

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60557
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NELSON BASS,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Mississippi
(CR 4:93-CR173)

(February 24, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Nelson Bass pleaded guilty to bank robbery. The district court sentenced him to 42 months of imprisonment, to be followed by a three-year term of supervised release. The district court also ordered Bass to pay \$40 in restitution.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Despite having medical authority determining him competent, Bass contends that the district court should have rejected his guilty plea, given the reservations expressed by defense counsel as to Bass's sanity. Bass cites no legal authority to support his position.

During the pre-trial proceedings, the government moved to have a psychiatric evaluation of Bass because of concern that he was suffering from a mental disease defect, injury, or other deficiency possibly related to his HIV positive status. The district court granted the motion, ordering Bass to be transported to the Medical Center for Federal Prisons at Springfield, Missouri, for psychiatric examination. Although Springfield's report is not in the record, defense counsel acknowledged that Springfield found Bass to be sane both at the present time and at the time of the alleged offense. Despite that finding, defense counsel moved for another psychiatric examination, based upon counsel's belief that it was in Bass's best interests to assert an insanity defense. Before the district court could consider this motion, Bass decided, over counsel's reservations, to plead guilty.

Constitutional due process protects a person who is mentally incompetent from trial or a guilty plea conviction. See Pate v. Robinson, 383 U.S. 375, 378 (1966). The competency standard for pleading guilty is the same as the competency standard for standing trial: whether the defendant has "sufficient present ability to

consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him." Godinez v. Moran, 113 S.Ct. 2680, 2685-86 (1993) (quoting Dusky v. United States, 362 U.S. 402 (1960)). If there is any doubt as to the defendant's mental state during the guilty plea hearing, the district court must conduct an inquiry as to competence. Pate, 383 U.S. at 385.

At the guilty plea hearing, Bass informed the court that he believed he fully understood what was happening. Upon the court's query, defense counsel stated that he disagreed with Springfield's opinion as to Bass's sanity and that there was some question in counsel's mind regarding Bass's competency. Counsel asserted that Bass rejected a possible insanity defense, believed himself to be competent, and wanted to enter a guilty plea. The district court determined that it would take the opinion of the professionals at Springfield and found Bass to be competent to enter a guilty plea.

Although defense counsel had some question as to Bass's mental competence, such question did not raise serious doubts that Bass lacked the rational ability to consult with his attorney and to understand the proceedings. Counsel's questioning of Bass's soundness of mind appears to have stemmed, in major part, from Bass's desire to reject counsel's planned insanity defense and to plead guilty. Such action could just as easily be explained as Bass's desire to accept responsibility for his actions. Additionally, Bass received a psychiatric evaluation that found him

to be mentally competent at the time of the examination and at the time he committed the alleged offense. The district court also questioned Bass concerning his ability to understand the proceedings. There was no triggering factor present at the guilty plea hearing to require the district court to inquire further as to Bass's mental competence. The district court did not err in accepting Bass's guilty plea.

II

Bass also argues that the district court erred in overruling his motion for a downward departure based upon diminished mental capacity, pursuant to U.S.S.G. § 5K2.13. Bass contends that the district court confused the concept of mental competence with reduced mental capacity, which are separate ideas.

Under § 5K2.13, a departure is warranted:

[i]f the defendant committed a non-violent offense while suffering from significantly reduced mental capacity not resulting from voluntary use of drugs or other intoxicants, a lower sentence may be warranted to reflect the extent to which reduced mental capacity contributed to the commission of the offense[.]

§ 5K2.13 (policy statement). We will not review a district court's refusal to depart from the Guidelines unless the refusal was in violation of the law. United States v. Adams, 996 F.2d 75, 78 (5th Cir. 1993).

At sentencing, the district court refused to apply a downward departure pursuant to § 5K2.13 and stated:

[t]he doctors have found that you are mentally competent, even though it does appear that you have some diminished

capacity, but I have no doubt that you knew when you did the act that you pleaded guilty to that you knew that you were committing a crime. That is the standard.

The district court's refusal to depart from the Guidelines was not in violation of the law. The district court recognized that it had the authority to depart under § 5K2.13 and acknowledged that Bass suffered from "some diminished capacity." However, the district court rejected the concept that Bass suffered from the degree of diminished capacity that would have affected his participation in the offense of conviction. Section 5K2.13 recognizes the grant of a downward departure for someone who was suffering from a "significantly reduced mental capacity" at the time he committed an offense. See U.S.S.G. § 5K2.13 (policy statement). The district court did not consider Bass to have a "significantly reduced mental capacity." Therefore, the district court did not consider Bass to be eligible for a downward departure under § 5K2.13.

Bass cites United States v. Cantu, 12 F.3d 1506 (9th Cir. 1993) to support his proposition that mental competence and diminished capacity were different concepts. However, Bass's reliance on Cantu is inappropriate. Cantu did not address the proposition for which Bass cites it, but instead considered whether the defendant's mental disorder of post-traumatic stress syndrome significantly reduced his capacity for the purposes of the guidelines departure policy under § 5K2.13. As Bass cannot demonstrate that the district court violated the law in refusing to

depart from the guidelines, his assertion provides him no ground for relief. See United States v. Buenrostro, 868 F.2d 135, 139 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990).

III

For the reasons stated herein, the judgment of the district court is

A F F I R M E D.