IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	**CRIMINAL NO. RDB-22-330**
	*	
AYAZ QURESHI,	*	
	*	
Defendant.	*	
	*	
	******	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA AND GOVERNMENT'S MOTION TO FIND DEFENDANT IN BREACH OF THE PLEA AGREEMENT

The United States of America, by its undersigned attorneys, respectfully submits this response in opposition to Defendant's Motion to Withdraw Guilty Plea (the "Motion"). ECF No. 20. For the reasons described below, the United States requests that the Court deny Defendant's motion and find that Defendant has breached the terms of the plea agreement.

BACKGROUND

A. Summary of the Charges Against Defendant.

On September 19, 2022, the Government filed a single count Information charging Defendant with Wire Fraud Conspiracy in violation of 18 U.S.C. § 1349. ECF No. 1. These charges arise out of Defendant's receipt of more than $250,000 in fraudulent Paycheck Protection Program (PPP) loan funds and his payment of a $75,000 to a co-conspirator in exchange for the co-conspirator's assistance in obtaining the loan.

On October 14, 2022, after an extensive Rule 11 inquiry, Defendant pled guilty to Count One of the Information pursuant to a plea agreement. Ex. 1 (Plea Agreement); Ex. 2 (Transcript). The proceedings were conducted in English, and the Court made a specific finding that Defendant was "fully competent and capable of understanding English, and also find specifically he can understand English and understand reading English." Ex. 2 at 64-65.

The Plea Agreement was negotiated between Defendant's first lawyer, Patrick Smith, and the Government. Defendant's second lawyer, Thomas Maronick, appeared on behalf of Defendant at the guilty plea proceeding. Sentencing was twice postponed at the request of the parties.

Defendant's current lawyer formally appeared on behalf of Defendant on August 29, 2023—the date Defendant filed the Motion.

The Motion was filed 10 and a half months after Defendant had pleaded guilty.

B. Plea Agreement Dated September 14, 2022.

Pursuant to the plea agreement, Defendant agreed to plead guilty to Count One of the Information. Ex. 1 at 1. The parties' plea agreement set out the maximum possible penalty for the offense and contained a stipulation concerning the offense level calculation under the Sentencing Guidelines. Id. at 2, 4-5. Specifically, the parties agreed that the base offense level was 7 and that it was increased by 12 levels because the loss amount was more than $250,000 but less than $550,000. Id. at 4-5. The parties also agreed that Defendant should receive a three-level reduction for acceptance of responsibility, resulting in an anticipated final offense level of 16. Id. at 5.

The parties also stipulated to the Statement of Facts that were set forth in Attachment A, which was on Pages 10-11 of the plea agreement. Id. at 10-11.

Defendant signed the plea agreement on Page 10, and he also separately signed the Statement of Facts on Page 11. Id. The following statement appears directly above Defendant's signature on Page 9:

> I have read this Agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation

with my attorney and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

Id. at 9.[1]

C. Guilty Plea on October 14, 2022.

On October 14, 2022, Defendant appeared for his arraignment and guilty plea proceeding. While reviewing the Waiver of Indictment signed by Defendant, the Court began by confirming with Defendant and prior counsel Defendant's American citizenship status and his ability to speak and understand English, as follows:

> **THE COURT:** Is your client an American citizen?
>
> **MR. MARONICK:** He is an American citizen, Your Honor. He's not originally from the country.
>
> **THE COURT:** If he's an American citizen then he's been tested for English.
>
> **MR. MARONICK:** That's correct.
>
> **THE COURT:** Presumably, the immigration people in this country still require that you have to speak English to become an American citizen. He is a naturalized American citizen.
>
> **THE DEFENDANT:** Yes, Your Honor. I can speak but, you know, my understanding is, like, some words I miss that. So I need to understand 100 percent. You know, I'm nervous and confused.

Id. at 8. The Court confirmed with Defendant that he signed the Waiver of Indictment and made the following finding:

> All right. I'm making a finding that I believe -- he's a naturalized American citizen, which he could not be if he doesn't understand English. I'm satisfied that the representation has been that his lawyer has explained to him in English the charges. And I'm satisfied that he understands what I've just said to him. So I've signed this document and now there's been a waiver of indictment in the case.

[1] See also Ex. 3 at 16; Ex. 4 at 41.

Id. at 9. The Court then painstakingly read the Information to Defendant. Id. at 13-29. The Court confirmed numerous times with Defendant that he understood the allegations in the Information. Id. at 13, 14, 15, 16, 18, 19, 21, 25, 26, 28. The Court then confirmed once again that Defendant understood the charge in the Information:

> I've read the entire charge to you verbatim. You've indicated to me that you understand it; is that correct, sir?
>
> **THE DEFENDANT:** Yes, Your Honor.

Id. at 30. The Court thereafter proceeded with the guilty plea proceeding.

