No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

CLAUDIO VALDEZ, Petitioner

V.

UNITED STATES OF AMERICA, Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

Now comes the Petitioner, CLAUDIO VALDEZ, who states that he has previously been granted leave to proceed in forma pauperis in the United States Court of Appeals for the First Circuit, and further that the United States Court of Appeals for the First Circuit appointed the undersigned attorney to represent him under the Criminal Justice Act of 1964, U.S.C. § 3006A.

THE PETITIONER
BY HIS ATTORNEY

/s/ John T. Ouderkirk, Jr.
_____
John T. Ouderkirk, Jr.
P. O. Box 2448
Westerly, RI 02891-0924
401.932.4800
jouderkirk@att.net

Dated: December 2, 2020

No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

CLAUDIO VALDEZ, Petitioner

V.

UNITED STATES OF AMERICA, Respondent.

_____

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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Counsel of Record

October Term, 2020

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

Donald C. Lockhart, Esq., AUSA

Gerard Brian Sullivan, Esq., AUSA

Claudio Valdez, Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

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CLAUDIO VALDEZ, Petitioner

V.

UNITED STATES OF AMERICA, Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Claudio Valdez, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit which affirmed his conviction and sentence as reported in U.S. v. Claudio Valdez, 18-2219, (1st Cir., 9-21-2020) decided on September 21, 2020.

OPINIONS BELOW

The September 21, 2020 decision of the United States Court of Appeals for the First Circuit, whose judgment is herein sought to be reviewed was reported without argument, as United States v. Claudio Valdez, 18-2219 (1st Cir., 9-21-2020), and is reprinted in the Appendix to the Petition at p.2.

JURISDICTION

This case arises from a plea agreement in the United States

District Court for the District of Rhode Island.[1] The defendant's change of plea was wrongfully accepted. On May 4, 2017, an indictment was filed accusing the defendant of two counts; one count of conspiracy to distribute and possession with intent to distribute heroin, fentanyl, cocaine base and cocaine, 21 U.S.C. § 841(a)(1), (b)(1)(A) and 21 U.S.C. § 846; and one count of illegal re-entry, 8 U.S.C. § 1326(a) and (b)(2). Apx.1-4. After several extensions and a motion to appoint new counsel, Apx.38, and a hearing on the motion, Apx.47, the motion to appoint new counsel was denied. Apx.8. That decision was appealed, Apx.7, and ultimately the appeal was dismissed. Apx.10. A plea agreement was filed on May 22, 2018. Apx.59. On June 7, 2018, a hearing was held and the trial court judge accepted the defendant's change of plea. Apx.71. Sentencing was held on November 28, 2018, Apx.98, and the defendant was sentenced to 240 months on each count to be served concurrently, five years supervised release on count one, three years supervised release on count three and a two hundred dollar special assessment. A.1

On December 11, 2018, a notice of appeal was filed. Apx.122. The matter was briefed, but not argued before the U.S. Court of Appeals for the First Circuit. The judgment and decision issued on September 21, 2020.

The rules of the Supreme Court of the United States provide

[1] References to the Addendum are denoted "A." followed by the page number in the Addendum. References to the brief are denoted "P." followed by the page number. References to the Appendix are denoted "Apx." followed by the page number.

jurisdiction over this matter with this Court as well as the jurisdiction conferred by 28 U.S.C. § 1254(1). 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

Federal Rule of Criminal Procedure Number 11

STATEMENT OF THE CASE

The facts of the case were contested after the defendant changed his plea to guilty. At sentencing, he contended that he neither understood nor agreed with the change of plea. Apx.101-102. The defendant stated that he did not understand the plea agreement and that he wanted to withdraw from the agreement. Apx.101. He stated that he was not in agreement with the plea. Apx.102. The defendant contended that, if the matter had gone to trial, he could have demonstrated that he was not a leader and that the wrong amount of drugs were attributed to him.

