[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12895
Non-Argument Calendar

D.C. Docket No. 8:17-cr-00506-SCB-AAS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KELLIS DION JACKSON,
a.k.a. Chandler Dante Alexander,

Defendant-Appellant.

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

(May 28, 2020)

Before MARTIN, ROSENBAUM, and BRANCH, Circuit Judges.

PER CURIAM:

Kellis Jackson, proceeding *pro se*, appeals his conviction for making a false statement in a U.S. passport application in violation of 18 U.S.C. § 1542. On appeal, Jackson raises a multitude of arguments which can be boiled down to three issues. First, Jackson contends that there was a *bona fide* doubt as to his competency at the time of his guilty plea, and the district court violated his due process rights by failing to hold an adequate competency hearing. Second, Jackson contends his guilty plea was not supported by a sufficient factual basis. Lastly, Jackson contends that the district court abused its discretion by denying his motion to withdraw his guilty plea. We affirm.[1]

I. Background

[1] Jackson also raises several claims of ineffective assistance of counsel which implicate both of the attorneys who represented him during the proceedings below. Notably, Jackson twice filed *pro se* motions to dismiss his first attorney for ineffective assistance. Jackson eventually withdrew the first motion before the court could enter any ruling, and the second was terminated as moot after the district court granted an independent motion by Jackson's first attorney to withdraw as counsel. Jackson did not raise any ineffective assistance accusations against his second attorney, and his arguments in his initial brief as to the second attorney's incompetence rest in part on their interactions not detailed in the record. Accordingly, the current record does not fully explain the issues he is raising here. "We will not generally consider claims of ineffective assistance of counsel raised on direct appeal where the district court did not entertain the claim nor develop a factual record." *United States v. Bender*, 290 F.3d 1279, 1284 (11th Cir. 2002). Ineffective-assistance claims are better suited for a timely 28 U.S.C. § 2255 motion in order that a more robust record can be established specifically on the issue of ineffective assistance. *See Massaro v. United States*, 538 U.S. 500, 504 (2003) (explaining that "in most cases a motion brought under § 2255 is preferable to direct appeal for deciding claims of ineffective assistance"). Accordingly, we dismiss without prejudice all of Jackson's ineffective-assistance claims.

In June 2017, Jackson applied for a passport in the name of Chandler Dante Alexander. At the time, Jackson was serving parole for a kidnapping offense committed 30 years earlier. On his passport application he listed a birthdate, place of birth, and social security number on the passport application that were not his own. And as proof of identity, Jackson furnished a birth certificate and Florida driver's license in the name of Chandler Dante Alexander. The government suspected fraud, investigated the matter, and declined to issue a passport. A grand jury subsequently indicted Jackson for making a false statement in an application for a passport. Then, with arrest and search warrants in hand, federal agents intercepted Jackson outside his Florida apartment. After being *Mirandized* and acknowledging that he understood his constitutional rights, Jackson admitted to the federal agents that he "just got tired of living with an 'X' on [his] back, that's why [he] did it,"[2] and that he "applied for the passport to go on a cruise, and [he] ended up not even needing one." He also escorted the agents into his apartment and helped them locate his Florida driver's license and several credit and bank cards issued in the name Chandler Dante Alexander.

[2] Although the record is not perfectly clear regarding what Jackson meant by "living with an 'X' on [his] back," we note that the district court assumed Jackson meant being identified as someone on parole. Further, Jackson admitted to federal agents at the time of arrest that "[he] just got tired of it. [He] couldn't get a job."

In January 2018, Jackson pleaded guilty without a plea agreement. During the plea hearing, Jackson made a number of admissions, notably that he provided a false birth certificate and date of birth in connection with the passport application.

On April 9, 2018, Jackson filed a motion to withdraw his guilty plea, in part because (1) he was unaware at the time of his plea hearing that he had a common law right to adopt a new name as long as it was not done for a fraudulent purpose, and (2) he was a "legally designated mentally disabled person who has been denied badly needed psychiatric medications." Jackson simultaneously filed a motion to discharge his attorney (and his attorney filed a motion to withdraw as counsel). Following a hearing, the district court granted Jackson's attorney's motion to withdraw as counsel, appointed new counsel,[3] and ordered a competency hearing.

