NOT RECOMMENDED FOR PUBLICATION
File Name: 20a0324n.06

Nos. 19-3193/3197

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. PHILLIP WATKINS, Defendant-Appellant.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

BEFORE: MOORE, SUTTON, and GRIFFIN, Circuit Judges.

GRIFFIN, Circuit Judge.

Defendant Phillip Watkins pleaded guilty to conspiring to possess and distribute heroin laced with other controlled substances which resulted in serious bodily injury and to witness tampering. The district court sentenced him to serve three hundred months in prison. Defendant appeals the district court's denial of his motions to withdraw his guilty plea and for an evidentiary hearing. We affirm.

I.

It is well-established that "[a] defendant has no right to withdraw his guilty plea." *United States v. Martin*, 668 F.3d 787, 794 (6th Cir. 2012). Instead, he must demonstrate a "fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). "[T]he aim of th[is] rule is to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to

allow a defendant 'to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty.'" *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) (per curiam) (citation omitted). We review a district court's denial of a motion to withdraw a guilty plea for abuse of discretion. *United States v. Benton*, 639 F.3d 723, 726–27 (6th Cir. 2011).

Whether a defendant satisfies the "fair and just reason" standard depends upon the totality of the circumstances, which we evaluate using the following seven factors:

> (1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

United States v. Bashara, 27 F.3d 1174, 1181 (6th Cir. 1994), *superseded by guidelines amendment on other grounds*, U.S.S.G. § 3B1.1. "The factors are a general, non-exclusive list and no one factor is controlling." *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996) (per curiam). "The relevance of each factor will vary according to the circumstances surrounding the original entrance of the plea as well as the motion to withdraw." *United States v. Haygood*, 549 F.3d 1049, 1052 (6th Cir. 2008) (citation and internal quotation marks omitted). The district court concluded none of the *Bashara* factors weighed in defendant's favor and denied his motion. We find no abuse of discretion in this ruling.

Time between the plea and the motion to withdraw. Defendant pleaded guilty on September 7, 2017. Ninety-eight days later, on December 14, 2017, he filed a pro se letter requesting to withdraw his plea. And following the withdrawal of counsel and a competency hearing, his new counsel renewed that motion. Giving Watkins the benefit of the first-filed motion,

this factor is of no help to him. *See Martin*, 668 F.3d at 795 (collecting cases where we have "found shorter periods"—seventy-seven, sixty-seven, and thirty-six days—"to be excessive").

Reason for the delay. Watkins claims he delayed filing his motion because he was waiting to consult with counsel (whom he criticizes for providing inadequate representation). The district court found this excuse unpersuasive, noting several instances where defendant communicated directly with the court during the same time period, finding curious the October 12, 2017 drafting date (the same date the presentence report was forwarded to his counsel), and commenting that if his complaints about counsel were true, a delay to communicate with that same counsel "makes no sense." This reasoning is well-supported.

Assertion or maintenance of innocence. "When a defendant has entered a knowing and voluntary plea of guilty at a hearing at which he acknowledged committing the crime, the occasion for setting aside a guilty plea should seldom arise." *United States v. Ellis*, 470 F.3d 275, 280 (6th Cir. 2006) (citation omitted). Here, Watkins admitted that he sold controlled substances that resulted in a drug overdose and that he subsequently planned and attempted to murder that victim after discovering she was going to testify against him. To be sure, Watkins presented technical challenges to his indictment before he pleaded guilty and generically expressed in his motions to withdraw that the allegations were "untrue and exaggerated." But upon review of the record, we conclude that these assertions fall well short of "vigorous and repeated protestations of innocence" our caselaw requires to support a motion to withdraw a guilty plea. *United States v. Baez*, 87 F.3d 805, 809 (6th Cir. 1996).

