deprived himself of this opportunity, he has no grounds to complain.

Bourgeois asserts that he did not think his guilty plea involved the 262 grams of crack cocaine that he threw from the car. He suggests that his lawyer informed him that his sentence would range from zero to ten years and would be based only on the cocaine found inside the car. Review of the record belies this claim. The judge informed Bourgeois that the guilty plea reflected the crack

cocaine, the factual basis for the plea included the 262 grams of crack cocaine, and Bourgeois assured the judge that he understood the terms of the plea.

Both defendants contend that they deserved but did not receive a reduction in their sentences because they were minimal or minor participants in the conspiracy to possess and sell cocaine. The conspiracy involved only Joseph and Bourgeois. Bourgeois claims that Joseph, and Joseph that Bourgeois, was the primary culprit, providing yet another instance in which the two played comparable roles in the case. Joseph drove the car and Bourgeois held the cocaine, at least for enough time to throw it out of the window. Neither deserved a reduction.

Joseph argues that he was entitled to an additional one-level reduction in his offense level, in excess of the two-level reduction he received, for acceptance of responsibility. Joseph claims he qualified for the reduction because he attempted to formalize his acceptance of responsibility at a date early enough to save the government the time required to prepare for trial and to allow the court to allocate its resources efficiently.¹ Joseph waited until three days before his trial to sign a plea agreement and plead guilty on the day of his scheduled trial. He was not entitled to a further reduction.

Finally, Bourgeois argues that the court should have made an independent finding before concluding that he knew or should have

¹ See U.S. v. Tello, 9 F.3d 1119, 1124-25 (5th Cir. 1993).

known that the conspiracy involved the 262 grams of crack cocaine.
Bourgeois threw the crack cocaine from the car.

AFFIRMED.