After being placed under oath, Defendant entered a plea of guilty to Count One and pursuant to the written plea agreement described above. Id. at 35. The Court then conducted a thorough and extensive colloquy under Rule 11 of the Federal Rules of Criminal Procedure to ensure that Defendant's plea was knowing and voluntary and that there was a factual basis for the plea.

At the outset, the Court confirmed that Defendant was not having any difficulty understanding the proceedings and that he could read and write the English language. Id. at 37. The Court went on to confirm that Defendant did not have any problems or concerns with Mr. Maronick's legal representation of Defendant. Id. at 38-39. The Court and Defendant had the following exchange:

> **THE COURT:** Are you fully satisfied with Mr. Maronick and his representation and the advice which he's given you?

THE DEFENDANT: Yes, Your Honor.
THE COURT: Is there anything which you've asked him to do which he has not done?
THE DEFENDANT: He is doing well, sir.
THE COURT: I beg your pardon?
THE DEFENDANT: He's doing well.
THE COURT: Is there anything that you've asked him to do which he has not done?
THE DEFENDANT: No, he's --
THE COURT: I guess let me ask, has he done everything that you asked him to do?
THE DEFENDANT: Yes, Your Honor.

Id. at 38-39.

After confirming that Defendant was satisfied with Mr. Maronick, the Court discussed the specific terms of the plea agreement with him. The Court began by confirming that Defendant had reviewed the plea agreement with counsel and understood it; Defendant confirmed that he did. Id. at 41. The Court confirmed that Defendant understood that the Court was not a party to the agreement, Id. at 42-43, and that Defendant was pleading guilty freely and voluntarily:

THE COURT: Has anyone in any way tried to threaten you or force you to plead guilty in this case?
THE DEFENDANT: No, Your Honor.
THE COURT: Are you pleading guilty on your own freely because you are, in fact, guilty?
THE DEFENDANT: Yes, Your Honor.

Id. at 43.

The Court then reviewed, among other things: (i) the various collateral consequences as a result of the conviction, id. at 43-45; (ii) the possibility of forfeiture, id. at 45; (iii) the maximum penalties associated with the charge of conviction, including supervised release, id. at 45-47; (iv) the role of the sentencing guidelines at sentencing, id. at 47-48; (v) the parties' stipulation as to the sentencing guidelines calculation and that the guidelines calculation would "expose [Defendant] to time in federal prison," id. at 48-49; (vi) the fact that there is no parole in the federal system, id. at 51-52; (vii) that Defendant waived his rights to appeal his sentence, id. at 52; (viii) all of the rights—including trial rights—that Defendant was giving up by pleading guilty, id. at 53-57; and (ix) the essential elements of the count of conviction, id. at 57-58.

The Court then asked Government counsel to read or summarize the factual stipulation associated with the plea. Id. at 59. And the Court was careful to direct Defendant to read the factual stipulation at the same time:

> THE COURT: I presume that that document was read to you by your lawyers, but in the abundance of caution, it is going to be read here in open court, and you are to listen very carefully, Mr. Qureshi.
>
> And you have represented to me that you not only speak English you read English; is that correct?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: So there should not be any confusion. He's going to read from this document, and you're going to read every word along with him, not out loud, but read it along with him.
>
> Do you understand that?
>
> THE DEFENDANT: Yes.

Id. at 60. Government counsel then proceeded to read the plea agreement's stipulation of facts. Id. at 60-64.

After that, the following exchange occurred:

THE COURT: Thank you very much, Mr. Riley.
Are there any additions or modifications to that statement of facts, Mr. Maronick?
MR. MARONICK: There are none, Your Honor.
THE COURT: Mr. Qureshi, is that an accurate summary of the facts in this case?
THE DEFENDANT: Yes, Your Honor.
THE COURT: Did you, in fact, commit the crime as summarized by Mr. Riley on behalf of the Government?
THE DEFENDANT: Yes, Your Honor.
THE COURT: Do you still wish to plead guilty, sir?
THE DEFENDANT: Yes, Your Honor.
THE COURT: Specifically then, Mr. Qureshi, how do you plead to the one-count criminal information filed against you, guilty or not guilty?
THE DEFENDANT: Guilty.
THE COURT: Mr. Maronick, is there any reason you know of why this Court should not accept this guilty plea?
MR. MARONICK: There is not, Your Honor.

Id. at 64. Defendant reaffirmed his desire to plead guilty. Id. Thereafter, the Court found that "the Defendant is fully competent and capable of entering an informed plea. I also find he's fully competent and capable of understanding English, and also find specifically he can understand English and understand reading English." Id. at 64-65.

The Court further found that "the Defendant is aware of the nature of the charges and the relevant consequences of his plea of guilty and great pain has been taken to make sure he understands he's accused of fraud. He's accused of fraud in connection with the PPP program and CARES Act in the face of the pandemic. That's not very confusing." Id. at 65. The Court noted that "I'm satisfied the Defendant has no confusion about what he's pleading guilty to. And he's acknowledged his guilt of that fraud here today." Id.