The facts stated in the plea agreement, however, were that the defendant, along with two of his brothers, was a leader and organizer of a drug trafficking organization known as “the Valdez DTO.” The defendant and his brothers conspired, agreed, combined and worked collaboratively to obtain and distribute more than a kilogram of heroin and other amounts of fentanyl, cocaine, cocaine base and opioids in pill form with other co-conspirators and accomplices charged and uncharged who were operating in concert with them as the Valdez DTO and the government could have proven that the conspiracy involved more than a kilogram of heroin beyond a reasonable doubt. Apx.63-64.

In the course of this conspiracy, the Valdez DTO used apartments in Woonsocket and Cranston (R.I.) as drug stash houses where drugs were processed, cut and packaged for redistribution. The Valdez DTO also used another individual to work for them selling heroin, fentanyl and crack cocaine in Hartford, Connecticut. The conspiracy used another individual to transport drugs and money to Hartford, Connecticut and to other drug customers in Rhode Island and Massachusetts who were buying controlled substances from the Valdez DTO. Apx.64.

The conspiracy also used yet another individual to deliver drugs and money to and from an uncharged drug source in the Dominican Republic. In addition the conspiracy used other uncharged drug sources. The defendant personally delivered cocaine, crack cocaine, heroin, heroin containing fentanyl and fentanyl to a co-operating source for which they were paid a total of $43,670.00. The conspiracy supplied other drug customers in Rhode Island and Massachusetts with distributable amounts of heroin, cocaine, cocaine base and fentanyl to four identified individuals as well as two individuals who were yet to be positively identified. Apx.64-65.

In the course of the investigation, controlled substances totaling more than two kilograms of heroin (some of which contained fentanyl), over one and one-half kilograms of cocaine, as well as hundreds of grams of cocaine base and fentanyl were purchased or seized; all of which was attributable to the conspiracy and all of which was reasonably foreseeable to the defendant. Apx.65.

The defendant also agreed that he had been previously been deported from the United States and had not received permission to re-enter the country. Apx.65.

REASON FOR GRANTING THE WRIT

I. THE DISTRICT COURT ERRED WHEN IT TOOK A GUILTY PLEA WHERE THERE WAS EVIDENCE THAT THE DEFENDANT DID NOT UNDERSTAND THE NATURE OF THE CHARGES OR KNOW THE EVIDENCE WHICH WOULD SUPPORT A CONVICTION ON THOSE CHARGES.

Reviewing courts have been willing to intervene when an error in the guilty plea process arguably affects a "core concern" of Rule 11 because a guilty plea is a shortcut around the fact finding process. United States v. Gandia-Maysonet, 226 F.3d. 1, 3 (1st Cir., 2000). In a guilty plea, the defendant stands as a witness against himself, forgoing the protection of the Fifth Amendment. Brady v. United States, 397 U.S. 742, 748 (1970). A guilty plea is also a waiver of the defendant's right to a trial before a jury or judge, and waivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences. Id. at 748.

This Court reviews the totality of the circumstances when considering whether a defendant's guilty plea was knowing, voluntary and intelligent. United States v. Bierd, 217 F.3d. 15, 18 (1st Cir., 2000). The defendant in the instant case did raise his claim in the trial court by means of a written letter that was read into the record and treated as motions by the District Court judge. Apx.102 The motions were denied. Apx.107-108. The

defendant did not make a formal objection to the denial of the motions. He did, however, try to renew the motions by again repeating the fact that he did not understand the agreement. Apx.110. Although the defendant did not use the magic words, it was clear that he was objecting to the denial of the motions. Even if the defendant's object is not considered to be preserved, "a Rule 11 challenge will not be deemed waived upon a party's failure to raise it in the district court." United States v. Parra-Ibanez, 936 F.2d. 588, 593 (1st Cir., 1991). Where the error was not called to the district court's attention, appellate review is governed by the plain error standard, which requires not only an error affecting substantial rights but also a finding by the reviewing court that the error has seriously affected the fairness, integrity, or public reputation of judicial proceedings. United States v. Savinon-Acosta, 232 F.3d. 265, 268 (1st Cir., 2000). The fairness, integrity, or reputation plain error standard is a flexible one and depends significantly on the nature of the error, its context, and the facts of the case. United States v. Young, 470 U.S. 1, 16 (1984); United States v. Gandia-Maysonet, 226 F.3d. 1, 6 (2000).