An appointed psychiatrist evaluated Jackson and determined he was competent. At the subsequent competency hearing on June 20, 2018, Jackson's new counsel noted that Jackson "wants to proceed pro se eventually" but that "he's given me authority for purposes of today to stipulate to [the psychologist's] report of him being found competent for matters proceeding forward." The magistrate judge confirmed this stipulation with Jackson himself, and then found that Jackson

[3] At the hearing regarding the motion to withdraw as counsel, Jackson stated that he had legal experience, including a paralegal certificate, and would prefer to proceed *pro se* in spite of the fact that he was also asserting that he was incompetent. The district court explained that it would be appointing new counsel because Jackson could not represent himself if he was incompetent.

was competent to proceed. As well, the magistrate judge confirmed both with Jackson's attorney and Jackson himself that there was nothing "further from [their] perspective that need[ed] to occur" at that hearing. Soon after the competency hearing, the magistrate judge granted Jackson's new counsel's motion to withdraw and appointed him as standby counsel to assist Jackson at the sentencing hearing.

Thereafter, the district court held a hearing to consider Jackson's motion to withdraw his plea and, if that was denied, to sentence him. Jackson, arguing *pro se*, reiterated that he should be allowed to withdraw his guilty plea on account of the fact that he was unaware at the time of his plea of the lawful-name-change defense, and because he was mentally incompetent at the time he entered his plea. After a lengthy discussion with Jackson, the district court denied his motion to withdraw his plea. As to the lawful-name-change defense, the district court found that Jackson's purpose in changing his name was fraudulent, and also that this defense did not diminish his culpability under § 1542 because Jackson admitted to furnishing a false birth certificate and date of birth in connection with his passport application. As to the competency argument, the district court found that Jackson was competent at the time of his plea in light of the fact that both of his attorneys, a psychologist, the magistrate judge, and the district court judge herself all concluded that Jackson was in fact competent. The district court then sentenced

Jackson to time served plus three years of supervised release. Jackson timely appealed.

II. Discussion

A. Due Process Challenge Regarding Competency

We first address Jackson's contention that there was a *bona fide* doubt as to his competency at the time of his guilty plea, and that the district court violated his statutory and due process rights by failing to hold an adequate competency hearing.[4]

1. Jackson's Competency to Enter a Plea

We review a district court's failure to conduct a competency hearing pursuant to 18 U.S.C. § 4241 *sua sponte* for abuse of discretion.[5] *United States v. Wingo*, 789 F.3d 1226, 1236 (11th Cir. 2015). "Every defendant has a substantive fundamental right under the Due Process Clause not to be tried or convicted while incompetent." *Id.* at 1235 (citing *Cooper v. Oklahoma*, 517 U.S. 348, 354, 363 (1996)). "Competence to proceed to trial or to enter a guilty plea requires the

[4] By analyzing the issue in this manner, we assume *arguendo* that the June 20 competency hearing was insufficient for the purposes of establishing Jackson's competence at the time of his plea agreement. We note, however, that our holding should not be construed as a comment upon the efficacy of a post-plea competency hearing to relate back to the time of a plea.

[5] 18 U.S.C. § 4241 provides that the district court shall *sua sponte* order a competency hearing "if there is reasonable cause to believe that 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." 18 U.S.C. § 4241(a).

defendant to possess the 'capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense.'" *Id.* at 1234–35 (internal citation omitted) (quoting *Drope v. Missouri*, 420 U.S. 162, 171 (1975)). Thus, "once the court learns of information that raises a 'bona fide doubt regarding [the defendant's] competence,' the court must apply adequate procedures to ascertain whether the defendant is competent to proceed to trial or the entry of a guilty plea." *Id.* at 1235 (quoting *James v. Singletary*, 957 F.2d 1562, 1570 (11th Cir. 1992)).

