

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3783

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FELIX RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CR-92-553-D)

(June 21, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Felix Rodriguez pleaded guilty to simple escape, La. Rev. Stat. 14:110(A)(1), which constituted a federal crime under the Assimilative Crimes Act. 18 U.S.C. §§ 7 and 13. He reserved the right to appeal the district court's denial of his motion to dismiss the indictment. See Fed. R. Crim. P. 11(a)(2). He appeals. We AFFIRM.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The Louisiana Department of Public Safety and Corrections assigned Rodriguez, a prisoner in the Department's custody, to perform maintenance work at the Belle Chasse Naval Air Station. Rodriguez escaped from the naval air station. He was captured at the home of his relatives in New Egypt, New Jersey. He was indicted for and plead guilty to simple escape. La. Rev. Stat. 14:110(A)(1). Because he committed the crime within federal jurisdiction, his acts violated federal law. 18 U.S.C. § 13. He argues on appeal that, as a matter of law, he could not have committed the crime.

Louisiana law defines simple escape as:

The intentional departure . . . of a person imprisoned, committed, or detained from a place where such person is legally confined, from a designated area of a place where such person is legally confined, or from the lawful custody of any law enforcement officer or officer of the Department of Public Safety and Corrections.

La. Rev. Stat. 14:110(A)(1). Rodriguez argues that he was not in the lawful custody of the Department of Public Safety and Corrections--or, presumably, legally confined--when he was on the Naval Air Station and, therefore, that he did not commit simple escape. Louisiana law, he notes, only proscribes a prisoner's "intentional departure . . . from a place where such person is legally confined, or from . . . lawful custody." La. Rev. Stat. 14:110(A)(1) (emphasis added). Rodriguez claims that he was not properly confined or in custody because the naval air station was exclusively within federal jurisdiction, and the Department of Public Safety and Corrections is empowered to contract inmate labor

only to departments, boards, commissions, or agencies of Louisiana.
See La. Rev. Stat. 15:832(C).

Rodriguez's reasoning rests on more than one fallacy. First, even if the department could not contract with the federal government for his labor, that does not mean that Rodriguez was at liberty to flee. He might have had grounds not to perform work; it does not follow that his confinement was illegal or his custody was unlawful. Second, although the naval air station was within federal jurisdiction, the Louisiana National Guard, for whom Rodriguez performed his work, is part of the state military. La. Rev. Stat. 29:4. He therefore was working for the State of Louisiana. Finally, Louisiana courts have held that Louisiana prisoners in the custody of the National Guard remain in the lawful custody of the Department of Public Safety and Corrections. See U.S. v. Buckles, No. 93-3616 (5th Cir. 1994) (unpublished opinion) (citing State v. Forest, 477 So.2d 866, 867 (La. Ct. App. 1985)). Flight of a prisoner from a National Guard facility therefore constitutes escape under Louisiana law. Id.

AFFIRMED.