

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

No. 19-40424
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 13, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JOSE DE JESUS LIZARRARAS-CHACON,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. 5:18-CR-310-1

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Jose Lizarraras-Chacon appeals his conviction of illegal reentry, main-

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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taining that the district court abused its discretion in denying his motion to withdraw his guilty plea. “[A] district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence.” *United States v. Lord*, 915 F.3d 1009, 1013–14 (5th Cir.) (internal quotation marks and citation omitted), *cert. denied*, 140 S. Ct. 320 (2019). In evaluating the denial of a motion to withdraw a plea, we consider the totality of circumstances, including the seven factors enumerated in *United States v. Carr*, 740 F.2d 339, 343–44 (5th Cir. 1984). “[N]o single factor or combination of factors mandates a particular result, and [the defendant] bears the burden of establishing a fair and just reason for withdrawal of his plea.” *United States v. Still*, 102 F.3d 118, 125 (5th Cir. 1996).

Lizarraras-Chacon’s motion to withdraw was based on *Pereira v. Sessions*, 138 S. Ct. 2105, 2109–10 (2018), which held that a notice to appear (“NTA”) that fails to designate a time and place of hearing does not trigger the stop-time rule for cancellation of removal, and on district court rulings that, relying on *Pereira*, dismissed illegal-reentry indictments based on invalid NTAs. Lizarraras-Chacon acknowledges that *United States v. Pedroza-Rocha*, 933 F.3d 490 (5th Cir.), *petition for cert. filed* (U.S. Nov. 6, 2019) (No. 19-6588), forecloses his argument based on *Pereira* and that he is raising the issue only to preserve it for further review.

Accordingly, irrespective of the *Carr* factors, Lizarraras-Chacon cannot show that the district court abused its discretion in determining that he failed to carry his burden of providing a fair and just reason for withdrawal of his plea. *See Lord*, 915 F.3d at 1013–14; *Still*, 102 F.3d at 125. The judgment is AFFIRMED.