The Court further found that "Defendant's plea of guilty on advice of competent counsel with whose services he is satisfied is a knowing and voluntary plea supported by independent bases and facts sustaining each of the essential elements of the offense charged" and adjudged Defendant guilty of Count One of the Information. Id.

The Court would go on to enter an Order Setting Conditions of Release, which Defendant signed and acknowledged he understood too. Id. at 71. Sentencing was scheduled for February 2, 2023, but was twice postponed at the request of the parties.

D. Defendant's Motion to Withdraw His Guilty Plea.

On August 29, 2023—almost a year after his guilty plea—Defendant moved to withdraw his guilty plea, supported by an affidavit and a so-called "competency evaluation" written by a psychologist named Michael Mintz after a single in-person and single Zoom meeting with Defendant—all conducted in English. ECF Nos. 20 (Motion), 20-1 (Mintz Report), 20-2 (Qureshi Affidavit).

Defendant essentially claims that he should be permitted to withdraw his guilty plea because (1) he "is not competent to understand [sic] his plea due to low cognitive functioning," Motion at 2; (2) he required an interpreter at the guilty plea hearing, Motion at 4; (3) he did not have the assistance of competent counsel, Motion at 8-9; (4) and "Defendant is innocence [sic] of the Charge of Conspiracy," Motion at 9-10.

These contentions are meritless. They are belied by Defendant's repeated sworn statements under oath and the Court's observations and findings during the Rule 11 proceedings. A straightforward application of the factors enumerated in United States v. Moore, 931 F.2d 245, 248 (4th Cir. 1991)—controlling authority not cited by Defendant—make plain that Defendant's Motion should be denied.

ARGUMENT

A. Legal Standard.

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, after the court accepts a guilty plea but before it imposes its sentence, a defendant may withdraw a guilty plea if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). The Fourth Circuit has held that "there is no absolute right to withdraw a guilty plea, thus, the defendant has the burden of showing a fair and just reason for the withdrawal." United States v. Ubakanma, 215 F.3d 421, 424 (4th Cir. 2000). This burden is a "heavy" one. United States v. Thompson-Riviere, 561 F.3d 345, 348 (4th Cir. 2009). Indeed, a "fair and just reason for withdrawing a guilty plea is one that essentially challenges the fairness of the Rule 11 proceeding." United States v. Puckett, 61 F.3d 1092, 1099 (4th Cir. 1995) (cleaned up).

In United States v. Moore, 931 F.2d 245, 248 (4th Cir. 1991), the Fourth Circuit set forth the following six factors for a district court to consider in determining whether a defendant has met his burden:

(1) whether the defendant has offered credible evidence that his plea was not knowing or otherwise involuntary;

(2) whether the defendant has credibly asserted his legal innocence;

(3) whether the defendant has had close assistance of counsel;

(4) whether there has been a delay between entry of the plea and filing of the motion;

(5) whether withdrawal will cause prejudice to the government; and

(6) whether withdrawal will inconvenience the court and waste judicial resources.

The Fourth Circuit has held that the inquiry into whether the guilty plea was valid "is ordinarily confined to whether the plea was both counseled and voluntary." United States v. Bowman, 348 F.3d 408, 414 (4th Cir. 2003) (quoting United States v. Willis, 992 F.2d 489, 490 (4th Cir. 1993)).

A voluntary and intelligent plea of guilty is "an admission of all the elements of a formal criminal charge … and constitutes an admission of all material facts alleged in the charge." Id. "The most important consideration in resolving a motion to withdraw a guilty plea is an evaluation of the Rule 11 colloquy at which the guilty plea was accepted." Id. Accordingly, a "properly conducted Rule 11 guilty plea leaves a defendant with a very limited basis upon which to have his plea withdrawn" and "raises the strong presumption that the plea is final and binding." United States v. Nicholson, 676 F.3d 376, 384 (4th Cir. 2012) (quoting Bowman, 348 F.3d at 414); see also United States v. Wilson, 81 F.3d 1300, 1307 (4th Cir. 1996) ("The key to a [plea withdrawal] motion is whether or not the Rule 11 proceeding was properly conducted."); United States v. Puckett, 61 F.3d 1092, 1099 (4th Cir. 1995) ("a 'fair and just' reason for withdrawing a guilty plea is one that 'essentially challenges . . . the fairness of the Rule 11 proceeding.'" (quoting Lambey, 974 F.2d at 1394)).

Indeed, "[w]ere withdrawal automatic in every case where the defendant decided to alter his tactics and present his theory of the case to the jury, the guilty plea would become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim." United States v. Hyde, 520 U.S. 670, 677 (1997) (quotation omitted).

B. Defendant's Plea was Knowing and Voluntary.

Again, the most important consideration in resolving a motion to withdraw a guilty plea is whether the plea was knowing and voluntary. United States v. Bowman, 348 F.3d 408, 414 (4th Cir. 2003). Here, there can be no question that it was.

