

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4823
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ADALBERTO RIVERA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 92-30032-02
- - - - -
(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Adalberto Rivera challenges the district court's denial of his motion to withdraw his guilty plea. Rivera asserts that, because of his limited understanding of the English language, he was unable to understand the nature of the offense and that, due to the short time before the plea hearing, he was not afforded adequate time to consult with counsel.

Rivera does not have an absolute right to withdraw his plea. United States v. Hurtado, 846 F.2d 995, 997 (5th Cir.), cert.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 488 U.S. 863 (1988). This Court reviews the denial of a motion to withdraw for an abuse of discretion. United States v. Bounds, 943 F.2d 541, 543 (5th Cir. 1991). Although Fed. R. Crim. P. 32(d) conditions the right to withdraw upon a showing of a "fair and just reason," absent an abuse of discretion, the district court's ruling on a motion for withdrawal will not be disturbed. Hurtado, 846 F.2d at 997. The defendant bears the burden of establishing that withdrawal of the guilty plea is justified. Id.

This Court has enumerated seven factors for district courts to consider when deciding to allow withdrawal of a guilty plea: 1) whether the defendant has asserted his innocence; 2) whether the Government would suffer prejudice if withdrawal were granted; 3) whether the defendant delayed in filing his withdrawal motion; 4) whether withdrawal would substantially inconvenience the court; 5) whether close assistance of counsel was available to the defendant; 6) whether the plea was knowing and voluntary; and (7) whether withdrawal would waste judicial resources. United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984), cert. denied, 471 U.S. 1004 (1985). In applying the factors enumerated above, the court "should consider the totality of the circumstances." Id. at 344.

The Carr factors support the district court's ruling. Rivera's assertion of innocence with respect to the conspiracy to possess with the intent to distribute count, does not, by itself, justify reversal. Carr, 740 F.2d at 344. Moreover, Rivera waited 72 days before moving for withdrawal. Rule 32 was not

intended "to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice." Id. at 345.

Finally, the transcript of the Rule 11 proceeding and the written plea agreement signed by Rivera indicate that a language barrier did not exist nor did the limited amount of consultation with his attorney render him at a disadvantage. The district court explicitly asked Rivera about the charge and whether he understood that he was being charged with conspiring to possess with the intent to distribute more than fifty grams of cocaine base. Rivera responded that he understood what was transpiring. For these reasons, the district court did not abuse its discretion in denying the motion.

AFFIRMED.