A trial court must provide "adequate procedures" whenever "the court learns of information that raises a 'bona fide doubt'" regarding that defendant's competence to enter a guilty plea. *Id.* (quoting *James*, 957 F.2d at 1570). Under our precedent, the *bona fide* doubt standard tracks the statutory standard of 18 U.S.C. § 4241(a), which requires federal courts, "[a]t any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, . . . [to] order . . . a [competency] hearing on its own motion[ ] if there is *reasonable cause* to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent . . . ." *Id.* at 1236 (emphasis added). To determine whether the information known to a court is sufficient to establish a *bona fide* doubt concerning a defendant's competency, we have set forth three factors to be considered: "(1) evidence of the defendant's

irrational behavior; (2) the defendant's demeanor at [the plea hearing]; and (3) prior medical opinion regarding the defendant's competence to [enter a plea]." *Tiller v. Esposito*, 911 F.2d 575, 576 (11th Cir. 1990); *accord Wingo*, 789 F.3d at 1236. A hearing is required only if "these factors, taken together, were sufficient to raise a bona fide doubt as to the defendant's competency." *Card v. Dugger*, 911 F.2d 1494, 1518 (11th Cir. 1990). In conducting this three-factor analysis, we "focus[] on what the trial court did in light of what it knew at the time of the . . . plea hearing." *Tiller*, 911 F.2d at 576.

Our independent review of the record confirms there was no *bona fide* doubt as to Jackson's competency at the time he entered his guilty plea. First, the district court possessed no evidence of "irrational behavior" by Jackson prior to or during the plea hearing.[6] Although Jackson filed a *pro se* notice of incompetence approximately a week before the change-of-plea hearing, this notice was struck because it violated the district court's local rules that a defendant may not file *pro*

[6] In his initial brief before this Court, Jackson points to "three occasions throughout his life" in which he attempted suicide and the fact that he was "under Suicide Watch" at one point during the proceedings below. His contention that he attempted suicide three times in his past appeared nowhere in the record at the time of his guilty plea. Rather, the PSI indicates that Jackson reported "one prior suicidal attempt" at some point before 2012, but that "the evaluator indicated that the defendant appeared to be untruthful when discussing this event." As for being placed on suicide watch, there is no indication in the record that this occurred before he entered his guilty plea in January 2018. Thus, the record does not demonstrate any relevant suicide attempts indicating irrational behavior that were known to the district court at the time Jackson entered his guilty plea.

se pleadings while represented by counsel. Nevertheless, the district court informed Jackson at the pre-trial hearing that such a notice would need to be filed by counsel and explained to Jackson how the competency evaluation process would work.[7] Despite this information, Jackson did not raise the issue of his competency again prior to, or during, the subsequent change-of-plea hearing.

Second, Jackson's demeanor during these hearings did not raise any *bona fide* doubt as to his competence. Jackson engaged in lengthy colloquies with the court, responded intelligently and appropriately to questions, and clearly exhibited the "capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense." *Wingo*, 789 F.3d at 1234–35 (quoting *Drope*, 420 U.S. at 171).

Third, the record bears no evidence of any medical opinion prior to Jackson's guilty plea that raises a *bona fide* doubt as to his incompetence.[8] *Cf.*

[7] At this same hearing, Jackson's first attorney alerted the court that Jackson had bipolar disorder, but in the four meetings counsel had with him, Jackson was "very lucid and very clear" and there was "no incompetency issue at all." At the subsequent change-of-plea hearing, Jackson's first attorney reiterated that he had no concerns regarding Jackson's competency and Jackson did not assert any competency issues at that time, which is persuasive evidence that Jackson's competency was not in doubt. *See Wingo*, 789 F.3d at 1238 (noting that "counsel's failure to raise the competency issue can be persuasive evidence that competency is not in doubt"). And again at the actual plea hearing, after the magistrate judge had been informed of Jackson's medical condition and that he was not then taking his medication, Jackson's first attorney confirmed that he did not have "any concerns about Jackson's competency." *See also Wingo*, 789 F.3d at 1238 ("[C]ases where counsel fails to bring the competency issue to the court's attention and the court abuses its discretion by not *sua sponte* raising it on its own are perhaps rare.").

