

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10391
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL MAXWELL,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:96-CR-124-A-13
- - - - -

November 12, 1997

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Michael Maxwell appeals the denial of his motion for leave to withdraw his guilty plea to the charges of bank theft and aiding and abetting bank theft. A district court may permit withdrawal of a guilty plea before sentencing "if the defendant shows any fair and just reason." Fed. R. Crim. P. 32(e). A district court's decision regarding plea withdrawal is given broad discretion and may only be reversed due to an abuse of that discretion. United States v. Carr, 740 F.2d 339, 344 (5th Cir.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1984). The burden is on the defendant to prove that withdrawal is warranted. Id. Maxwell's sole justification for withdrawal of his guilty plea is his assertion that he did know that his actions were illegal at the time he committed them. However, at his plea hearing and in the factual resume signed by him, Maxwell admitted that he committed the offense with the intent to steal. We conclude that the district court's ruling was not an abuse of discretion and Maxwell's motion was properly denied.

Maxwell further argues that the district court abused its discretion by summarily denying his motion without conducting an evidentiary hearing. A district court is not required to conduct an evidentiary hearing when a motion does not present sufficient factual issues with adequate support. United States v. Rome, No. 92-2499, at 4-5 (5th Cir. Sept. 7, 1993)(per curiam) (unpublished)(citing United States v. Fuller, 769 F.2d 1095, 1099 (5th Cir. 1985)). In light of Maxwell's withdrawal motion and its lack of evidentiary support, we conclude that the district court did not abuse its discretion by failing to conduct an evidentiary hearing.

AFFIRMED.