

No. 19-1478

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 23, 2020
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

ZONGLI CHANG, M.D.,

Defendant-Appellant.

ORDER

Before: COLE, Chief Judge; GUY and BUSH, Circuit Judges.

Zongli Chang, M.D., appeals the sentence imposed following his guilty plea to one count of conspiracy to possess with intent to distribute controlled substances. The government moves to dismiss the appeal based on an appellate-waiver provision in Chang's plea agreement. Chang opposes dismissal, arguing that his appeal waiver does not foreclose his challenge to the \$1,000,000 fine imposed by the district court. Chang also argues that the district court failed to ensure that he understood his appeal waiver and that enforcing his appeal waiver will result in a miscarriage of justice. The government replies, and Chang moves for leave to file a sur-reply.

“It is well settled that a defendant in a criminal case may waive any right, even a constitutional right, by means of a plea agreement.” *United States v. Griffin*, 854 F.3d 911, 914 (6th Cir. 2017) (quoting *United States v. Fleming*, 239 F.3d 761, 763–64 (6th Cir. 2001)). “A knowing and voluntary waiver of the right to appeal precludes appellate review.” *Id.* Before accepting a guilty plea, the district court must verify the defendant’s understanding of “the terms

Appendix 1. Appellate Court Decision.

of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.” Fed. R. Crim. P. 11(b)(1)(N).

Chang first argues that his waiver of the right to appeal his sentence does not encompass his challenge to the fine imposed. Binding precedent forecloses this argument. *See United States v. Grundy*, 844 F.3d 613, 616 (6th Cir. 2016) (“[B]y agreeing to waive his right to appeal his ‘sentence,’ [a] defendant waive[s] any challenges to each of the constituent elements of his sentence, including restitution.”).

Chang also argues that his appeal waiver was unknowing and involuntary because the district court failed to ensure that he understood the appellate-waiver provision. At his plea hearing, however, the district court read the appellate-waiver provision to Chang, verified that Chang had heard the appeal waiver’s terms, and asked Chang whether he had any questions. This colloquy was sufficient to comply with Rule 11(b)(1)(N). *See United States v. Sharp*, 442 F.3d 946, 951–52 (6th Cir. 2006).

Finally, Chang argues that enforcing his appeal waiver will result in a miscarriage of justice. At the outset, a valid appeal waiver does not necessarily deprive us of jurisdiction to correct an unlawful sentence. *See United States v. Caruthers*, 458 F.3d 459, 472 n.6 (6th Cir. 2006), *abrogation on other grounds recognized by Randolph v. Streeval*, No. 19-5135, 2020 WL 832896, at *2 (6th Cir. Feb. 7, 2020) (order). Other circuits have accordingly recognized a miscarriage-of-justice exception to the enforcement of appeal waivers. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011); *United States v. Guillen*, 561 F.3d 527, 531 (D.C. Cir. 2009). We have not expressly recognized such an exception, although we have implicitly done so in several unpublished cases. *See, e.g., United States v. Allen*, 635 F. App’x 311, 315 (6th Cir. 2016); *United States v. Mathews*, 534 F. App’x 418, 425 (6th Cir. 2013) (per curiam).

Even so, Chang's argument is that his fine, when combined with a \$3,000,000 forfeiture judgment enforced by the district court, "exceed[s] the maximum fine by a factor of four." But Chang does not allege that he "will be unable to pay the fine in reasonable installments." *United States v. Humphrey*, 84 F. App'x 482, 485 (6th Cir. 2003). Chang also argues that, "during sentencing, [he] presented considerable evidence that he has suffered a neurocognitive disorder and a degenerative brain disease," as well as other psychological ailments. But at his plea hearing, Chang assured the district court that the medications he had been prescribed did not affect his ability to understand the court proceedings. And Chang's counsel affirmed that, after frequent interactions with Chang, counsel "believe[d] Dr. Chang [was] capable of entering a knowing plea." Under these circumstances, Chang has not established that enforcing his appeal waiver will result in a miscarriage of justice.

The motion for leave to file a sur-reply is **GRANTED**, and the motion to dismiss is **GRANTED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
Eastern District Of Michigan

UNITED STATES OF AMERICA

v.

Zongli Chang§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§

§

§

§

Case Number: 0645 2:18CR20008 (1)

USM Number: 56246-039

Ronald William Chapman II

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1 of the Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

21 U.S.C. § 841(a)(1), Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances

Offense Ended

5/5/2017

Count

1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 2 through 43 of the Indictment ☐ is ☒ are dismissed on the motion of the United States

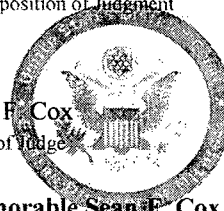
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/17/2019

Date of Imposition of Judgment

s/Sean F. Cox

Signature of Judge

**The Honorable Sean F. Cox****United States District Judge**

Name and Title of Judge

4/26/2019

Date

Appendix 2. District Court Decision

DEFENDANT: Zongli Chang
CASE NUMBER: 0645 2:18CR20008 (1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 135 months. The cost of incarceration is waived.