[8] Jackson points to several instances during the proceedings below in which the district

Wingo, 789 F.3d at 1238 (finding that "copious, objective medical evidence of organic brain damage, as well as medical and lay evidence suggesting corresponding mental incompetence," serves as "robust record evidence of possible incompetency [which] necessarily eclipses counsel's failure to raise [the defendant's] competency.")

In sum, the record here simply does not establish a *bona fide* doubt that Jackson was incompetent at the time of his guilty plea. Accordingly, the district court did not abuse its discretion by not *sua sponte* ordering a competency hearing before accepting Jackson's guilty plea.

2. The June 20 Competency Hearing was Adequate

Jackson also argues that the June 20, 2018 competency hearing was inadequate to establish his competency going forward and to be sentenced. Jackson's main quarrel with his competency hearing is the magistrate judge's characterization of Jackson's stipulation to the psychologist's report of his being found competent as a "waiver" of a formal competency hearing in a subsequent written order.[9]

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court and magistrate judge were made aware of his bipolar condition and his attendant need for medication. But merely having a medical condition, without more, is insufficient to demonstrate incompetence. *See Card v. Singletary*, 981 F.2d 481, 487 (11th Cir. 1992) ("[N]ot every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges." (quoting *United States ex rel. Foster v. DeRobertis*, 741 F.2d 1007, 1012 (7th Cir. 1985)).

[9] The magistrate judge's written formal order following the hearing stated the following:

"At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant" either party or the court on its own may motion for a "hearing to determine the mental competency of the defendant." 18 U.S.C. § 4241(a). The district court should grant the motion "if there is reasonable cause to believe that 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." *Id.* Upon a district court's determination that a competency hearing is appropriate, the court has discretion to order "a psychiatric or psychological examination of the defendant." *Id.* § 4241(b). At the competency hearing itself, a defendant must be "represented by counsel" and "be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine." *Id.* § 4247(d); *see also id.* § 4241(c) ("The hearing shall be conducted pursuant to the provisions of section 4247(d).").

Here, the district court and magistrate judge fully satisfied the requirements of an adequate competency hearing. First, the district court determined that a

"On June 20, 2018, the Court conducted a hearing [to determine Jackson's competency to stand trial], and as stated during the hearing, the parties have reviewed Dr. Goldsmith's forensic report/evaluation and stipulated to Dr. Goldsmith's findings, and waived a formal competency hearing."

competency hearing was appropriate in light of Jackson's notice of incompetency. The district court then exercised its discretion and ordered a psychological examination. Then, at the subsequent competency hearing, Jackson was represented by counsel. Jackson's stipulation—through counsel—to the psychologist's determination that he was competent to proceed demonstrated that he was afforded the "opportunity" to proffer testimony, evidence, witnesses, and cross-examination demonstrating his incompetency but opted not to do so. After receiving the psychologist's report and the parties' stipulations thereto, the magistrate judge ruled that Jackson was competent and capable of proceeding. We therefore find that the June 20 competency hearing was adequate to establish Jackson's competency at that time going forward unto sentencing.

B. Factual Basis to Support § 1542 Violation

Jackson also contends that his guilty plea was not supported by a sufficient factual basis because he was never issued the passport he sought to obtain. Thus, Jackson argues that the district court (1) violated Rule 11 by failing to inform him of the true nature of the charged offense or its elements and to assure a factual basis existed before accepting Jackson's guilty plea;[10] and (2) violated the Due Process Clause by accepting a guilty plea that was unknowing and involuntary.

[10] Rule 11(b) of the Federal Rules of Criminal Procedure provides that, "[b]efore the court accepts a plea of guilty . . . the court must inform the defendant of, and determine that the defendant understands . . . the nature of each charge to which the defendant is pleading," and

But nothing in the text of § 1542 requires that a defendant actually obtain a passport.[11] Indeed, we have explained that "Section 1542 proscribes 'willfully and knowingly' making a false statement in a passport application. The crime is complete when one *makes a statement one knows is untrue* to procure a passport." *United States v. O'Bryant*, 775 F.2d 1528, 1535 (11th Cir. 1985) (emphasis added). Consequently, because Jackson's interpretation of § 1542 is incorrect as a matter of law, both his Rule 11 and Due Process Clause challenges automatically fail.