Whether the defendant understands the elements of the charges that the prosecution would have to prove at trial is a "core concern" of Rule 11. United States v. Gandia-Maysonet, 226 F.3d. 1, 3 (1st Cir., 2000). In the present case the elements of the crime to which the defendant pled guilty were not adequately described.

A plea of guilty is constitutionally valid only to the

extent that it is voluntary and intelligent. Bousley v. United States, 523 U.S. 614, 618 (1998). A plea does not qualify as intelligent unless a criminal defendant first receives real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process. Id. The trial court must personally, in open court, inform the defendant of the charge against him and determine that the defendant understands the nature of the charge. F.R.Crim.P. 11.

On direct appeal the standard of review is more advantageous to the defendant than on collateral appeal. United States v. DiCarlo, 575 F.2d 952, 954-55 (1st Cir., 1978). The mere reading of the indictment may not be sufficient to inform the defendant of the charge. Mack v. United States, 635 F.2d 20, 25 (1st Cir., 1980). Simply advising the defendant of the charge or merely asking if he understands the charge does not insure that he understands the nature of the charge. Id. 653 F.2d at 26. Reality rather than ritual is essential. J. Cissell, Federal Criminal Trials, 5th Ed., 1999 §6-2(c)(2)(i). A written guilty plea which contains the nature of the charge does not satisfy the Rule 11 requirements. United States v. Adams, 556 F.2d 962, 967 n.6 (5th Cir.,1978).

In the present case, the government merely recited the elements of the crimes. The trial judge did not ask if the defendant understood the elements of the crimes. The trial judge stated, "...you heard the elements of the two charges the Government has brought against you..." Apx.95. The trial judge then asked "Do you admit the facts as stated by the Government as

true?" Apx.95 (emphasis added).

There was no true exchange between the trial judge and the defendant which indicated that the defendant understood the charges against him. Cf. United States v. Rairez-Benitez, 292 F.3d. 22, 27 (1st Cir., 2002)(trial judge explained the indictment in lay terms and asked the defendant to describe his involvement). Here, the trial judge did not read the charge to the defendant, the government did. Apx.83. The trial judge did not explain the charge to the defendant. The record does not show that the defendant understood the elements of the charge the prosecutor would have to prove at trial. Prejudice inheres in a failure to comply with Rule 11. McCarthy v. United States, 394 U.S. 459, 471 (1967).

The Court of Appeals, as did the District Court, relied on the benefit to the defendant from the agreement. Combined with the Court of Appeal's statement that "[the defendant] [made] no attempt to show a reasonable probability that, but for this alleged error, he would not have entered the plea agreement." United States v. Claudio Valdez, 18-2219 (1st Cir., 9-21-2020) p. 10. Given the defendant's statements to the District Court judge on the record, the defendant flatly stated that he wanted out of the plea agreement. The Court of Appeals reliance on the discussion at the change of plea hearing was misplaced. The defendant stated on the record that he had not fully understood the change of plea proceeding.

II. THE DISTRICT COURT ERRED BY ACCEPTING A GUILTY PLEA FROM A DEFENDANT WHO DID NOT UNDERSTAND THE CONSEQUENCES OF HIS

CHANGE OF PLEA.

The defendant stated at the change of plea hearing that he was taking medication for anxiety. Apx.75. The defendant also stated that he had not taken the medication on the day of the change of plea hearing. When a defendant informs the court that he is taking medication, the court has an obligation to make further inquiry into the defendant's capacity to enter a voluntary plea. See. United States v.Mejia-Encamacion, 887 F.3d 41, 46 (1st Cir., 2018); United States v. Llanos-Falero, 847 F.3d 29, 34 (1st Cir., 2017).

In the present case, the inquiry is reversed. The defendant informed the trial judge that he had failed to take his prescribed medication. There was no inquiry concerning the effects of the failure to take the medication. The trial court judge asked only one question; "[c]an you think clearly?." Apx.76. There was no way that the unmedicated defendant was competent to answer that question.