A guilty plea is knowing and voluntary when the defendant is fully aware of the direct consequences of the guilty plea. Brady v. United States, 397 U.S. 742, 755 (1970). The Supreme Court has explained that, under Rule 11, "the district court is required, as a precondition to acceptance of a guilty plea, to inform the defendant in person of the specified rights he or she may claim in a full criminal trial and then verify that the plea is voluntary by addressing the defendant." Gonzalez v. United States, 553 U.S. 242, 247 (2008). This "requirement is satisfied by a colloquy between the judge and the defendant, reviewing all the rights listed in Rule 11." Id.

Here, although Defendant claims that his plea was not knowing or voluntary, Defendant has not pointed to any actual deficiency in the Rule 11 colloquy and has not offered credible evidence that his plea was not knowing or voluntary.

In fact, the plea agreement and the extensive from record from the plea hearing demonstrate just the opposite. In the plea agreement itself, Defendant acknowledged that he carefully reviewed the agreement with his attorney, that he understood the terms of the agreement, and that he voluntarily agreed to its terms. Ex. 1 at 9.

By signing his name to the plea agreement, Defendant expressly confirmed:

> I have read this agreement, including the sealed supplement, and carefully reviewed every part of it with my attorney. I understand it and I voluntarily agree to it. Specifically, I have reviewed the factual and advisory guideline stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

Id. Then, at the plea colloquy, Defendant—after being placed under oath—confirmed that he had signed the agreement, and that he was pleading guilty because he was, in fact, guilty. Ex. 2 at 40, 43.

The Court also reviewed the terms of the plea agreement in detail with Defendant during the plea colloquy. The Court explained the nature and elements of the charges to which Defendant was pleading guilty, as well as the maximum penalties he was facing. Id. at 57-58. Defendant indicated that he fully understood. Id. The Court also explained the rights Defendant was waiving by pleading guilty, including the right to trial and certain appellate rights. Id. at 52-57. Again, Defendant acknowledged that he understood the rights he was waiving. Id. at 57.

The Court then reviewed the factual basis for the plea with Defendant. Id. at 60-64. When the Court asked Defendant if the summary of the facts read by Government counsel was accurate, Defendant stated, "Yes, Your Honor" and confirmed once again his desire to plead guilty. Id. at 64.

The Court also confirmed that Defendant was entering his plea voluntarily by ensuring that no one had made threats to him or tried to force him to plead guilty. Id. at 43. And the Court confirmed that Defendant was pleading guilty because he was guilty. Id.

The Court ensured that Defendant was satisfied by the representation of his lawyer, Mr. Maronick. Defendant confirmed that counsel was "doing well," that he was fully satisfied with counsel, and that counsel had done every Defendant had asked him to do. Id. at 39.

The Court also repeatedly ensured that Defendant could read and understand English. Id. at 8, 37, 60. Indeed, the Court explicitly—twice—made such a finding. Id. at 9 ("I'm making a finding that I believe -- he's a naturalized American citizen, which he could not be if he doesn't understand English. I'm satisfied that the representation has been that his lawyer has explained to him in English the charges. And I'm satisfied that he understands what I've just said to him."); id. at 64-65 ("I also find he's fully competent and capable of understanding English, and also find specifically he can understand English and understand reading English.").

At no point during the Rule 11 proceeding did Defendant raise any problem, issue, or concern he had with his counsel or the advice he had received about pleading guilty. At no point did Defendant say that he did not understand what was happening during the proceeding or that he did not understand the language being spoken. At no point did Defendant ask for an interpreter or indicate that one might be helpful. At no point did Defendant say anything about wanting to make changes to the Stipulation of Facts. At no point did Defendant hesitate, pause, or equivocate when asked whether he was in fact guilty of the offense as charged.

This is Court conducted a thorough and extensive Rule 11 proceeding in which the Court ensured that Defendant understood and could read English, discussed the nature and elements of the charges, ensured that Defendant had consulted with and was satisfied with counsel, ensured that Defendant understood the rights he forfeited by pleading guilty, entered the guilty plea freely and voluntarily, and satisfied itself that there was a factual basis for the plea.

After all of that occurred, the Court determined that Defendant is "fully competent and capable of entering an informed plea," "fully competent and capable of understanding English," and that "Defendant is aware of the nature of the charges and the relevant consequences of his plea of guilty and great pain has been taken to make sure he understands he's accused of fraud." Id. at 64-65. The Court further found that "I'm satisfied the Defendant has no confusion about what he's pleading guilty to. And he's acknowledged his guilt of that fraud here today." Id. at 65. And the Court further found that Defendant's "plea of guilty on advice of competent counsel with whose services he is satisfied is a knowing and voluntary plea supported by independent bases and facts sustaining each of the essential elements of the offense charged." Id.

