

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-40127  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ENRIQUE CABEZAS,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Eastern District of  
USDC No. 1:93-CR-134-1

- - - - -  
(January 25, 1995)

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

PER CURIAM:\*

Carlos Enrique Cabezas appeals his sentence for conspiracy to possess with intent to distribute cocaine.

Cabezas did not raise his ex post facto contention in the district court. Under FED. R. CRIM P. 52(b), this Court may correct forfeited errors only when the appellant shows the following factors: (1) there is an error, (2) that is clear or obvious, and (3) that affects his substantial rights. *United States v. Rodriguez*, 15 F.3d 408, 415-16 (5th Cir. 1994)(citing

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

*United States v. Olano*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 1770, 1777-79, 123 L. Ed. 2d 508 (1993)). If these factors are established, the decision to correct the forfeited error is within the sound discretion of the Court, and the Court will not exercise that discretion unless the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Olano*, 113 S. Ct. at 1778.

We need not exercise our discretion to address Cabezas's contention. Conspiracy is a continuing offense. *United States v. Bermea*, 30 F.3d 1539, 1577 (5th Cir. 1994). "If there is evidence that the conspiracy continued after the effective date of the amendments [to the guidelines], the Ex Post Facto Clause is not violated by sentencing under the amendments." *Id.* A guilty plea is an admission that the defendant committed the offense of which he has pleaded guilty. *United States v. Broce*, 488 U.S. 563, 570, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989).

The information charged Cabezas with involvement in a conspiracy that began in 1991 and lasted until July 1993. By pleading guilty, Cabezas admitted his involvement in that conspiracy. Cabezas sought a downward departure on the ground that the Government had not shown that he had been involved in criminal activity since early 1992. The district judge denied the downward departure.

Cabezas was sentenced in February 1994. The amendment about which Cabezas complains became effective November 1, 1991. U.S.S.G., app. C, amend. 382. Whether Cabezas ended his criminal activities in 1992 or 1993, the district court did not err by

applying the 1993 version of the guidelines to Cabezas.

See § 1B1.11(a).

Cabezas's concession that his offenses were separated by intervening arrests is fatal to his contention that his 1986 state-law convictions were related for purposes of the sentencing guidelines. "Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (*i.e.*, the defendant is arrested for the first offense prior to committing the second offense)." § 4A1.2, comment. (n.3); see *United States v. Bryant*, 991 F.2d 171, 178 (5th Cir. 1993).

Because Cabezas's appeal is frivolous, it is DISMISSED.