C. Denial of Motion to Withdraw Plea

Jackson contends that the district court improperly denied his motion to withdraw his guilty plea because he sought the passport using his adopted alternative name and for a non-fraudulent purpose, which was a valid defense to § 1542, citing *United States v. Cox*, 593 F.2d 46, 49 (6th Cir. 1979) (holding that § 1542 "is not violated by one who lists a legal adopted name on a passport application" and that "[u]nder the common law a person may freely change his or her name without any legal formalities").[12]

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also, "the court must determine that there is a factual basis for the plea." Fed. R. Crim. P. 11(b).

[11] In relevant part, § 1542 penalizes "[w]hoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws. . . ." 18 U.S.C. § 1542.

[12] Jackson also argues that his motion to withdraw his guilty plea should have been granted because he was incompetent at the time of his plea and there was an insufficient factual basis to adjudicate him guilty under § 1542. However, in light of our holdings above on the

We review the district court's denial of a defendant's motion to withdraw a guilty plea for abuse of discretion. *See United States v. McCarty*, 99 F.3d 383, 385 (11th Cir. 1996). A district court may permit a defendant to withdraw a guilty plea before sentencing if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d). "There is no abuse of discretion unless the denial is 'arbitrary or unreasonable.'" *United States v. Brehm*, 442 F.3d 1291, 1298 (11th Cir. 2006) (quoting *United States v. Weaver*, 275 F.3d 1320, 1328 n.8 (11th Cir. 2001)). "The good faith, credibility and weight of a defendant's assertions in support of a motion [to withdraw a guilty plea] are issues for the trial court to decide." *United States v. Buckles*, 843 F.2d 469, 472 (11th Cir. 1988).

Here, the district court did not abuse its discretion by denying Jackson's motion to withdraw his guilty plea. As the district court observed, the false statements on his passport application that served as a factual basis of his guilt included his use of a false birth certificate, date of birth, place of birth, and social security number, not just a different name. Thus, even assuming *arguendo* that Jackson's use of his alleged adopted name, Chandler Dante Alexander, in his passport application did not violate § 1542, his use of other false statements and documents clearly supported the charge. In fact, at the hearing for his motion to

merits of those claims, the district court properly rejected those grounds as a basis for allowing Jackson to withdraw his plea.

withdraw his plea, Jackson re-confirmed that his birth certificate and date of birth listed on his application were false.

For all these reasons, we hold that the district court did not abuse its discretion in determining that there was no fair and just reason to allow Jackson to withdraw his plea.[13]

AFFIRMED IN PART, DISMISSED IN PART.

[13] The district court also found that Jackson's adoption of an alternative name was fraudulent because he was attempting to evade parole. Jackson argues that the district court violated his Fifth and Sixth Amendment rights by questioning him about whether his adoption of a new name was for a fraudulent purpose because he was not charged with any fraud count. Because Jackson did not object to the district court's inquiry during the hearing or at any other time prior to his appeal, we review this the district court's actions for plain error. *United States v. Rodriguez*, 398 F.3d 1291, 1298 (11th Cir. 2005). To satisfy the plain error standard, an appellant must show: (1) an error occurred; (2) the error was plain; (3) it affected his substantial rights; and (4) it seriously affected the fairness of the judicial proceedings. *Id*. Jackson is not entitled to relief on this ground. First, Jackson was not, as he contends, "held to answer" for a crime (*i.e.*, fraud) that was not charged by the grand jury. Second, in light of Jackson's argument that he should be permitted to withdraw his guilty plea because the name he provided on the passport application was not false or for a fraudulent purpose, the district court was well within its discretion to inquire and make a credibility determination of Jackson's statements that he lacked a fraudulent purpose in changing his identity. *See Buckles*, 843 F.2d at 472. Third, even if the district court did err in this regard, the error did not affect Jackson's substantial rights, as the district court denied his motion to withdraw his plea on the separate bases that he had not refuted his use of a false birth certificate and date of birth on his passport application.