UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-1453

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WILLIAM GRANTMYRE,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas
CR3 90 148 H c/w CR3 90 190 H

June 28, 1993

Before GOLDBERG, HIGGINBOTHAM, AND DAVIS, Circuit Judges.

PER CURIAM:[1]

I.

William Grantmyre (Grantmyre) pleaded guilty to Count 2 of a three-count superseding indictment charging him with concealing bankruptcy assets. Grantmyre also pleaded guilty to Count 30 of a 36-count superseding indictment charging him with wire fraud. Grantmyre later moved pro se to withdraw his guilty plea. The district court denied the motion. This appeal followed. We affirm.

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[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

II.

A.

Grantmyre first contends that the district court erred in denying his motion to withdraw his guilty plea. First, he argues that his plea was not knowing because the final plea agreement differed from the draft he approved, and because the presentence report's loss calculations were higher than the figures discussed during the plea negotiations. Second, he argues that his plea was involuntary because he suffered from emotional stress resulting from his incarceration at the time he pleaded guilty.

A district court has broad discretion in deciding whether to allow a defendant to withdraw a guilty plea. Fed. R. Crim. P. 32(d); **United States v. Watson**, 988 F.2d 544, 550 (5th Cir. 1993). The standard for determining whether a defendant may withdraw his guilty plea prior to sentencing is whether "for any reason the granting of the privilege seems fair and just." **U.S. v. Carr**, 740 F.2d 339, 343 (5th Cir. 1984), **cert. denied**, 471 U.S. 1004 (1985). This decision calls for consideration of a number of factors, including whether (1) the defendant has asserted his innocence; (2) the government would be prejudiced; (3) the defendant has delayed in filing his motion; (4) withdrawal would substantially inconvenience the court; (5) close assistance of counsel was present; (6) the original plea was knowing and voluntary; and (7) the withdrawal would waste judicial resources. **Watson**, 988 F.2d at 550. The defendant bears the burden of proof. **Carr**, 740 F.2d at 344.

In denying Grantmyre's motion to withdraw his plea, the district court found that Grantmyre had failed to carry his burden on all seven of the above factors. It found that (1) Grantmyre did not fulfill the assertion of innocence factor; (2) "the government would suffer prejudice"--it would have to prepare again to try the case, which involved complex commercial transactions and numerous witnesses, including some from Canada; (3) Grantmyre had "delayed [four months] in filing his Withdrawal Motion;" (4) "the withdrawal would substantially inconvenience the court;" (5) "close assistance of able counsel was available to Mr. Grantmyre at all times"--Grantmyre was represented by a federal public defender whom the district court characterized as "one of the abler lawyers who appears in this court;" (6) "the original plea was knowing and voluntary"--Grantmyre's stress was "nothing out of the ordinary so far as incarceration is concerned," and was not such that would interfere with his will;"[2] and (7) "withdrawal would waste judicial resources."

Grantmyre argues that the final plea agreement omitted provisions that were in the draft plea agreement. This argument is meritless; all of the dropped provisions were beneficial only to the government. For example, the main provision to which Grantmyre points said: "Grantmyre shall submit to polygraph examination, if requested." This provision allowed the government, at its sole discretion, to **require** Grantmyre to submit to a polygraph

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[2]At the hearing, Grantmyre unsuccessfully attempted to call a United States Marshall to the stand, hoping that she would testify about Grantmyre's "emotionally and physically exhausted state" at the time of his arraignment. However, the court heard testimony from Grantmyre himself on this issue.

examination. The other provision to which Grantmyre points, which provided for the government to submit a § 5K1.1 motion if Grantmyre provided substantial assistance, was replaced by a substantially similar provision in the final plea agreement. Grantmyre also contends that the parties to the plea negotiations had referred to a loss calculation of $1.2 million. However he acknowledged in writing and at his arraignment that he understood that "sentencing is entirely within the discretion of the court, and that the defendant's plea of guilty exposes the defendant to the maximum penalty prescribed by law." The district court did not abuse its broad discretion in denying Grantmyre's motion to withdraw his guilty plea.

B.

Grantmyre next contends that the district court failed to address him personally during the plea colloquy and that the failure to do so constituted a total failure to address "one of the core concerns" of Rule 11. Rule 11 mandates that the court address three core concerns during a guilty plea proceeding: 1) whether the guilty plea was coerced; 2) whether the defendant understands the nature of the charges; and 3) whether the defendant understands the consequences of the plea. Fed. R. Crim. P. 11; **see U.S. v. Martirosian**, 967 F.2d 1036, 1038-39 (5th Cir. 1992). Grantmyre's arguments implicate the first and, to a lesser extent, the second core concerns. With respect to the first core concern, Rule 11(d) provides:

> The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of

> promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or the defendant's attorney.

