UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-8065
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NAPOLEON MICHAEL MILES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(W-92-CA-218 (90-CR-102))

(January 27, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

I. BACKGROUND

Napoleon Miles pled guilty in October 1990 to possessing a firearm. 18 U.S.C. § 922(g). Because Miles had three prior felony convictions, the district court sentenced him to fifteen years, the statutory minimum under 18 U.S.C. § 924(e). We affirmed his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conviction on appeal. See United States v. Miles, 947 F.2d 1234 (5th Cir. 1991).

In August 1992, Miles filed a motion in federal district court to vacate or correct his sentence pursuant to 28 U.S.C. § 2255. Miles first asserted that the district court at his original trial erred in three ways: (1) concluding that he was seized with probable cause and, therefore, (2) not suppressing evidence obtained from the seizure; and (3) imposing the statutory minimum sentence of fifteen years. Miles also asserted in his motion that he had a legal right to withdraw his guilty plea. The district court below rejected Miles' four claims and denied his motion. Miles now appeals.

II. DISCUSSION

A. Withdrawal of the Guilty Plea

We have noted before that a defendant seeking to withdraw a plea of guilty at the post-sentencing stage must leap a "monumental hurdle." United States v. Hoskins, 910 F.2d 309, 311 (5th Cir. 1990). Specifically, he must show "'a fundamental defect which inherently results is a complete miscarriage of justice' or 'an omission inconsistent with the rudimentary demands of fair procedure.'" Id. (quoting Hill v. United States, 368 U.S. 424, 428 (1962)).

Miles has failed to clear the hurdle. He has demonstrated nothing more than he is unhappy with his sentence. As it is required, the sentencing court made certain that Miles understood the terms and consequences of his guilty plea. The court also

ascertained that the government had not represented or promised a more lenient sentence. The district court's decision to not permit Miles to withdraw the guilty plea was wholly appropriate.

B. Probable Cause and Suppression of the Evidence

We have stated on several occasions that, by entering a plea of guilty, a criminal defendant waives all non-jurisdictional defects, constitutional or otherwise, in the proceedings below. United States v. Bell, 966 F.2d 914, 915 (5th Cir. 1992); United States v. Smallwood, 920 F.2d 1231, 1240 (5th Cir. 1991) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)); Barrientos v. United States, 668 F.2d 838, 842 (5th Cir. 1982). Accordingly, the district court's dispensation of this issue was appropriate.

C. Statutory Minimum Sentence

We have established that § 2255 provides recourse only for violations of "'constitutional rights and for that narrow compass of other injury that could not have been raised on direct appeal and, would, if condoned, result in a complete miscarriage of justice.'" United States v. Perez, 952 F.2d 908, 909 (5th Cir. 1992) (quoting United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981)). To invoke this procedural bar, the government must raise it in the district court. United States v. Drobny, 955 F.2d 990, 995 (5th Cir. 1992). Miles failed to raise this issue when he should have, i.e., his first appeal. See Miles, 947 F.2d at 1235. The government, for its part, raised Miles' omission to the district court below. Miles may not raise the issue now.

III. CONCLUSION

For the reasons stated above, the district court is AFFIRMED.