

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 98-50148
Summary Calendar

SIDNEY MCGARITY,

Plaintiff - Appellant,

versus

KENNETH S. APPEL, COMMISSIONER OF SOCIAL
SECURITY,

Defendant - Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA-96-CV-1205)

February 12, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Sidney McGarity appeals the district court's judgment affirming the Social Security Commissioner's denial of disability insurance benefits and supplemental security income. McGarity maintains that the Administrative Law Judge's hypothetical question to the vocational expert excluded his depression and poor prognosis for rehabilitation. He argues that this omission rendered the hypothetical question violative of Social Security Ruling 96-8p.

We review McGarity's claim under the plain error standard

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

because he did not present it in district court. See *Crawford v. Falcon Drilling Co.*, 131 F.3d 1120, 1123 (5th Cir. 1997); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428 (5th Cir. 1996) (en banc). We find plain error only if (1) there was an error (2) that was clear and obvious, and (3) that affected substantial rights. See *United States v. Munoz*, 150 F.3d 401, 413 (5th Cir. 1998). Even if we find plain error, we reverse only if the plain error seriously affected the fairness, integrity or public reputation of judicial proceedings. See *id.*

We are unpersuaded that we must reverse for plain error. Accordingly, the district court's judgment is AFFIRMED.