Simply put, Defendant's claims that he required an interpreter at the Rule 11 proceeding are belied by his statements under oath and the Court's explicit findings that Defendant is able to understand English. His claim that he was threatened by his lawyer is likewise contradicted by Defendant's sworn statements under oath that no one had made threats to him or tried to force him to plead guilty, id. at 43, and are simply not credible. "Because the district court conformed to the requirements of Rule 11 … the plea is presumed to be final and binding." United States v. Beckworth, 210 F.3d 362, 2000 WL 296308, *1 (4th Cir. 2000) (unpublished); see also United States v. Nostratis, 321 F.3d 1206, 1208 (9th Cir. 2003) (rejecting defendant's argument that his plea was not knowing and voluntary because he did not have a Tagalog interpreter at the Rule 11 hearing in light of, among other things, guilty plea colloquy).

At bottom, Defendant has no credible basis to claim that he did not knowingly or willingly agree to his plea agreement. The district court was careful to ensure that the Defendant's plea was knowing and voluntary, and Defendant's "cold feet" after pleading guilty is not a sufficient basis to withdraw his plea. United States v. Wilson, 81 F.3d 1300, 1309 (4th Cir. 1996); see also United States v. Newson, 46 F.3d 730, 732 (8th Cir. 1995) ("The plea of guilty is a solemn act not to be disregarded because of belated misgivings about its wisdom."); Bowman, 348 F.3d at 416 (rejecting effort by defendant "to second guess his guilty plea").

C. The Defendant Has Not Credibly Asserted His Legal Innocence.

Aside from falling far short in establishing the first Moore factor, Defendant has not made any credible assertions under the second Moore factor related to his legal innocence. Nor could he, since he stipulated to the Statement of Facts, which support each element of the crime Defendant admitted to committing. This factor weighs strongly in favor the Government.

Defendant asserts that he is innocent and that he "lacked the mens rea to commit the crimes alleged." Motion at 9. But he provides limited information about what specifically his defense would have been or how we would have proven it—apart from his own self-serving statements in his affidavit. And he provides nothing to overcome his admission under oath to the truth of the detailed statement of facts read by the Government at the Rule 11 hearing. Ex. 2 at 64.

Thus, any claim of legal innocence that Defendant might try to assert now is unsupported and unbelievable. "[T]he mere allegation of innocence, without any new evidentiary support is not entitled to much weight." United States v. Wells, 82 F.3d 411, 1996 WL 174631, at *5 (4th Cir. Apr. 12, 1996) (unpublished); see also United States v. O'Neil, 352 F. App'x 859, 866 (4th Cir. 2009) ("[A] defendant's bare allegation of innocence does not, without more, satisfy the second *Moore* factor."); United States v. Cray, 47 F.3d 1203, 1209 (D.C. Cir. 1995) ("A defendant appealing the denial of his motion to withdraw a guilty plea, unlike a defendant who has not first pled guilty, must do more than make a general denial in order to put the Government to its proof; he must affirmatively advance an *objectively reasonable argument that he is innocent* . . . for he has waived his right simply to try his luck before a jury") (emphasis added).

Instead, to credibly assert actual innocence, Defendant must "present evidence that (1) inspires belief and (2) tends to either defeat the elements in the government's prima facie case or make out a successful affirmative defense." United States v. Howard, 549 F. App'x 164, 168 (4th Cir. 2013) (citing United States v. Thompson–Riviere, 561 F.3d 345, 353 (4th Cir. 2009)). Defendant has not and cannot do that, particularly in light of the admissions he has already made under oath. See Bowman, 348 F.3d at 415 (bare assertion that defendant lied at the plea colloquy when he admitted guilt was inconsistent with record, and did not state a plausible claim of legal innocence). This factor weighs in favor of the Government.

D. There Was A Delay Of More Than 10 Months Between Defendant's Guilty Plea And The Motion To Withdraw.

The third *Moore* factor is "whether there has been a delay between the entering of the plea and the filing of the motion." Moore, 931 F.2d at 248. Courts have distinguished between "a hastily entered plea made with unsure heart and confused mind," on the one hand, and "a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if [the defendant] believes that he made a bad choice in pleading guilty." United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991) (quoting United States v. Carr, 740 F.2d 339, 345 (5th Cir. 1984)). Courts have found that even delays of several weeks are beyond the bounds of the time frame considered appropriate for motions to withdraw. See Alexander, 948 F.2d at 1004 (5 months); United States v. Spencer, 836 F.2d 236, 239 (6th Cir. 1987) (5 weeks); Carr, 740 F.2d at 345 (22 days). Indeed, "[t]he timing of a motion to withdraw a guilty plea is important . . . because it is highly probative of motive. While an immediate change of heart may well lend considerable force to a plea withdrawal request, a long interval between the plea and the request often weakens any claim that the plea was entered in confusion or under false pretenses." United States v. Fernández-Santos, 856 F.3d 10, 18 (1st Cir. 2017) (two month delay weighed against defendant).

