

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8116
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DANIEL LEE MOODY,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(SA-92-CV-401(SA-91-CR-135))

(January 19, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Appellant Moody pleaded guilty to a violation of the Lacey Act, 16 U.S.C. § 3372(a)(1), which prohibits the sale or purchase of wildlife knowing that it was taken in violation of the law. The wildlife at issue is a black leopard which is protected from "taking" by the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(B). Moody argues that the factual basis offered by the government to support his plea is inadequate because it fails to show that he knew that it was unlawful to take an endangered species and knew

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that the leopard was an endangered species. He also claims that counsel was inadequate for failure to advise him that the government's factual basis was inadequate. Appellant sought relief under § 2255 which the district court denied. We affirm.

Appellant is correct that the government is required to show knowledge of the illegal nature of the game. United States v. Todd, 735 F.2d 146, 151 (5th Cir. 1984), cert. denied, 469 U.S. 1189 (1985). But we disagree with his view of the record. The factual basis proffered by the government showed: "[Moody] aided and brought about the killing of this black leopard knowing that it was killed unlawfully and knowing it would be transported to Louisiana to be mounted." At the hearing Moody testified under oath that "[e]verything [the government] said was correct except for the dollar amount." As the district court noted "[i]n the context of the indictment, knowledge of the unlawful nature of the hunt necessarily entails knowledge of the animal's membership on the endangered species list." The record fully demonstrates that Moody's conduct fell within that defined as criminal. Moody points to his affidavit stating that he did not know that the black leopard was on the endangered species list. But, a defendant will not be heard to refute his testimony given under oath when pleading guilty. United States v. Fuller, 769 F.2d 1095, 1099 (5th Cir. 1985).

For the foregoing reasons, Appellant's contention that his counsel was ineffective for failing to advise him of a defense must likewise fail.

AFFIRMED.