

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12034
Non-Argument Calendar

D.C. Docket No. 0:16-cr-60300-WJZ-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TIMOTHY TAFFE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(December 5, 2017)

Before HULL, MARCUS and JULIE CARNES, Circuit Judges.

PER CURIAM:

Timothy Taffe appeals his conviction for knowingly using a means of interstate or foreign commerce to persuade, induce, entice, and coerce an individual under the age of 18 to engage in sexual activity in violation of 18 U.S.C.

§ 2422(b). Taffe argues the district court erred in accepting his guilty plea because it failed to inform him that he could persist in his not-guilty plea after he pled guilty, and because it failed to inform him that it could order restitution. After careful review, we affirm.

We review the voluntariness of a guilty plea de novo. United States v. Bushert, 997 F.2d 1343, 1352 (11th Cir. 1993). Where the defendant fails to make Constitutional or Rule 11 objections to the plea proceedings, we review only for plain error. United States v. Moriarty, 429 F.3d 1012, 1018–1019 (11th Cir. 2005). To establish plain error, the defendant must show (1) an error, (2) that is plain, and (3) that affected his substantial rights. United States v. Turner, 474 F.3d 1265, 1276 (11th Cir. 2007). If the defendant satisfies these conditions, we may exercise our discretion to recognize the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. Id. An error is plain when it is contrary to the explicit language of a statute or rule or to on-point precedent from the Supreme Court or this Court. United States v. Chau, 426 F.3d 1318, 1322 (11th Cir. 2005).

First, we are unpersuaded by Taffe’s claim that the district court committed plain error in accepting Taffe’s guilty plea when he was not informed that he could persist in his not guilty plea during his plea colloquy. Because a plea of guilty is a waiver of several constitutional rights, the Due Process Clause of the Fourteenth

Amendment requires that the plea be equally voluntary and knowing. McCarthy v. United States, 394 U.S. 459, 466 (1969). The two purposes of Rule 11 are to assist the district court in making the constitutionally required determination that the defendant's guilty plea is truly voluntary and to produce a complete record at the time of the plea. Id. at 465. Rule 11 includes the requirement that the district court inform the defendant of "the right to plead not guilty, or having already so pleaded, to persist in that plea" before a district court can accept a guilty plea. Fed. R. Crim. P. 11(b)(1)(B).

When accepting a guilty plea, a district court must address three core concerns underlying Rule 11, which require that (1) the guilty plea be free from coercion, (2) the defendant understands the nature of the charges against him, and (3) the defendant knows and understands the consequences of his guilty plea. United States v. Hernandez-Fraire, 208 F.3d 945, 949 (11th Cir. 2000). Importantly, a district court has wide latitude in addressing these core concerns, and we will not vacate a guilty plea where the district court failed to address a Rule 11 requirement so long as the overall plea colloquy adequately addressed them. United States v. Monroe, 353 F.3d 1346, 1351-52 (11th Cir. 2003). A reviewing court can consider the entire record when determining if a Rule 11 error occurred or prejudiced a defendant. United States v. Vonn, 535 U.S. 55, 74-75 (2002).

There is a strong presumption that statements made during a plea colloquy are true. United States v. Medlock, 12 F.3d 185, 187 (11th Cir. 1994).

A district court's failure to address a core concern of Rule 11 constitutes plain error. Hernandez-Fraire, 208 F.3d at 949. In Hernandez-Fraire, we overturned a guilty plea under plain error review because the district court had completely failed to inform a defendant of the consequences of his guilty plea, including the right to persist in a plea of not guilty, and the record did not show that the defendant was otherwise aware of these rights. Id. at 950–951. Rather, the record indicated there that Hernandez-Fraire did not understand his rights. Id.

Moreover, to show a Rule 11 violation affected a substantial right for purposes of plain error review, a defendant must establish that there is a reasonable probability that but for the error, he would not have entered the plea. United States v. Dominguez-Benitez, 542 U.S. 74, 83 (2004). In Moriarty, we did not find plain error where a district court failed to elicit an express declaration of the defendant's guilty plea where the record did not indicate that the defendant did not want to plead guilty. 429 F.3d at 1020. Instead, at the plea colloquy, Moriarty's counsel had explained that one reason Moriarty had decided to plead guilty was to avoid going to trial. Id.

