

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5641
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JONATHAN RAY NOBLES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:93-CR-47.2

- - - - -
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

A district judge may permit a defendant to withdraw his plea before sentencing if the defendant shows "any fair and just reason." FED. R. CRIM. P. 32(d). This Court reviews the denial of plea-withdrawal motions under the abuse-of-discretion standard. *United States v. Carr*, 740 F.2d 339, 344 (5th Cir. 1984), *cert. denied*, 471 U.S. 1004 (1985). A district judge should consider the totality of circumstances when determining a motion to withdraw a guilty plea. A judge should consider

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

particularly the following factors: First, whether the defendant has asserted his innocence; second, whether the Government would suffer prejudice should the judge grant the motion; third, whether the defendant has delayed filing his motion; fourth, whether withdrawal would seriously inconvenience the court; fifth, whether the defendant has had available close assistance of counsel; sixth, whether the plea was knowing and voluntary; and seventh, whether withdrawal would waste judicial resources. *Id.* at 343-44. The district court need not consider all seven *Carr* factors when the defendant fails to proffer a credible reason to allow withdrawal. See *United States v. Rojas*, 898 F.2d 40, 43 (5th Cir. 1990).

Additionally, "[o]rdinarily a defendant will not be heard to refute his testimony given under oath when pleading guilty.' If, however, the defendant offers specific factual allegations supported by the affidavit of a reliable third person, then he is entitled to a hearing on his allegations." *United States v. Fuller*, 769 F.2d 1095, 1099 (5th Cir. 1985)(footnotes and citations omitted).

At the plea hearing, Nobles and McLean stated under oath that they had robbed the three grocery stores together. Both men attempted to refute their sworn testimony in their written statements. Because both men had admitted to robbing the stores together, neither man's later written statements were reliable. The district judge need not have held a hearing on Nobles's motion.

Moreover, Nobles failed to provide a credible reason for the

judge to allow him to withdraw his plea. The written statements of Nobles and McLean are unreliable, and their story about a robber named "Spot" is implausible. This Court need not consider all seven *Carr* factors. See *Rojas*, 898 F.2d at 43.

AFFIRMED.