

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

APR 27 1990

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
LEE JUAN BOWIE,
Defendant-Appellant.

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) No. 89-6167
) (D.C. No. CR-85-289-E)
) (W.D. Okla.)
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ORDER AND JUDGMENT*

Before **McKAY, ANDERSON, and TACHA**, 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.

Lee Juan Bowie appeals from the district court order dismissing his petition for post conviction relief. Bowie contends that the district court erred in finding that no plea bargain agreement existed between himself and the government. We affirm.

* 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.

Bowie's contention is without merit. No valid plea bargain agreement exists. The record clearly shows that all parties understood that the plea agreement was canceled by U.S. Attorney Price before the hearing. We thus hold that no plea bargain agreement exists. Bowie's reliance on United States v. Porter, 594 F.2d 12 (4th Cir. 1979) is misplaced. The holding of Porter - that a proposed plea agreement cannot be withdrawn once offered -- was overruled by the United States Supreme Court in Mabry v. Johnson, 467 U.S. 504 (1984). See Plaster v. United States, 789 F.2d 289, 292-93 (4th Cir. 1986). Because no plea bargain exists and the record shows that this fact was recognized by both Bowie and his counsel, we hold that the district court's finding that Bowie knowingly pleaded guilty without reliance on the canceled plea agreement is not clearly erroneous.

The judgment of the district court is AFFIRMED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge