

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10514
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE JUAN GONZALEZ,
a/k/a Jose Juan Gonzales,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:93-CR-84-Y

- - - - -
(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

A district court may permit a defendant to withdraw a guilty plea prior to sentencing upon a showing of "any fair and just reason." Fed. R. Crim. P. 32(e). The defendant bears the burden of proving that withdrawal is justified, and the reviewing court will reverse the district court's determination only upon concluding that it abused its discretion. United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984), cert. denied, 471 U.S. 1004 (1985).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Gonzalez asserts that the record is insufficient to determine the district court's basis for its denial of his withdrawal motion and requests remand for further fact findings. The district court is not required to enumerate its consideration of the Carr factors because the burden of establishing a fair and just reason remains on Gonzalez. See United States v. Badger, 925 F.2d 101, 104 (5th Cir. 1991). The district court determined that Gonzalez fully understood the consequences of signing the factual resume and that he was fully alerted to the consequences of his guilty plea. The record supports this finding. Gonzalez admitted that he read and understood the factual resume and that the facts contained in it were true and correct at the time he signed it. At arraignment, the district court explained to Gonzalez that it was not bound by the stipulated facts in imposition of punishment. Gonzalez's sentence was within the punishment range explained to him at arraignment.

Additionally, the record indicates that the Carr factors support the district court's ruling. Gonzalez did not assert his innocence; Gonzalez waited until the day of sentencing to file his motion; Gonzalez had the assistance of counsel and an interpreter at his arraignment. Gonzalez asserts on this appeal that withdrawal would not prejudice the Government or inconvenience the court. Even if these factors weigh in Gonzalez's favor, they do not tip the scales to the extent necessary to find an abuse of discretion. See Badger, 925 F.2d at 104.

Gonzalez failed to demonstrate a fair and just reason to set aside his guilty plea. The district court did not abuse its discretion in denying Gonzalez's motion to withdraw his guilty plea.

AFFIRMED.