

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40070

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS CHAVEZ, a/k/a CHUY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(1:93-CR-39-7)

(October 21, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Jesus Chavez pleaded guilty to conspiracy to import 1,000 kilograms or more of marijuana in violation of 21 U.S.C. § 963. Chavez filed a timely notice of appeal from the judgment and sentence. Finding no meritorious issues for appeal, Chavez's court-appointed counsel filed a motion for leave to withdraw. In accordance with Anders v. California, 386 U.S. 738, 744 (1967), Chavez's counsel filed a brief identifying possible issues for

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appeal. Chavez's counsel notified Chavez of the motion to withdraw and of Chavez's right to file a pro se brief in opposition. Chavez did not respond. Because we find there are no meritorious issues for appeal, we grant counsel's motion to withdraw and dismiss the appeal.

Pursuant to the plea agreement, Chavez waived the right to appeal his conviction. There is no evidence in the record that Chavez's plea was anything other than knowing and voluntary. Boykin v. Alabama, 395 U.S. 238, 242 (1969). Moreover, by pleading guilty, Chavez waived all non-jurisdictional defects in the proceeding below. United States v. Bell, 966 F.2d 914, 915 (5th Cir. 1992).

Chavez, however, did not waive the right to appeal his sentence. At his sentencing hearing, Chavez filed three objections to the pre-sentencing report ("PSR"). First, he sought to be sentenced within the sentencing guidelines rather than the minimum statutory sentence. Second, he sought a three-point decrease for acceptance of responsibility. Finally, he objected to the PSR's failure to recommend a two-point decrease for his minor role in the conspiracy. The court sustained Chavez's first objection and overruled the other two.

The district court's factual determinations regarding Chavez's acceptance of responsibility were not clearly erroneous. See United States v. Tello, 9 F.3d 1119, 1122 (5th Cir. 1993) (review of acceptance of responsibility determination is under a standard even more deferential than a pure clearly erroneous standard). The

record shows that Chavez was not forthright about the extent of his involvement in the conspiracy. Chavez initially admitted to supplying only seventy pounds of marijuana; later he admitted to supplying no more than 670 pounds. Finally, the PSR established that Chavez supplied at least 1,500 pounds of marijuana.

The district court's findings regarding Chavez's role in the conspiracy were also not clearly erroneous. See United States v. Gallegos, 868 F.2d 711, 713 (5th Cir. 1989). The court found that Chavez's "role as supplier was an integral part of the conspiracy that makes him equally, if not more, culpable than other co-defendants." The record amply supports the district court's conclusion that Chavez was not a minor participant in the conspiracy.

A close examination of the record in this case leads us to conclude that there are no meritorious issues for appeal.

MOTION TO WITHDRAW GRANTED; APPEAL DISMISSED.