Fed. R. Crim. P. 11(d). This requirement does not lend itself to "mechanical rules;" the extent of the inquiry must be dictated by the "sound judgment and discretion" of the court. **United States v. Dayton**, 604 F.2d 931, 938 (5th Cir. 1979) (en banc), **cert. denied**, 445 U.S. 904, **and cert. denied**, 445 U.S. 971 (1980). Moreover, "satisfying Rule 11(d) does not require the court to invoke a 'talismanic phrase.'" **United States v. Andrews**, 918 F.2d 1156, 1162 (5th Cir. 1990). Thus, a district court satisfies Rule 11(d), even if it does not use that rule's exact language, "when it exposes to public view the terms of any plea agreement and ensures that the plea is voluntary." **Andrews**, 918 F.2d at 1162-63.

The transcript of Grantmyre's arraignment reveals that the district court's questioning adequately addressed the core concerns of Rule 11. The following exchange took place after the Assistant U.S. Attorney summarized the plea agreement in open court:

> The Court: Mr. Grantmyre, do you have any questions about this Plea Agreement which has just been read?
>
> Mr. Stickney (Counsel for Grantmyre): No, Your Honor.
>
> The Court: You signed it?
>
> Grantmyre: Yes, sir, I did.

The Assistant U.S. Attorney then summarized, on the record, an acknowledgment of rights form which Grantmyre had executed. The summary specified that Grantmyre acknowledged his rights to a speedy trial, to call and cross examine witnesses and cross examine

the Government's witnesses, to be represented by an attorney, and to plead not guilty and go to a trial in which the government would have to prove him guilty beyond a reasonable doubt. The government's summary of the form further specified that Grantmyre understood the charges against him, his maximum punishment under the agreement (ten years in prison for both indictments and a $500,000 fine and a mandatory special assessment of $100), that the court could impose up to three years of supervised release, that he would be sentenced under the guidelines, and that his sentencing was within the discretion of the court. After this summary, the following exchange took place:

> The Court: Now, Mr. Grantmyre, with respect to that Acknowledgement which Government counsel has just read, do you agree with what Mr. Senerote is telling me about it?
>
> Grantmyre: Yes, sir.
>
> The Court: Did you sign it?
>
> Grantmyre: I did, sir.
>
> The Court: Do you have any questions, Mr. Grantmyre, about either the Plea Agreement or the Acknowledgement?
>
> Grantmyre: No, Your Honor.
>
> The Court Do you want the Court to accept the Plea Agreement?
>
> Grantmyre: Yes, Your Honor.

After having the factual resume read, the court further questioned Grantmyre:

> The Court: Mr. Grantmyre, with respect to that Factual Resume' which has just been read it shows that you signed it. Is that correct?
>
> Grantmyre: Yes, sir.

> The Court: Is the Factual Statement correct?
>
> Grantmyre: Yes, sir.
>
> The Court: Are there any changes you want made in it?
>
> Grantmyre: No, sir.

The court concluded the plea colloquy by gaining the assurances of Grantmyre's attorney that Grantmyre's plea was knowing and voluntary:

> The Court: [I]n your judgment is this a voluntary plea of guilty to each of the two counts?
>
> Mr. Stickney: It is, Your Honor.
>
> The Court: And in your opinion is it understandingly made by Mr. Grantmyre[?]
>
> Mr. Stickney: It is, Your Honor.

In addition, the transcript shows that Grantmyre had completed high school and two years of college. Thus, at the conclusion of the arraignment, the court found that "the plea of guilty to Count 2 in 90-148 and to Count 30 in 90-190 is voluntarily and intelligently made."

This plea colloquy resembles the plea colloquy that took place in **United States v. Taylor**, 814 F.2d 172, 174 (5th Cir. 1987). In **Taylor**, we found that Rule 11(d) had been satisfied where "the trial court questioned [the defendant] extensively before accepting his guilty plea, the defendant "stated that he was a college graduate and had attended law school," the defendant "explained that he had consulted with his attorneys about his guilty plea and that he was aware of what was going on," the defendant "stated that he was pleading guilty because he was guilty and not because of any

threats or promises," and the court informed the defendant of the rights he was foregoing by pleading guilty and explained the maximum penalty that could be imposed. **Taylor**, 814 F.2d at 174. The only possible difference between the colloquy in this case and that in **Taylor** is that no references were made in this case to "threats or promises." However, Grantmyre told the district court that he wanted the court to accept his plea agreement, that the factual resume was correct, and that he had no questions about the plea agreement, the acknowledgement form, or the factual resume. Therefore the district court satisfied Rule 11 even though it did not invoke the exact language of Rule 11(d).

III.

For the reasons stated above, we affirm Grantmyre's conviction.

AFFIRMED.