UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1698
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHERRY B. GROEPLER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
3:92 CR 123 H

July 14, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Appellant Sherry Groepler was sentenced to twelve years in prison and other punishment for her participation in a multi-kilo heroin importation scheme. On appeal, she contends only that the district court did not conduct a proper colloquy concerning her guilty plea, that the colloquy violated Fed. Crim. R. 11, and that

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* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

her plea was therefore involuntary. There is no merit in this contention, and we affirm.

Before addressing the merits, we note that the same federal public defender represented Ms. Groepler at her plea, at sentencing and on this appeal. If there were a serious procedural deficiency in either hearing, we assume the defender was well equipped to bring it to the attention of Chief Judge Sanders. Counsel did not do so, and in fact, at the plea hearing, counsel responded affirmatively to several questions by the court concerning her client's understanding of the nature and consequences of the guilty plea. Counsel does not waive Groepler's appellate points even though she cooperated fully in the trial court's conduct of the plea colloquy she now condemns. But it does seem that counsel's duty to her client and the spirit of Rule 11 would be better served if she had broached her procedural complaints with the trial court initially.

On the merits, this court has carefully reviewed the entire plea colloquy and sentencing hearing carried out by Chief Judge Sanders and finds that his deviations from the practice prescribed by Fed. R. Crim. P. 11 involved, at most, partial failures to address core concerns of the Rule and thus amounted to harmless error. United States v. Bachynsky, 934 F.2d 1349 (5th Cir.) (en banc) cert. denied, 112 S. Ct. 402 (1991). The core concerns are: (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 her plea. United States v. Bernal, 861 F.2d 434, 436 (5th Cir. 1988), cert. denied, 110 S. Ct. 203 (1989). If the trial court completely fails to address a court concern, the conviction must be overturned. United States v. Hekimain, 975 F.2d 1098, 1100 (5th Cir. 1992). Groepler contends the district court failed to address any of these core concerns. We disagree, although the district court could have addressed them more clearly by personally questioning Groepler as Rule 11 provides.

Groepler asserts that the court never sufficiently inquired whether the guilty plea was coerced, because the judge did not personally ask Groepler whether "the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement." Rule 11(d).[1] The court did, however, ask counsel whether counsel was satisfied that Groepler was entering a voluntary plea of guilty, to which counsel responded in the affirmative. The prosecutor affirmed this understanding as well. While a finding of voluntariness does not necessarily negate the existence of threats or coercion, we are satisfied that under all

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[1] Groepler also contends that the court should have asked her whether her plea was influenced by "promises made by the government" in the plea agreement, specifically, whether she was led to believe that if she cooperated with the government, the government would move to depart from the sentencing guidelines pursuant to § 5K1.1. This contention is meritless, as the government's § 5K1.1 statement could not have affected the voluntariness of Groepler's guilty plea for two reasons. First, the plea agreement specifically says that her cooperation had to be deemed of substantial assistance by the government, so Groepler was aware that the government initially had the right to evaluate her cooperation as it chose. Second, at no time following the plea agreement has Groepler actually complained of the government's failure to comply with this provision of the plea agreement. The government cannot have misled her if she does not believe that its failure to file a § 5K1.1 motion for downward departure was a breach.

the circumstances, the district court's failure to inquire of the defendant directly or to inquire more specifically about threats or coercion was harmless. See United States v. Hekimain, 975 F.2d at 1100-1101 (failure to provide explanation of effects of supervisory release was harmless error although relating to a core concern).

Groepler next contends that the district court failed to ascertain properly that Groepler understood the nature of the charges against her. Rule 11(c)(1). This contention is ill-founded. First, Groepler was asked by the trial court whether she understood she was charged with importing heroin, and she responded affirmatively. Second, the prosecutor read aloud the charge in its entirety, as requested by the court. This procedure is permitted by Rule 11. United States v. Hekimain, 975 F.2d at 1100. Groepler even corrected a part of the factual resume. There was no error in this part of the plea colloquy.

Finally, Groepler asserts that the court did not personally address her as to the consequences of her plea. Instead, the prosecutor fully summarized the maximum penalty, including the possibility of mandatory supervised release. The court was assured by defense counsel that she had discussed the maximum penalties with Groepler and the application of the sentencing guidelines. The court asked Groepler whether she had any questions about the plea agreement as summarized, and she said no. The fact that the prosecutor rather than the court advised Groepler of the maximum penalty is of no consequence. Hekimain, id. To the extent that the trial court did not specifically

address the effect of supervised release, this was no more than a partial failure to address a core concern. United States v. Bachynsky, supra, 934 F.2d at 1359-60. Any error that occurred was harmless under the circumstances.

Because Rule 11 requires the court to personally address the defendant in several particulars, it would have been better for the district court to have done so here. His colloquy with defense counsel and the prosecutor covered all of the core concerns of Rule 11 well enough, however, to withstand a harmless error analysis.

The judgment of the district court is AFFIRMED.