

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 7, 2026

Thomas B. Plunkett, III
Clerk

No. 24-50874

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

THOMAS ROBERT CIANCIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CR-288-1

Before JONES, SOUTHWICK, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Thomas Ciania pled guilty to knowingly possessing child pornography. Months later, alleging that he had misunderstood the meaning of “knowingly,” Ciania moved to withdraw his plea. The district court denied this motion and sentenced Ciania. We AFFIRM.

The FBI flagged Ciania’s IP address for downloading massive volumes of child pornography. A search uncovered “trillions of bits” of

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 24-50874

pornography in Ciania's possession. Ciania admitted that this trove included at least 54 files of child pornography, bearing names such as "pedofile MEGA pack HD, schoolgirl, [and] real incest." These files contained hideous images of prepubescent children being sexually abused. Ciania viewed these images on an Oculus virtual reality headset.

A grand jury indicted Ciania for distributing and possessing child pornography. Two years later, in July 2023, he agreed to plead guilty to possession, 18 U.S.C. § 2252A(a)(5)(B), and the government agreed to dismiss the distribution charge, 18 U.S.C. § 2252A(a)(2). In September 2023, at Ciania's arraignment, he verbally accepted the plea agreement's factual basis, acknowledged the "knowingly" element of his offense, and reiterated the voluntariness of his plea.

At some point, Ciania changed his mind. In November 2023, he wrote to his lawyers that he had not understood the meaning of "knowingly possessed," had "always" intended to "maintain [his] innocence," and wanted to rescind his guilty plea. In February 2024, Ciania wrote a letter to the district judge, claiming that he had urged counsel to withdraw his plea "since August of 2023," and that "[t]he definition of 'knowingly' . . . has, for me, changed."

In March 2024, Ciania requested a continuance to withdraw the plea. He finally moved to do so in May. In September 2024, the district court denied this motion and sentenced Ciania to 135 months imprisonment—the guidelines-minimum term—plus other penalties. Ciania appealed his conviction *pro se*.¹

¹ The notice of appeal was untimely. But the time limit for filing a notice of appeal in a criminal action is not jurisdictional and may be waived.

No. 24-50874

“The validity of a guilty plea is reviewed *de novo*,” *United States v. Washington*, 480 F.3d 309, 315 (5th Cir. 2007), but challenges raised for the first time on appeal are reviewed for plain error. *United States v. Palmer*, 456 F.3d 484, 489 (5th Cir. 2006). “We review a district court’s denial of a motion to withdraw a guilty plea for abuse of discretion.” *United States v. Strother*, 977 F.3d 438, 443 (5th Cir. 2020).

Ciancia asserts that his guilty plea was based on insufficient evidence and was unknowing and involuntary. For the first time on appeal, he also asserts that the government breached the plea agreement by discussing aggravating evidence at his sentencing. Finally, Ciancia contests the district court’s denial of his motion to withdraw his plea. All four arguments fail.

First, Ciancia’s guilty plea was based on ample evidence. Before accepting a guilty plea, a court must compare “(1) the conduct to which the defendant admits with (2) the elements of the offense charged in the indictment or information.” *United States v. Marek*, 238 F.3d 310, 315 (5th Cir.2001) (en banc). Here, the Government needed to show that Ciancia “knowingly possesse[d], or knowingly accesse[d] with intent to view, any. . . material that contains an image of child pornography.” 18 U.S.C. § 2252A(a)(5)(B). As Ciancia himself repeatedly admitted, on the papers and in open court, the government met this burden. Ciancia urges that the factual basis of his plea agreement shows “only that he knew that he possessed child pornography even though he attempted to delete it.” Indeed, “only” these elements suffice for the district court to accept his plea. Ciancia might instead have shown that he could not “access those files” in the first place. *United States v. Moreland*, 665 F.3d 137, 150 (5th Cir. 2011) (collecting cases).