Here, because Taffe challenges the district court's failure to comply with Rule 11(b)(1)(B) for the first time on appeal, we review his objection only for plain

error. Id. at 949. Taffe cannot show error in the district court's conduct at the plea colloquy, much less an error that was plain. Chau, 426 F.3d at 1322. While Taffe argues that the district court failed to expressly inform him that he had a right to persist in his not guilty plea, the record reflects that the district court repeatedly asked Taffe if he was sure that he wanted to plead guilty. Further, the district court told Taffe that he had a right to plead not guilty in the context of explaining his trial rights, which Taffe said he understood. Thus, upon consideration of the entire plea colloquy transcript, the record shows that the district court accomplished Rule 11(b)(1)(B)'s requirement by informing Taffe of his right to plead not guilty before accepting his guilty plea. Vonn, 553 U.S. at 74–75; Monroe, 353 F.3d at 1350. Moreover, even if the district court technically violated Rule 11(b)(6)(B), it satisfied the core concern of explaining the consequences of his guilty plea by explaining the rights Taffe would have at trial, the sentencing process, and the sentencing penalties he faced.

In addition, Taffe has failed to show that, but for the error, he would not have entered his guilty plea. Rodriguez, 398 F.3d at 1299; Dominguez-Benitez, 542 U.S. at 83. As the record reveals, Taffe admitted to the inappropriate contact with the minor to the police. Moriarty, 429 F.3d at 1020. Then, throughout the plea colloquy, and even afterwards at sentencing, Taffe repeatedly indicated that he committed the acts described in the indictment and the presentence investigation

report (“PSI”) underlying his charge. His sworn declarations that he engaged in the conduct underlying his charge have a strong presumption of verity. Medlock, 12 F.3d at 187. Furthermore, there is no indication in the plea colloquy or the sentencing hearing that Taffe did not want to plead guilty or attempted to withdraw his guilty plea. On this record, we cannot say that the district court plainly erred by failing to inform Taffe of his right to persist in his not-guilty plea.

We also find no merit to Taffe’s claim that the district court committed plain error in accepting Taffe’s guilty plea when he was not informed that the court could order restitution during his plea colloquy. Restitution is a part of a defendant’s sentence. See United States v. Johnson, 541 F.3d 1064, 1067 (11th Cir. 2008). Rule 11(b)(1)(K) requires a district court to inform a defendant of the court’s authority to impose restitution upon acceptance of a guilty plea. Fed. R. Crim. P. 11(b)(1)(K).

In United States v. Morris, we concluded there was no plain error where a district court failed to inform the defendant of the possibility of restitution because the defendant was given notice in the plea agreement and the plea colloquy of a potential fine that exceeded the amount of restitution ordered, and, as a result, the district court’s omission did not affect his substantial rights. 286 F.3d 1291, 1294 (11th Cir. 2002). Similarly, in United States v. McCarty, we concluded that a defendant’s substantial rights were not affected when a district court failed to

specifically mention the possibility of restitution at the plea colloquy, but the defendant was aware of his restitution obligations because it was included in the plea agreement. 99 F.3d 383, 387 (11th Cir. 1996).

Here, the district court's failure to inform Taffe that it could order restitution did not affect Taffe's substantial rights. Id. Although the district court did not inform Taffe at the plea hearing that it would impose restitution, the plea agreement explained that the district court must order restitution and that Taffe was subject to a fine of up to \$250,000.00, which far exceeded the \$1,500.00 in restitution ordered. Morris, 286 F.3d at 1294. Taffe admitted under oath that he read the plea agreement, discussed it with his counsel, and understood it.

Further, the PSI provided that, pursuant to U.S.S.G § 5E1.1 and 18 U.S.C. § 3663A, he would be required to pay restitution. Taffe said at sentencing that he had read the PSI and had no objections to it. In addition, when the district court referenced restitution while imposing the sentence, Taffe did not object or attempt to withdraw his guilty plea. Finally, as we've already noted, there is no indication in the record that Taffe would not have pled guilty but for the omission regarding restitution. Thus, the district court did not plainly err by failing to inform Taffe that it would order restitution, and we affirm.

AFFIRMED.