It is error for a judge to accept a defendant's guilty plea unless there is affirmative evidence that the plea is knowing and voluntary. Bousley v. United States, 523 U.S. 614, 618 (1998). Compliance with Rule 11 to determine the voluntary nature of the plea depends on a consideration of all the surrounding circumstances in each case. Brady v. United States, 397 U.S. 742, 749 (1970). Under the facts of this case, the plea was offered without full knowledge and understanding. Therefore the plea was inherently involuntary and must be vacated.

III. THE DISTRICT COURT ERRED BY NOT ALLOWING THE DEFENDANT TO

WITHDRAW HIS PLEA WHERE HE STATED THAT HE WAS NOT ADEQUATELY REPRESENTED.

As mentioned above, at the sentencing hearing the defendant produced a written letter which was read into the record by the court interpreter. In the letter he asserts that the defense lawyer "never explained with certitude so that I could have a better understanding of the process of coming to or agreeing to a plea." Apx.101. He stated that the defense lawyer did not review the evidence with him before he signed the plea agreement. Apx.101. He claimed that there was a breakdown in communication. Apx.101. He stated that he did not feel the attorney was defending him as best as possible. Apx.102.

He stated that he signed the plea agreement which he did not understand and that he wished to withdraw from it. Apx.101. He also stated that he was not in agreement with the plea nor was he in agreement with his attorney. Apx.102. There had been a history of contentiousness between the defendant and his attorney. The defendant had filed a motion to appoint new counsel on January 3, 2018. Apx.38. A Magistrate's hearing was held on February 15, 2018, Apx.47, and the defendant's request was denied. Apx.57.

The trial judge treated the letter as two separate motions; one to withdraw the plea and the other was to appoint new court appointed counsel. Apx.102. Both motions were denied. Apx.108. The motion to withdraw the plea was based on the trial court judge's recollection that the defendant had fully explained the agreement and that the defendant made voluntary admissions under oath. Apx.108-109.

The defendant countered that "[the attorney] said to plead guilty you have to answer all the questions in the affirmative, so I followed that advice and I answered in the affirmative. I said yes, yes to everything. But I wasn't really sure nor did I know what I was actually doing." Apx.110.

The motion for new counsel was denied as well. The basis of this denial was based on the trial judge's knowledge of the attorney's "reputation" and observations. Apx.108. The trial court judge did not address the defendant's direct concerns.

"A criminal defendant's Sixth Amendment right to counsel is a right of the highest order. United States v. Jones, 778 F.3d 375, 388 (1st Cir., 2015)." United States v. Mejia-Encamacion, 887 F.3d 41, 47 (1st Cir., 2018). "To determine whether the district court's denial of a motion for substitute counsel violated the defendant's Sixth Amendment rights, we assess three factors: '(1) the timeliness of the motion; (2) the adequacy of the court's inquiry into the defendant's complaint; and (3) whether the conflict between the defendant and his counsel was so great that it resulted in a total lack of communication preventing an adequate defense.' United States v. Kar, 851 F.3d 59, 65 (1st Cir., 2017)(quoting United States v. Francois, 715 F.3d 21, 28 (1st Cir., 2013). United States v. Mejia-Encamacion, 887 F.3d 41, 47 (1st Cir., 2018).

In the present case, the defendant began asking for substitute counsel on January 3, 2018; more than ten months before the sentencing hearing. His request at the hearing was a continuation of a long-standing request. The trial judge did not

inquire into the defendant's complaint; relying instead on the attorney's reputation and the trial judge's observations of the attorney. Although the defendant stated that there was a "breakdown in communication," Apx.101, the trial court judge never addressed that issue.

All three factors pointed to a compelling case for appointing substitute counsel. The trial court judge failed to adequately consider any of the three factors.

The record was replete with examples of conflict between the defendant and his counsel. The Court of Appeals characterization of the defendant's previous attempt to obtain new counsel as "frivolous" was not supported by the record. United States v. Claudio Valdez, 18-2219 (1st Cir., 9-21-2020) p. 12. Again, the Court of Appeals relied on the defendant's statements at the change of plea hearing. The defendant had already informed the District Court that he did not understand the change of plea proceedings.

CONCLUSION

For all the reasons stated above, this Honorable Court should review the decision of the United States Court of Appeals

for the First Circuit and grant the writ of certiorari.

