

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-11299  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JEROME SHEARER, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:97-CR-80-1-A  
- - - - -

December 29, 1998

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Jerome Shearer, Jr., argues that the district court abused its discretion in denying his 28 U.S.C. § 455(a) motion to recuse the district judge from presiding in his case. Shearer argues that the fact that his counsel was subpoenaed to provide testimony adverse to the district judge's interest would have caused a reasonable person to question the judge's ability to be impartial during the proceedings.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We have reviewed the record, and the briefs of the parties, including the brief submitted by Judge McBryde, and affirm the denial of the motion on grounds different than those relied upon by the district court. See Hanchey v. Energas Co., 925 F.2d 96, 97 (5th Cir. 1990).

We have determined that Shearer waived his right to challenge the district court's denial of the motion to recuse by entering into an unconditional guilty plea after the district court had denied his recusal motion. See United States v. Hoctel, \_\_\_ F.3d \_\_\_, No. 97-50916, 1998 WL 611106 at \*\*2-3 (5th Cir. Sept. 11, 1998).

AFFIRMED.