Circumstances underlying the plea. Watkins maintains that the stresses associated with being in solitary confinement while awaiting trial "force[d him] to take a plea [he] did not want to take." He asserts he pleaded guilty so that he could be released from solitary confinement because

that is what his attorney purportedly told him. And he claims his isolation limited his communications with his attorneys and his ability to defend his case. Yet his statements to the district court reflect the opposite. The district court asked whether "anyone made any promise or assurance that is not in the plea agreement to persuade you to accept this agreement." Watkins responded in the negative. He acknowledged he was fully satisfied with his counsel's representation and that he was pleading guilty on his own free will, as well as denied that he was being forced to do so. Absent extraordinary circumstances, when the Rule 11 procedures are "fully adequate," we hold a defendant pleading guilty to the statements he makes at his plea hearing. *See, e.g.*, *Baker v. United States*, 781 F.2d 85, 90 (6th Cir. 1986). The district court found no reason to set aside Watkins' statements under oath, and we agree.[1]

Defendant's nature and background. This factor weighs against Watkins too. He completed the twelfth grade, demonstrated in his pro se filings that "he is a very capable reader and writer," and presented to the district court as "lucid, competent[,] and attentive." Further, we note that the district court ordered a competency exam post-motion to withdraw, but that exam concluded defendant at that later time "possesses a rational and factual understanding of the proceedings against him, has the capacity to assist legal counsel in his defense, and can adequately make decisions regarding his legal strategy." We agree with the district court that these facts do not support defendant's motion to withdraw his plea; instead, they "strongly suggest[] that there is nothing in his nature and background that would prevent him from understanding to what he was pleading." *Martin*, 668 F.3d at 796–97.

[1]To the extent Watkins suggests the district court erred in finding him competent to plead guilty, he has forfeited our consideration of this issue because he did not include it in his statement of issues. *United States v. Calvetti*, 836 F.3d 654, 664 (6th Cir. 2016).

Defendant's prior experience with the criminal justice system. Below, "[t]he parties agree[d] that Watkins has significant prior contacts with the criminal justice system, including a prior felony drug trafficking conviction." Given this, and his proven ability to communicate pro se, the district court concluded Watkins "demonstrate[d] a relatively high level of sophistication regarding the judicial system," which weighed against permitting withdrawal. Watkins does not contest this factor.

Potential prejudice to the government. Finally, because Watkins failed to establish any fair and just reason to withdraw his guilty plea, the government need not establish prejudice. *Ellis*, 470 F.3d at 285–86. And even if it did, we are confident in the district court's conclusion that this factor also weighed against Watkins because "[t]here is an extremely high risk that necessary witnesses may no longer be available now that [four] years have passed since the criminal activities occurred. In addition, memories fade, and Watkins has already admitted to attempting to influence a witness' availability."

For these reasons, the district court did not abuse its discretion when it denied Watkins' motion to withdraw his guilty plea.

II.

After the district court denied defendant's motion to withdraw, he moved for reconsideration. Included in his motion was a perfunctory and unsupported request for an evidentiary hearing. The district court summarily denied it. Whether to conduct an evidentiary hearing to evaluate the merits of a motion to withdraw falls within "the wide discretion of the district court, which we review for abuse of discretion." *United States v. Woods*, 554 F.3d 611, 613 (6th Cir. 2009).

In challenging that denial on appeal, Watkins raises new grounds for why the district court should have held an evidentiary hearing (relating in large part to the tribulations of solitary confinement). But having failed to present these to the district court, we see no reason to condone his attempt to raise a "better case fashioned after a district court's unfavorable order." *Estate of Barney v. PNC Bank*, 714 F.3d 920, 925 (6th Cir. 2013). Moreover, it is unmeritorious; the district court did not abuse its discretion by denying defendant's unsupported and belated request for an evidentiary hearing.

III.

For these reasons, the district court did not abuse its discretion when it denied defendant's motions to withdraw his guilty plea and for an evidentiary hearing.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. PHILLIP WATKINS, Defendant.	: : : : : : : : : :	Case Nos. 1:16-cr-89 1:17-cr-38 Judge Susan J. Dlott **ORDER DENYING DEFENDANT'S SECOND MOTION TO WITHDRAW GUILTY PLEA**

This matter is before the Court on Defendant's Second Motion to Withdraw His Guilty Plea (Doc. 134).[1] For the reasons set forth below, Watkins' motion will be **DENIED.**