THE DEFENDANT
BY HIS ATTORNEY

/s/ John T. Ouderkirk, Jr.
_____
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CERTIFICATE OF SERVICE

I, John T. Ouderkirk, Jr., do hereby certify that I have caused the foregoing to be served by submitting an electronic copy to the Clerk of the United States Court of Appeal for the First Circuit, 1 Courthouse Way, Suite 2500, Boston, MA 02210-3004, one copy to Donald C. Lockhart, Esq., and Gerard Brian Sullivan, Esq., both of the U.S. Attorney's Office, 50 Kennedy Plaza, 8th Floor, Providence RI 02906, and the Solicitor General of the United States, Room 5614, DOJ, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001, on this 4th day of December, 2020. Paper copies will be mailed at the direction of the Clerk's Office when paper copies are requested.

/s/ John T. Ouderkirk, Jr
_____
John T. Ouderkirk, Jr.

AFFIDAVIT OF TIMELY FILING (SUP. CT. R. 29.2)

Under oath I depose and say that my name is John T. Ouderkirk, Jr., and that I am the attorney for the petitioner. On December 4, 2020, I submitted an electronic copy of the Petition to the Clerk of the United States Supreme Court at 1st Street, N.E., Washington, DC 20543-0001 via the Court's electronic filing system. The judgement was entered on September 21, 2020 and the last day for filing is December 20, 2020. December 20, 2020 is a Sunday and the Clerk's Office is closed. Therefore, the last date

for filing is December 21, 2020.

/s/ John T. Ouderkirk, Jr.
_____
John T. Ouderkirk, Jr.

APPENDIX

United States Court of Appeals
For the First Circuit

No. 18-2219

UNITED STATES OF AMERICA,

Appellee,

v.

CLAUDIO VALDEZ, a/k/a Claudio Radhames Valdez Nunez, a/k/a Radhames, a/k/a Carlos Giovanetti Torres, a/k/a Luis Hernandez, a/k/a Luis Nunes,

Defendant, Appellant.

JUDGMENT
Entered: September 21, 2020

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Rhode Island.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's orders denying Claudio Valdez's pro se motions to withdraw his guilty plea and to appoint new counsel are affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: John T. Ouderkirk Jr., Gerard Brian Sullivan, Lauren S. Zurier

United States Court of Appeals
For the First Circuit

No. 18-2219

UNITED STATES OF AMERICA,

Appellee,

v.

CLAUDIO VALDEZ, a/k/a Claudio Radhames Valdez Nunez, a/k/a Radhames, a/k/a Carlos Giovanetti Torres, a/k/a Luis Hernandez, a/k/a Luis Nunes,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Hon. John J. McConnell, Jr., Chief U.S. District Judge]

Before

Lynch, Kayatta, and Barron,
Circuit Judges.

John T. Ouderkirk, Jr., by appointment of the Court, on brief for appellant.

Donald C. Lockhart, Assistant United States Attorney, and Aaron L. Weisman, United States Attorney, on brief for appellee.

September 21, 2020

LYNCH, **Circuit Judge**. Claudio Valdez entered into a plea agreement and was sentenced to 240 months' imprisonment pursuant to that agreement. The district court denied his pro se motions to withdraw his guilty plea and to appoint new counsel. We affirm.

I.

On April 11, 2017, Valdez was arrested as a leader and organizer of a major drug-trafficking organization which had customers in Connecticut, Massachusetts, and Rhode Island. On May 4, 2017, Valdez was charged by indictment with one count of conspiracy to distribute and to possess with intent to distribute one kilogram or more of heroin, and other amounts of fentanyl, cocaine base, and cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, and one count of illegal reentry in violation of 8 U.S.C. § 1326(a) and (b)(2).

