

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50104
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES DOUGLAS BOYENS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-96-CR-532-H
- - - - -

April 30, 1998

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Charles Douglas Boyens appeals his guilty-plea conviction for one count of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). Boyens argues that the district court erred in denying his motion to withdraw his guilty plea. He has failed to meet his burden to establish a fair and just reason for the withdrawal of his guilty plea. See United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984). The record of Boyens' guilty-plea hearing shows that his guilty plea was knowing and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

voluntary. See United States v. Abreo, 30 F.3d 29, 31 (5th Cir. 1994) (testimony in open court is entitled to a strong presumption of verity). We have reviewed the record and the briefs of the parties and affirm substantially for the reasons given by the district court. See United States v. Boyens, EP-96-CR-532-H (W.D. Tex. Jan. 29, 1997). Although, based on Boyens' letter to the court stating that he wanted to go to trial but was having trouble communicating with his attorney, we do not agree with the district court's finding that Boyens delayed 24 days before filing his motion to withdraw, this does not alter our determination that under the totality of the circumstances Boyens has not shown that the district court abused its discretion in denying the motion to withdraw his guilty plea. United States v. Hurtado, 846 F.2d 995, 997 (5th Cir. 1988).

AFFIRMED.