I. BACKGROUND

On August 21, 2016, police officers reported an overdose to Heroin Task Force Officers. (Doc. 1 at PageID 3.) The overdose victim ("CS16-11") was not breathing when s/he was found unresponsive in a vehicle but had become responsive after emergency medical personnel administered Narcan. (*Id.*) CS16-11 indicated s/he purchased heroin from a couple now known to be Watkins and his co-defendant. CS16-11 engaged in a series of controlled buys of heroin and carfentenil from the couple, and Watkins and his co-defendant were arrested. (*Id.* at PageID 3–11.) On September 21, 2016, a federal grand jury returned a seven-count indictment charging them with one count of conspiracy to possess with intent to distribute heroin and carfentanil resulting in serious bodily injury in violation of 21 U.S.C. § 846, five counts of distributing

[1] Case 1:16-cr-89 and Case 1:17-cr-38 are related actions. Watkins filed his Second Motion to Withdraw His Guilty Plea in both cases. (Doc. 134 in Case 1:16-cr-89 and Doc. 48 in Case 1:17-cr-38.) For simplicity and consistency, the Court will refer to document numbers and PageID numbers in Case 1:16-cr-89 unless otherwise specified.

heroin and carfentanil in violation of 21 U.S.C. § 841; and one count of operating a drug involved premises in violation of 21 U.S.C. § 856. (Doc. 16.)

On December 21, 2016, a federal grand jury returned an 11-count superseding indictment adding additional counts relating to the heroin and carfentanil trafficking and "resulting in death" allegations to the conspiracy count. (Doc. 32.) The Government later filed a second superseding indictment (Doc. 82) and a notice of intent to use Defendant's previous Hamilton County felony drug trafficking conviction for sentencing enhancement pursuant to 21 U.S.C. § 851. (Doc. 106.)

While Watkins was detained pending trial on the drug-related charges, officers intercepted letters Watkins sent through an intermediary disclosing the name, address, and personal details of a confidential witness whom Watkins believed planned to testify against him and urging recipients to burn or destroy the letters after reading them. (*See* Doc. 28 in Case 1:17-cr-38.) Once the letters were intercepted, the Government moved the witness to a safe location. Watkins was moved from general population to solitary confinement, and his co-defendant's attorney moved for a "No Contact" Order against Watkins. (Doc. 42.)

On March 15, 2017, a federal grand jury returned a three-count indictment charging Watkins with tampering with a witness with intent to murder the witness, tampering with a witness by corrupt persuasion, and use of interstate commerce facilities in the commission of murder-for-hire, in violation of 18 U.S.C. § 1512 and 18 U.S.C. § 1958. This indictment is the basis of the related case, 1:17-cr-38. (Doc. 1 in Case 1:17-cr-38.)

After Watkins was indicted on the witness tampering and murder-for-hire charges, he requested new counsel, and the Court granted his request. (Doc. 65.) When Watkins' new counsel indicated that the volume of discovery was difficult for a sole practitioner to handle, the

Court appointed co-counsel from a large law firm with extensive experience in complicated criminal matters to assist him. (Doc. 74.)

On September 7, 2017, Watkins entered into a plea agreement. (Doc. 107.) By the terms of the plea agreement, Watkins would plead guilty to Count 1 in Case 1:16-cr-89 (conspiracy to possess and distribute a controlled substance resulting in serious bodily injury) and Count 1 in Case 1:17-cr-38 (tampering with a witness by attempting to kill). In exchange, the Government would dismiss the remaining counts in both cases and withdraw its Section 851 notice for sentencing enhancement based on a prior drug trafficking conviction. (*Id.* at PageID 331.) The plea agreement called for an agreed sentence of 240 to 300 months plus supervised release, a fine to be determined by the Court, and a $200 mandatory special assessment. (*Id.* at PageID 330.) Watkins signed the plea agreement shortly below the paragraph in which he acknowledges:

> [T]hat he has read and understands this plea agreement; that he accepts this plea agreement knowingly and voluntarily and not as a result of any force, threats, or promises, other than the promises in this plea agreement; that he has conferred with his attorney regarding this plea agreement . . . and that he is fully satisfied with [his attorneys'] representation, advice, and other assistance.

(*Id.* at PageID 332–33.)

The same day, Watkins appeared before this Court accompanied by both of his attorneys and entered a change of plea. (Doc. 115.) During the change of plea hearing, Watkins indicated that he believed his attorneys were fully informed about the facts and circumstances of his case, and he was fully satisfied with their representation and advice. (*Id.* at PageID 357.) The Court informed Watkins that the mandatory sentence on the drug conspiracy charge was 20 years to life, and Watkins stated that he understood. (*Id.*) In addition, the Court informed Watkins that

the maximum penalty for the witness tampering charge was 30 years, and he indicated that he understood. (*Id.* at PageID 358–59.)