On April 12, 2017, Valdez was appointed counsel. On January 25, 2018, he filed a motion seeking new court-appointed counsel, arguing that his attorney had a "conflict of interest" and was not "represent[ing] [his] best interest and well-being," but failed to specify facts evidencing such a conflict. A hearing on the motion was held before a magistrate judge on February 15, 2018, who denied the motion as "conclusory" and a "purely tactical

attempt[] [by the defendant] to try to either create appeal issues or to delay proceedings by the replacement of counsel."[1]

On May 17, 2018, Valdez signed a plea agreement. The government agreed not to file a sentencing enhancement pursuant to 21 U.S.C. § 851. Such an enhancement would have exposed the defendant to a mandatory life sentence. The government also agreed to recommend that the court impose a term of twenty years' imprisonment. Valdez specifically "stipulate[d] and agree[d]" to the facts contained in the plea agreement. Valdez also acknowledged that he understood the possible statutory penalties for the charged offenses and the sentence he would receive if the court accepted the plea agreement. Finally, before signing, Valdez acknowledged that he "ha[d] read the agreement or ha[d] had it read to [him], ha[d] discussed it with [his] [attorney], underst[ood] it, and agree[d] to its provisions."[2]

A change-of-plea hearing was held on June 7, 2018. At that hearing, Valdez affirmed that he had "thoroughly reviewed the plea agreement with [his] attorney and [his attorney had] answered any questions that [he] ha[d] about that plea agreement," and that he "underst[ood] as part of that plea agreement . . . that [his]

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[1] Valdez appealed the denial of that motion, but the appeal was voluntarily dismissed after he "entered a plea of guilty with the assistance of counsel."

[2] The plea agreement also included an appeal waiver, which the government does not seek to enforce.

attorney will recommend 20 years of imprisonment and the Government will recommend 20 years of imprisonment." In response to a question from the court regarding whether he had "been treated recently for any mental illness or addiction to narcotic drugs," Valdez stated that he was "taking medication to treat anxiety and for something else" and that he had not taken the medication since "[y]esterday." The court then asked him whether his not having taken the medication was "having any effect on [his] ability to think clearly today," to which the defendant answered "I'm aware of what's happening" and "I can think clearly."

The district court asked Valdez whether he had reviewed the indictment and the consequences of the indictment with his attorney and whether his attorney had answered any questions with respect to the indictment, and the defendant answered in the affirmative. Valdez also confirmed that he was "fully satisfied" with the representation he had received from his attorney. The court reviewed with Valdez the maximum penalties it could impose at sentencing, which included "a mandatory minimum of 10 years but up to a lifetime of imprisonment" for the drug offense and a maximum of twenty years' imprisonment for the illegal reentry offense. Valdez acknowledged that he understood those penalties.

The government recited the elements of the charged offenses and the facts, including those facts Valdez had stipulated to in the plea agreement and more specific details about the drug-

trafficking conspiracy and law enforcement investigation. The district court then "remind[ed] [Valdez] [that the government would] have to prove each and every one of those elements beyond a reasonable doubt for [him] to be found guilty of either or both charges," and asked Valdez whether he "admit[ted] [to] the facts as stated by the Government as true." Valdez stated that he did. He had no questions for the court and had nothing further to discuss with his attorney at that time. The district court accepted the guilty plea as knowing and voluntary.

The sentencing hearing was held on November 28, 2018. At the beginning of the hearing, Valdez submitted a letter to the court, a translation of which stated in relevant part that "I had no idea, I signed that -- meaning plea agreement -- because my lawyer told me that my sentence would be 10 to 20 years," that "[m]y lawyer never explained with certitude so that I could have a better understanding of the process of coming to or agreeing to a plea," and that "[h]e never reviewed the evidence with me . . . before the agreement." Valdez also stated that "I tried to fire [my lawyer]" and "there's been a breakdown in communication, I do not trust him, and he does not trust me." Valdez further stated that "I signed the plea agreement which I did not understand, and right now I wish to withdraw from that agreement and to abandon that negotiation" and "I also want to change my lawyer."

The district court construed the defendant's statement as making two separate motions: (1) a motion to withdraw the guilty plea and (2) a motion to appoint new counsel. After hearing from both the government and defense counsel, the court denied both motions. With respect to the first, the court stated that it

> vividly recall[ed] [the defendant] under oath admitting that [he] w[as] satisfied with [his] representation of counsel, that [his attorney] had fully explained the matter to [him], [and] that [he] w[as] aware that the plea agreement that [he] told [the court] [he] knowingly and voluntarily signed included a mandatory binding 20-year sentence.