United States v. Martinez, 496 F.3d 387, 388–89 (5th Cir. 2007). Because the government failed to object, we premit the issue of the timeliness of the notice of appeal.

No. 24-50874

But the record makes clear that Ciancia could and did view the 54 files described in his plea agreement. Noting that these files were found in a browser “cache” does not defeat a § 2252A(a)(5)(B) conviction either. *United States v. Romm*, 455 F.3d 990, 1000 (9th Cir. 2006) (affirming conviction where the defendant “exercised control over the cached images while they were contemporaneously saved to his cache and displayed on his screen.”).

Second, Ciancia’s plea was also knowing and voluntary. This is demonstrated by Ciancia’s repeated admissions at arraignment. *See Strother*, 977 F.3d at 440–41; *United States v. Lampazianie*, 251 F.3d 519, 524 (5th Cir. 2001). A plea colloquy, though bearing a “strong presumption of verity,” is not the only evidence we might consider on this point. *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S. Ct. 1621, 1629 (1977). This record contains no evidence to contradict the plea colloquy, aside from Ciancia’s bare assertions that his attorneys misled him.² *See id.* (dismissing “contentions that in the face of the record are wholly incredible.”).

Third, Ciancia cannot show that the Government voided the plea agreement by describing his child pornography consumption at sentencing. The plea agreement reserved the Government’s “full rights of allocution as to the appropriate sentence Defendant should receive.” *Cf. Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971) (authorizing withdrawal of

² Ciancia now claims that the “misadvice of counsel” obscured the elements of his charged offense and the implications of his plea. *See Padilla v. Kentucky*, 559 U.S. 356, 369 (2010). Ciancia cannot raise the ineffective assistance of counsel (IAC) for the first time on appeal. *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006); *cf. United States v. Urias-Marrufo*, 744 F.3d 361, 366 (5th Cir. 2014) (addressing the knowing-and-voluntary requirement in view of a proper IAC challenge). At arraignment, Ciancia admitted that he discussed his plea agreement with counsel and thereafter understood its terms. The district court likewise found that Ciancia was “represented by competent, experienced, and respected counsel throughout the proceedings.”

No. 24-50874

a plea entered “on condition that no sentence recommendation would be made by the prosecutor.”). The plea agreement also allowed the Government to contribute facts to the pre-sentence report (PSR). The PSR contained the facts that the prosecutor discussed at sentencing and the district court denied Ciancia’s objection to those facts. We find no error, let alone plain error, in allowing the government’s allocution.

Finally, before sentencing, a defendant may withdraw a guilty plea if he “can show a fair and just reason for requesting the withdrawal.” FED. R. CRIM. P. 11(d)(2)(B). “The burden for establishing this reason lies with the defendant.” *Strother*, 977 F.3d at 443. The district court weighs this showing against several factors, *see United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984), and “must ultimately examine the totality of the circumstances.” *Strother*, 977 F.3d at 443.

Here, the district court considered each of the *Carr* factors and found no “fair and just” basis for withdrawing Ciancia’s plea. Given Ciancia’s five-month delay in disputing his plea, plus the prejudice and administrative challenges which this delay would create if Ciancia’s case went to trial, the district court declined to credit Ciancia’s tenuous assertions of misunderstanding the plea agreement. *See Carr*, 740 F.2d at 344 (“[T]he longer a defendant delays in filing a withdrawal motion, the more substantial reasons he must proffer in support of his motion.”). The district court did not abuse its discretion.

Nor did the district court abuse its discretion in denying a hearing on the plea withdrawal. An evidentiary hearing on the *Carr* factors is only required if “the defendant alleges sufficient facts which, if proven, would justify relief under *Carr*.” *United States v. Harrison*, 777 F.3d 227, 234 (5th Cir. 2015). Ciancia did not allege such facts; the totality of the circumstances here weighs heavily against withdrawing his plea.

No. 24-50874

The judgment of the district court is AFFIRMED.