During the entire Rule 11 colloquy, Watkins appeared lucid, competent and attentive. When the Court asked his attorneys if they had any reason to doubt his competence to change his plea, one of his attorneys responded, "Judge, in interaction with our client over the last two months, I've found him to be extremely lucid. He understands what's going on, and I have no doubt that he's competent." (*Id.* at PageID 356.)

The Assistant United States Attorney summarized the plea agreement in open Court, and Watkins and his Counsel all affirmed the plea agreement. (*Id.* at PageID 369–71.) Watkins then affirmed again that he was pleading guilty of his own free will and because he is in fact guilty. (*Id.* at PageID 370.)

A Task Force Officer read the allegations against Watkins in open court, including that Watkins and his co-defendant sold "Victim Two" controlled substances which resulted in Victim Two's drug overdose, loss of consciousness, and respiratory failure until revival by emergency medical personnel. The Officer further stated, "Watkins planned and attempted to murder Victim Two because Watkins believed Victim Two was going to testify against him in the narcotics case." (*Id.* at PageID 371–72.) The Court asked Watkins if what the Task Force Officer said was correct, and Watkins answered "Yes, ma'am." (*Id.* at 372.) The Court asked Watkins if what the Task Force Officer said was in any way incorrect, and Watkins answered, "No, ma'am." (*Id.*)

The Court then asked Watkins again if he was offering to plead guilty to these two charges because he was in fact guilty of these charges, and Watkins responded, "Yes, ma'am." (*Id.* at PageID 372–73.) The Court asked Watkins one final time how he would like to plead in

light of everything that was said in open court, and Watkins responded, "Guilty." (*Id.* at PageID 373.) The Court ultimately concluded that—after observing Watkins' appearance and responsiveness—the plea was knowing and voluntary and supported by an independent basis in fact. (*Id.*)

From September 7, 2017 through October 27, 2017, the Court did not hear from Watkins even though Watkins obviously knew how to file a motion or letter. (*See* Docs. 92 through 104.) In October, November, and early December, Watkins' attorneys filed Motions to Extend Deadlines for Objections to the Initial Presentence Investigation Report, which the Court granted. (Docs. 113, 116, 117, 119, 128.)

On December 14, 2017, the Court received a *pro se* "Letter" from Watkins that the Court construed as a Motion to Withdraw his Guilty Plea. (Doc. 120.) In it, Watkins contends that he should be entitled to withdraw his guilty plea because—during his nine and one half month stay in solitary confinement—he was unable to properly access the law library or communicate with his family effectively to prepare his defense or make proper legal decisions. (*Id.* at PageID 390.) He further alleges that his isolation "caused me a lot of stress, and duress giving counsel the opportunity to [] represent me ineffectively." (*Id.* at PageID 391.)

After conducting a brief hearing regarding the *pro se* Letter/Motion, the Court granted Watkins' attorneys' Motions to Withdraw as Counsel and appointed new counsel for him. (Minute Entry dated January 5, 2018.) Meanwhile, Watkins continued to write to the Court directly. (Docs. 123, 124, 125.) On February 8, 2018, Watkins' attorney filed a Motion to Determine Competency and/or Present Mental Condition of Defendant. (Doc. 129.) In that Motion, defense Counsel stated that Watkins desired mental health testing and stated that Watkins "has exhibited odd thought processes, such as hyper-rationalization of his actions,

factor will vary according to the 'circumstances surrounding the original entrance of the plea as well as the motion to withdraw.'" *United States v. Dalalli*, 651 F. App'x 389, 400 (6th Cir. 2016) (quoting *Haygood*, 549 F.3d at 1052).

III. ANALYSIS

In determining whether Watkins can show a fair and just reason for requesting the withdrawal, the Court will examine each factor in order.