Here, Defendant pleaded guilty on October 14, 2022, and his motion to withdraw was not filed until over 10 months later on August 29, 2023—many months after sentencing was originally scheduled (February 2, 2023) and twice postponed. This period of delay is significant and weighs against Defendant. *See* Moore, 931 F.2d at 248 (six week delay too long); United States v. Dickey, 2011 WL 4793196, *2 (4th Cir. Oct. 11, 2011) (unpublished) (*less than two months* was "a significant period of delay" that weighed in favor of the district court's denial of the defendant's motion to withdraw his guilty plea); United States v. Cline, 286 F. App'x 817, 822 (4th Cir. 2008) (unpublished) (delay of nearly three months was "significant" and properly weighed against defendant in denying her motion to withdraw plea); United States v. Sandoval Delgado, 148 F. App'x 166, 168 (4th Cir. 2005) (delay of 2.5 months weighed against defendant's motion to withdraw plea). The more than 10 month delay here is yet another factor supporting the denial of Defendant's Motion.

E. Defendant Had The Close Assistance of Counsel.

To prevail on the fourth Moore factor, a defendant must demonstrate "(1) that his counsel's performance 'fell below an objective standard of reasonableness' and (2) that 'there [was] a reasonable probability that, but for counsel's error, he would not have pleaded guilty and would have insisted on going to trial.'" United States v. DeFreitas, 865 F.2d 80, 82 (1989) (quoting Hill v. Lockhart, 474 U.S. 52, 57, 59 (1985)); see also Bowman, 348 F.3d at 416; Ubakanma, 215 F.3d at 425. "Under this standard, the Court's inquiry is limited to whether the defendant's counsel 'was reasonable under prevailing professional norms, and in light of the circumstances.'" Bowman, 348 F.3d at 416 (quoting Carter v. Lee, 283 F.3d 240, 249 (4th Cir. 2002)); see also Hill, 474 U.S.

at 58 (holding that the two-part Strickland test applies to motions to withdraw guilty pleas based on ineffective assistance of counsel).

Here, Defendant's post-hoc claim that Mr. Maronick was ineffective is belied by the plea agreement and Defendant's sworn statements under oath. Mr. Maronick wisely advised Defendant to plead guilty based on the strength of the Government's evidence, the fact that Defendant had twice met with the Government and confessed (including in a proffer session), and that, in light of the posture of the case, it was likely that Government counsel would recommend a variant below-guidelines sentence.

Defendant stipulated in his plea agreement that he had "carefully reviewed every part of [the agreement] with [his] attorney" and that he was "completely satisfied with the representation of [his] attorney." Ex. 1 at 9. And the Court confirmed with Defendant his satisfaction with Mr. Maronick's legal representation of him:

THE COURT: Are you fully satisfied with Mr. Maronick and his representation and the advice which he's given you?

THE DEFENDANT: Yes, Your Honor.
THE COURT: Is there anything which you've asked him to do which he has not done?
THE DEFENDANT: He is doing well, sir.
THE COURT: I beg your pardon?
THE DEFENDANT: He's doing well.
THE COURT: Is there anything that you've asked him to do which he has not done?
THE DEFENDANT: No, he's --
THE COURT: I guess let me ask, has he done everything that you asked him to do?
THE DEFENDANT: Yes, Your Honor.

Ex. 2 at 38-39. At bottom, Defendant's advice to plead guilty was effective and sound advice based on the information known to the parties at the time, and Defendant testified to his satisfaction with his lawyer at the Rule 11 hearing.

Further, Defendant's sensational claim that Mr. Maronick coerced him, threatened him or somehow intimidated him into pleading guilty, Motion at 8-9, cannot be squared with Defendant's statements under oath either. Ex. 2 at 43 (THE COURT: Has anyone in any way tried to threaten you or force you to plead guilty in this case? THE DEFENDANT: No, Your Honor. THE COURT: Are you pleading guilty on your own freely because you are, in fact, guilty? THE DEFENDANT: Yes, Your Honor.").

Simply put, none of Defendant's claim's as to his former counsel's performance provide a basis for the relief Defendant seeks here. See Ubakanma, 215 F.3d at 425 (4th Cir. 2000) (rejecting claim by defendant that "he was 'misinformed' or 'intimidated' into pleading guilty" and had pleaded guilty "due to his attorney's intimidation and poor advice" in light of defendant's sworn statements and district court's findings that defendant was no coerced and contents of plea agreement, which defendant had agreed he understood); United States v. Dyess, 478 F.3d 224, 240 (4th Cir. 2007) (rejecting motion to withdraw guilty plea and reasoning "the defendant expressed satisfaction with his attorney during the colloquy; this statement of fact cannot be so easily repudiated"); United States v. Gaines, No. 21-4195, 2023 WL 5745367, at *2 (4th Cir. Sept. 6, 2023) (affirming denial of motion to withdraw guilty plea and noting that "in the absence of extraordinary circumstances, the truth of sworn statements made during a Rule 11 colloquy is conclusively established" (quoting United States v. Lemaster, 403 F.3d 216, 221–22 (4th Cir. 2005)).

