

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40914
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VICTOR GARZA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:92-CR-30
- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

After rejecting several offers to withdraw his guilty plea, Victor Garza now argues on appeal that the district court abused its discretion in not sua sponte striking the plea and requiring Garza to stand trial. Garza does not seriously challenge the voluntariness of the plea, his guilt of the crime charged, or the calculation of his sentence. His concern, as expressed to the district court, was that he thought his sentence would be substantially shorter than was calculated by the Presentence

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Report. Yet he declined several offers to withdraw his plea or to have an opportunity to present evidence that his attorney had acted improperly with regard to the possible length of his sentence.

In Dawson v. Wainwright, 440 F.2d 1259, 1262 (5th Cir.), cert. denied, 403 U.S. 939 (1971), the defendant indicated at sentencing that he pleaded guilty only to avoid retaliation against his family. Yet, he refused offers to withdraw his guilty pleas. Id. Although the defendant would have been exposed to more severe penalties if the court had sua sponte withdrawn the pleas, this court held that because the defendant refused to withdraw his pleas, the district court could not order it done for him. Id.

Much like the situation in Dawson, Garza refused repeated offers by the court to withdraw his guilty plea. Accordingly, the district court's failure to strike that plea was not an abuse of discretion. The decision of the district court is AFFIRMED.