The court concluded that Valdez had "not presented any evidence . . . that would support a withdrawal of the plea." As to the second motion, the court noted that a magistrate judge had already determined that the defendant's previous attempt to replace his attorney "was a deliberate attempt . . . to stall and disrupt the orderly administration of this case." The court stated that Valdez was entitled to a court-appointed attorney who is competent, not one of his own choosing, and that the defendant had "received that exceedingly well." It stated that the defendant's attorney was known "by reputation and observation as one of the finest criminal defense lawyers in our state if not in our region." The court concluded that, having observed defense counsel's representation of the defendant throughout the case, it "ha[d] nothing but the greatest confidence that he ha[d] well and adequately represented

[Valdez] as he routinely and regularly d[id] and always does before this Court." The court accepted the joint sentencing recommendation in the plea agreement and sentenced Valdez to twenty years' imprisonment.

Valdez timely appealed.

II.

Represented by new counsel on appeal, Valdez raises several claims of error with respect to the denial of his motion to withdraw the guilty plea. Valdez also argues that the district court abused its discretion in denying the motion for new court-appointed counsel by "fail[ing] to consider the three guiding factors" for such requests.

Generally, an appeal from the denial of a motion to withdraw a guilty plea before sentencing is reviewed for abuse of discretion. United States v. Rodríguez-Morales, 647 F.3d 395, 397 (1st Cir. 2011); United States v. De Alba Pagan, 33 F.3d 125, 127 (1st Cir. 1994). The burden is on the defendant to prove that there is a "fair and just reason" to withdraw the guilty plea prior to sentencing. Rodríguez-Morales, 647 F.3d at 398-99 (quoting Fed. R. Crim. P. 11(d)(2)(B)) (assessing several factors in making that determination); De Alba Pagan, 33 F.3d at 127 (same).

Where a defendant fails to raise a particular Rule 11 error before the district court, however, we review that claim for plain error. United States v. Vonn, 535 U.S. 55, 58-59 (2002);

United States v. Laracuent, 778 F.3d 347, 349 (1st Cir. 2015); United States v. Borrero-Acevedo, 533 F.3d 11, 15 (1st Cir. 2008). To demonstrate plain error, the defendant must show "(1) that an error occurred (2) which was clear or obvious and which not only (3) affected the defendant's substantial rights, but also (4) seriously impaired the fairness, integrity, or public reputation of judicial proceedings." Laracuent, 778 F.3d at 349 (quoting United States v. Negrón-Narváez, 403 F.3d 33, 37 (1st Cir. 2005)); see also Borrero-Acevedo, 533 F.3d at 15. To establish that the defendant's substantial rights were affected, he "must show 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); see also Borrero-Acevedo, 533 F.3d at 16.

Our review of the district court's denial of the defendant's motion to appoint new counsel is for abuse of discretion. United States v. Karmue, 841 F.3d 24, 31 (1st Cir. 2016). We will reverse a denial for abuse of discretion only after considering (1) "the adequacy of the [trial] court's inquiry," (2) "the timeliness of the motion for substitution," and (3) "the nature of the conflict between the lawyer and client." Id. (alteration in original) (quoting United States v. Myers, 294 F.3d 203, 207 (1st Cir. 2002)).

A. Denial of the Motion to Withdraw the Guilty Plea

Valdez's first claim is that the district court failed to ensure that he adequately understood the nature of the charged offenses and erroneously determined that there was a factual basis for the plea pursuant to Rule 11 of the Federal Rules of Criminal Procedure. See Fed. R. Crim. P. 11(b)(1)(G), (b)(3). Assuming, arguendo, that Valdez preserved this claim, the record makes clear that the plea was in full compliance with Rule 11. Our earlier description of the plea agreement and the change-of-plea hearing disposes of this claim. See, e.g., United States v. Díaz-Concepción, 860 F.3d 32, 37, 39 n.4 (1st Cir. 2017); United States v. Ramos-Mejía, 721 F.3d 12, 14-16 (1st Cir. 2013). The district court did not abuse its discretion in finding that there was no fair and just reason for withdrawing the guilty plea given the weakness of defendant's arguments and the timing of his motion. See Rodríguez-Morales, 647 F.3d at 398-99 (explaining that "the force of the reasons offered by the defendant" and "the timing of the motion" are two of the factors courts consider in determining whether to permit a defendant to withdraw a guilty plea prior to sentencing (quoting United States v. Padilla-Galarza, 351 F.3d 594, 597 (1st Cir. 2003))).