☒ The court makes the following recommendations to the Bureau of Prisons:
- Participation in the Inmate Financial Responsibility Program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on to

at, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Zongli Chang
CASE NUMBER: 0645 2:18CR20008 (1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of two years. The cost of supervised release is waived.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: Zongli Chang
CASE NUMBER: 0645 2:18CR20008 (1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program approved by the probation department for mental health counseling, if necessary.

The defendant shall submit to a psychological/psychiatric evaluation as directed by the probation officer, if necessary.

The defendant shall take all medications as prescribed by a physician whose care he/she is under, including a psychiatrist, in the dosages and at the times proposed. If the defendant is prescribed a medication, he/she shall take it, and the defendant shall not discontinue medications against medical advice.

The defendant shall be lawfully and gainfully employed on a full-time basis, or shall be seeking such lawful, gainful employment on a full-time basis. "Full-time" is defined as 40 hours per week.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	\$100.00	N/A	\$1,000,000.00	N/A

- ☐ The determination of restitution is deferred until An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payments of \$ 100.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after the date of this judgment; or
- D ☐ Payment in equal (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
Restitution is joint and several with the following co-defendants and/or related cases, in the amount specified below:

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ Defendant shall receive credit on «*df*_*his*_*her*» restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Pursuant to Title 21 U.S.C. Section 853 and Title 28 U.S.C. Section 2461(c), defendant agrees to forfeit the following property, which constitutes property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the violation charged in Count One: a) \$603,136 of United States Currency seized from Zongli Chang's residence in Novi, Michigan on or about June 12, 2017; b) All funds on deposit in JPMC bank account number 729431213, held in the name of Metro Home Visiting Physicians, LLC (MHVP) (approximately \$12,782); c) All funds on deposit in JPMC bank account number 815100979, held in the name of Wei Guan (approximately \$29,787); d) \$30,000 in funds on deposit in Charles Schwab Investment Account, account number 3153-4130, held in the name of Wei Guan; e) \$294,000 in funds on deposit in Charles Schwab Investment Account, account number 6035-5917, held in the name of Zongli Chang; f) All funds on deposit in Flagstar Bank Certificate of Deposit number 116921554, held in the names of Zongli Chang, Wei Guan, and Jeffrey Chang (approximately \$178,529); g) \$118,000 in funds on deposit in JPMC Brokerage Account, account number 963-33944, held in the name of Zongli Chang and Wei Guan; h) \$455,000 in funds on deposit in Ally Bank, account number 2134482914, held in the name of Zongli Chang; i) All funds on deposit in Citizens Bank Checking account number 4531599992, held in the name of Zongli Chang and Wei Guan; signers: Zongli

DEFENDANT: Zongli Chang
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Chang and Wei Guan (approximately \$10,002); j) All funds on deposit in Citizens Bank Certificate of Deposit account number 4558831516, held in the name of Zongli Chang and Wei Guan; signers: Zongli Chang and Wei Guan (approximately \$505,821); k) All funds on deposit in Citizens Bank Certificate of Deposit account number 4558831699, held in the Name of Zongli Chang, TTEE for Wei Guan; signer: Zongli Chang (approximately \$252,911); and l) All funds on deposit in Citizens Bank Certificate of Deposit account number 4557941903, held in the Name of Wei Guan, TTEE, for Zongli Chang; signer: Wei Guan (approximately \$252,911). Pursuant to Title 21 U.S.C. Section 853 and Title 28 U.S.C. Section 2461(c), a forfeiture money judgement in the amount of \$3 million is entered against defendant in favor of the United States. The Stipulated Amended Preliminary Order of Forfeiture (ECF No. 220) is incorporated herein by this reference.”

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ZONGLI CHANG, M.D., Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2020 U.S. App. LEXIS 28553
No. 19-1478
September 9, 2020, Filed

Editorial Information: Prior History

United States v. Chang, 2020 U.S. App. LEXIS 13259 (6th Cir., Apr. 23, 2020)

Counsel {2020 U.S. App. LEXIS 1} For United States of America, Plaintiff -
Appellee: Brant Cook, United States Attorney's Office, Detroit, MI.
Zongli Chang, M.D., Defendant - Appellant, Pro se, Lisbon,
OH.

Judges: BEFORE: COLE, Chief Judge; GUY and BUSH, Circuit Judges.

Opinion

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

CIRHOT

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Appendix 3. Rehearing
denial

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