A. Time Elapsed Between the Plea and the Motion to Withdraw

Watkins entered his guilty plea on Thursday, September 7, 2017. (Doc. 108.) The Court received the Letter that the Court interpreted as a *pro se* Motion to Withdraw Plea of Guilty on December 14, 2017. (Doc. 120.) Thus, 98 days elapsed between his guilty plea and his Letter/Motion. Courts properly have denied withdrawal motions based on the same or shorter delays. *See, e.g., Buford*, 627 F. App'x at 522 (98-day delay); *United States v. Cinnamon*, 112 F. App'x 415, 418–19 (6th Cir. 2004) (90-day delay); *United States v. Durham*, 178 F.3d 796, 799 (6th Cir. 1999) (77-day delay); *United States v. Baez*, 87 F.3d 805, 808 (6th Cir. 1996) (67-day delay); *United States v. Goldberg*, 862 F.2d 101, 104 (6th Cir. 1988) (55-day delay); *United States v. Spencer*, 836 F.2d 236, 239 (6th Cir. 1987) (35-day delay). Thus, the 98-day delay between Watkins' plea and Letter/Motion seeking withdrawal weighs against permitting withdrawal at this juncture.

B. Reason for Failing to Move for Withdrawal Earlier

Watkins contends that he drafted the Letter/Motion on October 12, 2017, but he did not want to mail it until he visited with Counsel, thereby justifying his failure to seek timely withdrawal. (Doc. 134 at PageID 521.) This contention is unpersuasive for three reasons. First, while the Letter is notarized October 12, 2017, the fact remains that the Court did not receive it

until December 14, 2017–98 days after Watkins entered his guilty plea. (*See* Doc. 120 at PageID 390.) Watkins has had no problem communicating with the Court, even when he was in solitary confinement, so the delay here lacks explanation. (*See* Docs. 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104.) Second, the October 12, 2017 timing is curious because it happens to be the day the Initial Presentence Investigation Report ("PSR") was forwarded to Watkins' Counsel. (Doc. 110.) "Defendants are not permitted to plead guilty and then use their PSR to their advantage in seeking to withdraw a guilty plea." *Dalalli*, 651 F. App'x at 401 (citing *United States v. Poole*, 2 F. App'x 433, 438 (6th Cir. 2001) (district court properly denied the defendant's motion to withdraw his guilty plea in part "because courts more closely scrutinize motions to withdraw guilty pleas which follow significant delays and *potential review of presentence reports.*")) Finally, in his Letter/Motion to Withdraw Guilty Plea, Watkins complains at length about his counsel's perceived failings. (*See* Doc. 120 at PageID 391–93). If Watkins found his counsel so lacking, it makes no sense to delay sending his Letter/Motion to the Court for more than two additional months so that he could meet with Counsel before filing. Thus, Watkins' stated reason for delay strains credulity and weighs against permitting him to withdraw his guilty plea.

C. Whether Watkins Maintained his Innocence

In the brief filed by his newest attorney, it states, without further elaboration or comment, "Mr. Watkins before, during and immediately after entering the guilty plea maintained and maintains his innocence to the indictment." (Doc. 134 at PageID 522.) While Watkins may have raised technical challenges or claimed that the indictment was exaggerated, he does not maintain his innocence either before, during or after he changed his plea.

At no time during the change of plea hearing did Watkins hesitate, act as though he was unsure, or indicate verbally or in any other way that he was not guilty of the charges to which he was pleading guilty.

More than three months after the change of plea hearing, the Court received Watkins' *pro se* Letter/Motion to Withdraw Guilty Plea. (Doc. 120.) In it, Watkins contends that the witness tampering allegations are "untrue and exaggerated," that the penalty enhancement provision of the Controlled Substance Act for death or serious bodily injury should not apply in his case because the "but-for cause of death or injury" lacks evidence here, and that a Section 851 sentencing enhancement applies only to "major drug offenders, not low level dealers with low level drug priors." (*Id.* at 390–92.) He does not at any time state that he is innocent of the charges to which he pled guilty.

A week after the Court received Watkins' *pro se* Letter/Motion to Withdraw Guilty Plea, the Court received three more documents from Watkins. (Docs. 123–125.) In those letters, Watkins claimed that the informant is unreliable, that prosecutors "exaggerated" charges against him to force a plea, and that there is insufficient evidence on the murder for hire aspect of the witness tampering charge. (Doc. 123 at PageID 399.) Watkins also expressed his belief that "had the Prosecutors not err[ed] by not blacking out CS16-11 name on EMS medical papers given to defendant in discovery a month after being arrested, that defendant would have never had the opportunity to 'attempt' to give anyone info." (*Id.* at PageID 400.) In his final *pro se* letter to the Court, Watkins apologizes to the Court and his family for "the allegations that are true" before alleging that the other allegations against him "are fabricated, and there is insufficient evidence to convict defendant on the charges." (Doc. 125 at PageID 415.)