Valdez's second argument is that the district court failed to inquire adequately into the medication issue to ensure that his plea was voluntary and intelligent. See United States v.

Kenney, 756 F.3d 36, 46-47 (1st Cir. 2014); United States v. Parra-Ibañez, 936 F.2d 588, 595-96 (1st Cir. 1991). This specific claim was not raised before the district court, and thus we review it for plain error. See Kenney, 756 F.3d at 45.

After Valdez informed the district court at the change-of-plea hearing that he had not taken his anxiety medication that day, the court followed up with questions directed at the defendant's ability to think clearly despite not having done so. Valdez answered that he was "aware of what's happening" and "c[ould] think clearly." The court also observed Valdez's demeanor and his apt responses to its questions. The court's inquiry was clearly adequate. See id. at 46-47.

Furthermore, Valdez makes no attempt to show a reasonable probability that, but for this alleged error, he would not have entered the plea agreement. Given the strength of the evidence against him, as well as the substantial benefit conferred by the plea agreement -- avoiding a mandatory life sentence -- it is highly doubtful that Valdez would have rejected that agreement.

The defendant's third claim is that the district court erred in finding that he understood the period of incarceration which would result from the plea agreement. That argument is only referenced briefly in the defendant's summary of argument, is not further developed, and so is waived. GGNSC Admin. Servs., LLC v. Schrader, 958 F.3d 93, 95 (1st Cir. 2020). Even if the claim were

not waived, the plea agreement, Valdez's acknowledgment of the plea agreement, and the discussion at the change-of-plea hearing demonstrate that Valdez was fully aware of the period of incarceration he was facing when he pleaded guilty.

B. Denial of the Motion to Appoint New Counsel

Valdez argues that the district court abused its discretion in denying his motion for new court-appointed counsel. This claim of error too is meritless. As the district court noted, five months earlier Valdez had expressed his satisfaction with his attorney.[3] Furthermore, he waited without justification until the sentencing hearing to file his motion. See, e.g., Karmue, 841 F.3d at 31 (concluding that the fact the motion was made just two days before sentencing militated against granting it); United States v. Myers, 294 F.3d 203, 207 (1st Cir. 2002) (same for a motion filed five days before sentencing without any explanation for failure to file sooner).

The district court did inquire and hear from both Valdez and his attorney as to the existence and nature of the alleged conflict between them. The court appropriately considered the

[3] The motion at the sentencing hearing was not merely a continuation of the defendant's first motion to substitute counsel filed in January 2018. The appeal of the denial of that motion was voluntarily dismissed after Valdez entered the plea agreement with the assistance of counsel. This is not a situation where the defendant consistently objected to the effectiveness of counsel over a significant period of time. Cf. United States v. Kar, 851 F.3d 59, 65 (1st Cir. 2017).

defendant's previous frivolous attempt to obtain new counsel, defense counsel's own statement that he did not believe there was a conflict, defense counsel's reputation, and its own observations of defense counsel's adequate representation of Valdez. See, e.g., United States v. Kar, 851 F.3d 59, 65-66 (1st Cir. 2017); Karmue, 841 F.3d at 31; United States v. Hicks, 531 F.3d 49, 51-52, 54-55 (1st Cir. 2008).

Nothing in the record shows an actual conflict or "total lack of communication" between Valdez and his attorney which "prevent[ed] an adequate defense." Kar, 851 F.3d at 66 (quoting United States v. Allen, 789 F.2d 90, 92 (1st Cir. 1986)). Defense counsel had discussed the plea agreement and its consequences with Valdez numerous times, which Valdez acknowledged at the change-of-plea hearing.

The district court did not err in denying both motions.

Affirmed.