

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth circuit

AUG 10 1990

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
WILLIAM KEITH ELLIOTT,
Defendant-Appellant.

ROBERT L. HOECKER
Clerk

No. 89-4110
(D.C. No. 88-NCR-063S)
(D. Utah)

ORDER AND JUDGMENT*

Before TACHA, McWILLIAMS, and BARRETT, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

This is an appeal by William Keith Elliott contending that the district court violated his rights under the Speedy Trial Act, 18 U.S.C. §§ 3161-3174. We affirm.

Because Elliott did not raise this argument to the district court, we review for plain error. Fed. R. Crim. P. 52(b). Elliott's sole contention is that his Speedy Trial Act rights were

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

violated and that a purported waiver of those rights by his attorney is invalid. We do not reach the question of the validity of the waiver by his attorney because we find that Elliott has waived his rights under the Speedy Trial Act by failing to raise this claim before trial. The Speedy Trial Act expressly states:

Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

18 U.S.C. § 3162(a)(2). Failure to raise the claim before plea or trial thus waives recourse to the Act. See United States v. McKinnell, 888 F.2d 669, 676 (10th Cir. 1989). The district court did not commit plain error in failing to dismiss the indictment for violating the Speedy Trial Act.

Accordingly, the judgment of the district court is AFFIRMED.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge