

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41547
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK GUILLORY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:97-CR-23-1
- - - - -

September 17, 1998

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Frank Guillory appeals the denial of his motion for specific performance of his plea agreement with the State of Texas. He was convicted under 18 U.S.C. § 922(g)(1) for possession of a firearm by a convicted felon, an incident arising out of the same events as his state prosecution for attempted capital murder and hindering apprehension. He argues that the federal government is acting as the alter ego of the state government in this

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

prosecution and that as a result the indictment should be dismissed.

On appeal from the denial of a motion for specific performance of a plea agreement, this court reviews the district court's factual findings under a "clearly erroneous" standard. United States v. Williams, 809 F.2d 1072, 1079, *modified on other grounds*, 828 F.2d 1 (5th Cir. 1987). The trial court made several findings of fact to support its denial. The federal prosecutors decided to pursue the case against the defendant for a distinct offense. This decision was based primarily upon contact with the victim. No federal agent participated in the state plea negotiations. The parties to the state plea agreement had agreed that all state prosecutions would be dismissed, but they admitted that they did not consider or discuss federal prosecutions. The defendant was not assured that he would not be prosecuted under the federal law.

Upon a review of the record, the briefs, and the applicable law, we hold that the factual findings of the trial court are not clearly erroneous and that the denial of the motion for specific performance of the plea agreement was not error. The judgment of the district court is therefore AFFIRMED.