IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 4, 2008
Charles R. Fulbruge III
Clerk

No. 07-40726
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

CHARLTON RAY MCDONALD

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:06-CR-286-ALL

Before KING, DAVIS and CLEMENT, Circuit Judges.

PER CURIAM:[*]

Charlton Ray McDonald pleaded guilty to the possession of child pornography and was sentenced to 120 months of imprisonment and three years of supervised release.

He argues on appeal that the district court erred in denying his motion to withdraw his guilty plea. He contends that he was entitled to have his plea withdrawn because his counsel was ineffective for failing to investigate or advise him concerning the defense of necessity before advising him to plead guilty.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

When determining whether to allow a defendant to withdraw his guilty plea, the district court should consider whether: (1) the defendant has asserted his innocence, (2) withdrawal would prejudice the Government, (3) the defendant has delayed in filing his withdrawal motion, (4) withdrawal would substantially inconvenience the court, (5) close assistance of counsel was available, (6) the original plea was knowing and voluntary, and (7) withdrawal would waste judicial resources. United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984). McDonald has not shown that the district court abused its discretion in determining that he was not entitled under the Carr factors to have his guilty plea withdrawn. See United States v. Powell, 354 F.3d 362, 370 (5th Cir. 2003); Carr, 740 F.2d at 343-44.

AFFIRMED.