

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4399
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIMMY L. TAYLOR,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:92-CR-87-1
- - - - -
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Jimmy L. Taylor appeals the denial of his motions to suppress and to withdraw his guilty plea. Although both parties briefed this issue as if Taylor's guilty plea was conditional, the record does not indicate that Taylor preserved his right to appeal the denial of his motion to suppress. See United States v. Smallwood, 920 F.2d 1231 1240 (5th Cir. 1991) (in the absence of a conditional plea, a guilty plea waives all nonjurisdictional

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

defects in the proceedings leading to conviction). Thus, Taylor waived this issue when he pleaded guilty.

This Court reviews the denial of a motion to withdraw a guilty plea for an abuse of discretion. United States v. Bounds, 943 F.2d 541, 543 (5th Cir. 1991), cert. denied, 114 S.Ct. 135 (1993). In United States v. Carr, this Court enumerated seven factors for district courts to consider when ruling on a motion to withdraw a guilty plea: (1) whether the defendant has asserted his innocence; (2) whether withdrawal would prejudice the Government; (3) whether the defendant delayed in filing the motion, and if so, the reason for the delay; (4) whether withdrawal would substantially inconvenience the court; (5) whether adequate assistance of counsel was available to the defendant; (6) whether the plea was knowing and voluntary; and (7) whether withdrawal would waste judicial resources. 740 F.2d 339, 343-44 (5th Cir. 1984), cert. denied, 471 U.S. 1004 (1985). No single factor or combination of factors mandates a particular result. Instead, the district court should make its determination based on the totality of the circumstances. Id. at 344. The defendant bears the burden of establishing a fair and just reason for withdrawing the guilty plea. United States v. Hurtado, 846 F.2d 995, 997 (5th Cir.), cert. denied, 488 U.S. 863 (1988).

Taylor's claim of innocence is equivocal given his guilty plea in state court. The Government argues that it would be prejudiced if Taylor is allowed to withdraw his guilty plea because it would be required to bring in the witnesses again,

including those who are now incarcerated. Based on the letters submitted to the district court, twenty-four days passed between the guilty plea and Taylor's first indication that he was dissatisfied. The district court found that withdrawal would substantially inconvenience the court since Taylor could have been tried with his codefendant, Minnifield.

Taylor had the benefit of court-appointed counsel throughout the events of the case, including the plea, and at his plea hearing said that he was satisfied with his representation. The transcript of the arraignment reflects that Taylor's plea was knowing and voluntary. Last, the district court noted that withdrawal of the plea would obviously waste judicial resources inasmuch as Taylor's codefendant had already been tried and the probation office had already prepared Taylor's presentence report.

In sum, although Taylor adamantly asserted his innocence, his assertion is questionable given his state-court guilty plea. Moreover, a claim of factual innocence does not mandate granting withdrawal of an otherwise voluntary guilty plea. See United States v. Clark, 931 F.2d 292, 294-95 (5th Cir. 1993) Furthermore, as Carr instructs, no single factor mandates a particular result. See 740 F.2d at 344. Application of the remaining Carr factors indicates that under the "totality of the circumstances" (see id.), the district court did not abuse its discretion when it denied Taylor's motion to withdraw his guilty plea.

The judgment of the district court is AFFIRMED.