

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 22, 2010

No. 09-30258

Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BRIAN K. PORTER,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:06-CR-279-1

Before JONES, Chief Judge, and GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:*

Brian K. Porter pleaded guilty to distribution of 50 grams or more of cocaine base. He asks this court to overturn his conviction on grounds that the district court failed to admonish him before he entered his plea that he had the right to remain silent at trial, the right to testify, and the right to present evidence, as required by Federal Rule of Criminal Procedure 11. The Government does not seek to enforce the appeal waiver in the plea agreement

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

for this issue. *See United States v. Acquaye*, 452 F.3d 380, 381-82 (5th Cir. 2006).

Because Porter did not object to the Rule 11 colloquy in the district court, our review is for plain error. *See United States v. Vonn*, 535 U.S. 55, 59 (2002). Porter does not assert that he would not have pleaded guilty if the district court had fully informed him of his trial rights, and there is no indication in the record that the district court's omission affected his decision to plead guilty. He thus fails to show that his substantial rights were affected, and we find no plain error under Rule 11. *See United States v. Dominguez Benitez*, 542 U.S. 74, 80-83 (2004).

AFFIRMED.