These are far from the "vigorous and repeated protestations of innocence" necessary to support the withdrawal of a guilty plea. *Dalalli*, 651 F. App'x at 402 (quoting *Baez*, 87 F.3d at 808-09); *see also Buford*, 627 F. App'x at 521. Rather, Watkins has not maintained his innocence, and this factor weighs heavily against his withdrawal request.

D. Circumstances Underlying the Plea

Watkins' counsel contends—without citation—that Watkins entered a guilty plea "because he desperately wanted to be released from solitary confinement and he was assured that if he entered the guilty plea he would immediately be released from his 23 hour a day, 9 ½ month solitary confinement in isolation." (Doc. 134 at PageID 522.) While the Court acknowledges the difficulties an inmate may face in solitary confinement, counsel's assertion is in direct conflict with Watkins' own statements at the plea hearing.

"A defendant's statements at a plea hearing should be regarded as conclusive [as to truth and accuracy] in the absence of a believable, valid reason justifying a departure from the apparent truth of those statements." *United States v. Owens*, 215 F. App'x 498, 502 (6th Cir. 2007) (quoting *Cinnamon*, 112 F. App'x at 419 (alteration in original)). At the plea hearing, Watkins repeatedly acknowledged that he was pleading guilty of his own free will and because he was in fact guilty of the two charges to which he pled. (*See* Doc. 115.) The Court specifically asked Watkins in open court, "Has anyone made any promise or assurance that is not in the plea agreement to persuade you to accept this [plea]?" to which Watkins responded under oath, "No, ma'am." (*Id.* at PageID 370.) Thus, this factor, too, weighs against allowing withdrawal in this case.

Ellis, 470 F.3d 275, 280 (6th Cir. 2006) (citation omitted)). This case does not present one of those rare circumstances.

IV. CONCLUSION

For the foregoing reasons, Defendant's Second Motion to Withdraw Plea of Guilty (Doc. 134 in Case 1:16-cr-89 and Doc. 48 in Case 1:17-cr-38) is hereby **DENIED**.

IT IS SO ORDERED.

Dated: 8/22/18

S/Susan J. Dlott
Judge Susan J. Dlott
United States District Court

No. 19-3193/19-3197

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PHILLIP WATKINS,

Defendant-Appellant.

ORDER

Defendant, pro se, moves to strike the principal brief filed by his court-appointed counsel and reset the briefing schedule, or in the alternative, for leave to file a pro se supplemental brief. Further, defendant moves to hold briefing in abeyance. Defendant cites communication difficulties and dissatisfaction with the issues briefed by his court-appointed counsel.

There is no right to hybrid representation on appeal. Further, counsel is generally not obligated to brief issues that in counsel's reasoned judgment she does not deem meritorious. Therefore, defendant's motions to strike the principal brief filed by his court-appointed counsel, for leave to file a pro se supplemental brief and to hold briefing in abeyance are DENIED. This appeal shall proceed pursuant to the current briefing schedule in place.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT

Deborah S. Hunt, Clerk

No. 19-3193/19-3197

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PHILLIP WATKINS,

Defendant-Appellant.

ORDER

Defendant appeals the district court's judgment of conviction and sentence entered pursuant to his guilty plea to a charge of conspiracy to possess with intent to distribute mixtures and substances containing heroin, fentanyl, and carfentanil. Defendant, pro se, moves to dismiss court-appointed counsel, strike the appellant brief, and for leave to proceed pro se.

Defendant has no constitutional right to proceed on appeal pro se. *United States v. Montgomery*, 592 F. App'x 411, 415 (6th Cir. 2014) (citing *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163 (2000). Given the difficulties of litigating an appeal from prison and the time constraints presented, it is **ORDERED** that the motions are hereby **DENIED**.

Upon review, it is further **ORDERED** that defendant's pro se motions to take judicial notice shall be **REFERRED** to the ultimate merits panel for whatever consideration, if any, the panel deems appropriate.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT

Deborah S. Hunt, Clerk