Defendant had the close assistance of counsel. This Moore factor weighs against Defendant.

F. The Remaining Moore Factors Weigh Against Defendant.

The fifth and sixth factors (which are often considered together) are whether there would be prejudice to the government or a waste of judicial resources owing to a withdrawal of the guilty plea. These factors weigh in favor of denial of the motion to withdraw the guilty plea.

The Fourth Circuit has repeatedly reiterated the guilty plea's importance to the efficient administration of justice. See, e.g., Lemaster, 403 F.3d at 219-20 (citing Blackledge v. Allison, 431 U.S. 63, 71 (1977)); Bowman, 348 F.3d at 414.

Allowing the defendant to withdraw his guilty plea after he had the benefit of competent counsel, and an exhaustive Rule 11 colloquy would burden the government and needlessly waste judicial resources.

Indeed, as time passes, evidence grows stale and witnesses' memories fade. Thus, allowing Defendant to withdraw his guilty plea would prejudice the Government. See Sparks, 67 F.3d at 1154 n.5 ("[W]ithdrawal of a guilty plea almost invariably prejudices the government to some extent and wastes judicial resources."). Moreover, allowing Defendant to withdraw his plea after a clear affirmance of his guilt, as indicated by the signed plea agreement and the properly conducted Rule 11 proceeding, would be a gross waste of judicial resources too. See Moore, 931 F.2d at 249 (finding that the sixth factor weighed against the defendant because "a reopening of the plea would have been futile"; there "was no substance to [the defendant's] claims"; and "[i]t would be pointless, perhaps even unjust, to allow him to relitigate"). The final two Moore factors weigh against Defendant too.

G. Defendant's Claims As To His Purported "Disability" Are Meritless.

Finally, Defendant claims that withdrawal is warranted because he "suffers from a developmental disability" and supposedly did not understand the parties' plea agreement or the nature of the charge. Motion at 3. He relies entirely on the Mintz Report in support of his conclusion. Id. This contention is likewise belied by Defendant's statements under oath during the Rule 11 proceeding and is meritless.

To begin, Defendant claims he has a disability, but doesn't even bother to state what his purported disability is. Nor does Mintz; indeed, Mintz's report is devoid of any diagnosis of Defendant made pursuant to, for example, the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). The closest Dr. Mintz comes is his statement that Defendant "may meet diagnostic criteria for attention-deficit/hyperactivity disorder (ADHD)" but even Dr. Mintz acknowledges that "further testing"—testing which Mintz didn't perform—"would be necessary to confirm the diagnosis." Mintz Report at 10.

Defendant states, that he "suffers from a developmental disability as established by Dr. Mintz's report, which 'impairs his ability to understand complex legal proceedings and impairs his ability to assist his legal counsel in respect to any legal proceeding.'" Motion at 3 (purporting to quote Mintz Report).

But Defendant misquotes the Mintz Report. *See* Mintz Report at 11 ("Mr. Qureshi's verbal deficits and executive functioning deficits *may also impair* his ability to assist his legal counsel in respect to any legal proceedings.") (emphasis added). Mintz does not even use the term "developmental disability" in his report at all. Moreover, though Mintz's report is styled as "Competency Evaluation," Mintz does not in fact render any opinion concerning Defendant's competency—*i.e.*, whether the "defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." *See* 18 U.S.C. § 4241(a).[2]

[2] Mintz describes his assignment on page 10 of the report—to "assess [Defendant's] cognitive functioning as it pertains to the crimes of which he has been accused" and "consider

And for good reason. Defendant is competent today, and he was competent at the Rule 11 proceeding. What's more, there is a significant question as to whether Mintz—a psychologist who specializes in infant and toddler development and early childhood mental health[3]—is even qualified to render an expert opinion with respect to Defendant's competency or any sort of "developmental disability" Defendant purportedly has. Next, Dr. Mintz met with Defendant just once in person and once via Zoom for a total of five hours. Mintz Report at 1. He interviewed Defendant's wife[4]—someone with an interest in the outcome of this matter—and relied on her assertions in support of certain conclusions. Mintz Report at 3-4, 9. His Report likewise takes information provided by Defendant at face value. Mintz Report at 3.

Moreover, in reaching his conclusion—that Defendant's verbal abilities are "very poor"—Mintz relies on tests that were not normed on non-native English speakers such as Defendant. Mintz Report at 4 ("The instruments utilized in this evaluation have been normed on a United States population. Individuals from south Asia (including Pakistan) are included in the normative sample in numbers that approximate their percentage of the overall United States population. *However, the normative sample may not include individuals who speak Urdu as their primary language*.") (emphasis added). Even Mintz acknowledges that this undercuts the validity or reliability of his conclusions, noting that Defendant's "*poor performance on verbal tasks is related*, at least in part, *to the fact that testing was administered in English*. Testing was administered in

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whether he has the cognitive or reading skills to comprehensively understand the arrangements of his plea bargain."

