

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50189
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TIMOTHY E. MCCRARY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-95-CR-197
- - - - -

October 23, 1996

Before POLITZ, Chief Judge, and JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Timothy E. McCrary appeals from his judgment of conviction and sentence following a conditional guilty plea for possession of a firearm by a convicted felon. He argues that 18 U.S.C. § 922(g)(1) is unconstitutional, in light of the Supreme Court's decision in United States v. Lopez, 115 S. Ct. 1624 (1995). McCrary's argument is foreclosed by United States v. Rawls, 85 F.3d 240, 242 (5th Cir. 1996).

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

McCrary argues that the district court's inclusion in his criminal history calculation of a prior conviction for the misdemeanor offense of failure to identify constituted plain error because the offense should have been excluded from the calculation pursuant to U.S.S.G. § 4A1.2(c)(1). McCrary waived his right to appeal his sentence as part of his plea agreement. United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992). A claim that is waived is "entirely unreviewable, unlike forfeited errors, which are reviewable for plain error." See United States v. Musquiz, 45 F.3d 927, 931 (5th Cir.), cert. denied, 116 S. Ct. 54 (1995).

AFFIRMED.