

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 8, 2022

Lyle W. Cayce
Clerk

No. 21-30755
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAVONTE DEJEAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CR-120-1

Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Davonte DeJean pleaded guilty to possessing with intent to distribute cocaine base, possessing a firearm during and in relation to a drug-trafficking crime, and possessing a firearm and ammunition after a felony conviction.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-30755

He was sentenced to a total of 190 months in prison with three years of supervised release and now appeals.

DeJean first challenges the district court's denial of his motion to withdraw his guilty pleas. To prevail on his motion, DeJean was required to show a "fair and just reason" for seeking withdrawal. FED. R. CRIM. P. 11(d)(2)(B). This court reviews the denial of such motions for an abuse of discretion. *United States v. Lord*, 915 F.3d 1009, 1013-14 (5th Cir. 2019). DeJean fails to show an abuse of the district court's discretion in light of the record and the factors set forth in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984), and we accordingly affirm the denial of his motion. *See Lord*, 915 F.3d at 1013-17; *United States v. Rivera*, 898 F.2d 442, 447 (5th Cir. 1990).

In his remaining claim, DeJean argues the district court erred by sentencing him based on a finding that an incident in which he denied involvement was relevant conduct. The Government correctly responds that this claim is barred by the plain language of the knowing and voluntary appeal waiver in DeJean's plea agreement. *See United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005). Therefore, this portion of the appeal is dismissed. *See United States v. Story*, 439 F.3d 226, 230-31 & n.5 (5th Cir. 2006).

AFFIRMED IN PART; DISMISSED IN PART.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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September 08, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-30755 USA v. DeJean
USDC No. 2:18-CR-120-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By: _____
Charles B. Whitney, Deputy Clerk

Enclosure(s)

Mr. Kevin G. Boitmann
Ms. Diane Hollenshead Copes
Mr. Justin Caine Harrell
Mr. Jeffrey Ryan McLaren
Mr. Jonathan Leighton Shih