[3] *See* Children's National, Michael Mintz Bio, *available at* https://childrensnational.org/visit/find-a-provider/michael-mintz.

[4] Government counsel has twice (on August 30, 2023 and September 7, 2023) requested all of the materials underlying Mintz's report and which form the basis of Mintz's conclusions. To date, no materials have been provided.

English based on broad limitations (i.e., the examiner is not proficient in Urdu, and materials in Urdu were not available)." Report at 10 (emphasis added). But Mintz points to nothing to justify the use of these tests (or the validity or acceptability of their results) under such circumstances besides his *ipse dixit*, and the reliability of Mintz's conclusions thus rests on very shaky ground.

At bottom, Defendant has not established that he suffers from any sort of cognitive "disability" or that he was not competent to enter a knowing and voluntary guilty plea when he did so. Defendant's behavior, demeanor, and answers under oath to the Court at the Rule 11 hearing suggest likewise. See, e.g.,United States v. Malone, No. 3:13-CR-104 JD, 2014 WL 12659415, at *3 (N.D. Ind. Dec. 30, 2014) (rejecting motion to withdraw where defendant claimed he had low IQ and noting "that [t]he only rational manner in which a judge may determine whether a plea is knowingly and voluntarily made, is to observe the defendant's demeanor and responses to the court's questions and to rely on the defendant's sworn answers." (quoting United States v. Hoke, 569 F.3d 718, 720–21 (7th Cir. 2009)); cf. United States v. Bryant, 540 F. App'x 241, 247 (4th Cir. 2014) (unpublished) (concluding the defendant failed to establish a fair and just reason to withdraw his guilty plea where it was "undisputed that Defendant suffers from a variety of mental illnesses," but "nothing in the record indicate[d] that his illnesses had any impact on his competence or his ability to understand the nature of the proceedings against him"). Indeed, the Court conducted a thorough and exhaustive Rule 11 colloquy with Defendant. At no time was there any suggestion by Defendant that he did not understand what was happening during the guilty plea hearing or the terms of his plea agreement, which the Court explained in painstaking detail.

Defendant has not satisfied his heavy burden to withdraw his guilty plea and the Motion should be denied.

GOVERNMENT'S MOTION TO FIND
DEFENDANT IN BREACH OF THE PLEA AGREEMENT

By filing his motion to withdraw his guilty plea, Defendant has breached the plea agreement and the government should be relieved of its obligations under the agreement. Pursuant to Paragraph 18 of the plea agreement, Defendant agreed, among other things, that he "will not violate any federal, state, or local law; will acknowledge guilt to the probation officer and the Court; … and will not move to withdraw from the plea of guilty of from this agreement." Ex. 1 ¶ 18. Paragraph 18 sets forth the consequences if Defendant were to violate Paragraph 18. Specifically:

> If the Defendant engages in conduct prior to sentencing that violates the above paragraph of this Agreement, and the Court finds a violation by a preponderance of the evidence then: (i) this Office will be free from its obligations under this Agreement; (ii) this Office may make sentencing arguments and recommendations different from those set out in this Agreement, even if the Agreement was reached pursuant to Rule 11(c)(1)(C)….

Id. ¶ 18. Moreover, the plea agreement provides that "[a] determination that this Office is released from its obligations under this Agreement will not permit the Defendant to withdraw the guilty plea" and that "the Defendant may not withdraw the Defendant's guilty plea—even if made pursuant to Rule 11(c)(1)(C)—if the Court finds that the Defendant breached the Agreement." Id.

The plea agreement further provides that the Government may oppose a two-level adjustment under U.S.S.G. §3E1.1(a) for acceptance of responsibility and decline to make a motion under U.S.S.G. §3E1.1(b) if Defendant, among other things, "denies involvement in the offense" or "attempts to withdraw the plea of guilty." Ex. 1 at ¶ 6(c).

Here, Defendant's motion to withdraw from the guilty plea is a clear violation of the plea agreement. The Government should be relieved of its obligations under the agreement and should be free to oppose the adjustments under U.S.S.G. §3E1.1(a) and to decline to make a motion under U.S.S.G. §3E1.1(b) and make sentencing recommendations and arguments without regard to the plea agreement. Defendant's filing of the Motion coupled with the allegations made therein, reflect a gross failure to accept responsibility. Therefore, the Sentencing Guidelines calculation in the plea agreement should be adjusted to reflect this failure. Without the three-level reduction for acceptance of responsibility, the final offense level would be 19 rather than 16, resulting in a guideline sentencing range of 30-37 months' imprisonment.

CONCLUSION

For the reasons described above, the Court should deny Defendant's Motion to Withdraw Guilty Plea, find that Defendant has breached the terms of the plea agreement, and proceed to sentencing in this matter.

Respectfully submitted,

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