

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8754
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RANDALL C. STONE,

Defendant-Appellant.

Appeal from the United States District Court for
the Western District of Texas
(M0-92-CR-081)

(August 19, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

The grand jury indicted Randall C. Stone on two counts of a felon in possession of a firearm. The afternoon before trial, the government provided Stone with a statement from an ATF agent that the government intended to use at trial. Surprised, Stone moved for a continuance on the morning of trial, and the court gave Stone an extra day and one-half. Later that day, Stone

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pleaded guilty to one of the counts, and the government dismissed the other. The district court sentenced Stone to 15 months in prison with 3 years of supervised release. Stone appeals.

Stone argues that the district court abused its discretion by granting such a short continuance, but Stone's guilty plea waived this argument. See *United States v. Bell*, 966 F.2d 914, 915 (5th Cir. 1992). Stone also contests the court's calculation of his sentence, but, again, Stone waived this argument as a part of his plea agreement. See *United States v. Portillo*, 18 F.3d 290, 292-93 (5th Cir. 1994). Finally, Stone complains that the short continuance denied him effective assistance of counsel and due process of law. We find no merit in these arguments because Stone has failed to allege any materiality of the new testimony or why more time to investigate would have mattered.

AFFIRMED.