

No. 20-

IN THE
Supreme Court of the United States

FAIZAL SABAR ,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX VOLUME

JAMES SCOTT SULLIVAN
LAW OFFICES OF J. SCOTT SULLIVAN
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SAN ANTONIO, TEXAS 78257
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APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 19-11006

United States Court of Appeals
Fifth Circuit

FILED

September 8, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FAIZAL SABAR, *also known as* BRIAN PIMENTEL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-19-2

Before HAYNES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Faizal Sabar appeals his conviction and sentence for conspiracy to commit sex trafficking, asserting that the district court erred in denying his motion to withdraw his guilty plea. We disagree and affirm.

We review the denial of a motion to withdraw a guilty plea for abuse of discretion. *United States v. McKnight*, 570 F.3d 641, 645 (5th Cir. 2009).

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 19-11006

And we consider the totality of circumstances, including the seven factors enumerated in *United States v. Carr*, 740 F.2d 339, 343–44 (5th Cir. 1984).

The record supports the district court’s denial of Sabar’s motion based on its consideration of the *Carr* factors. In particular, Sabar waited nearly three months after his guilty plea was entered to file his motion to withdraw, a fact that weighs against him. *See United States v. Thomas*, 13 F.3d 151, 153 (5th Cir. 1994). Sabar also received close assistance of counsel, and his guilty plea was knowing and voluntary. *See McKnight*, 570 F.3d at 646–48; *Carr*, 740 F.2d at 345. Finally, the district court was in the “best position to know the effect that the withdrawal [would have] on its resources.” *Carr*, 740 F.2d at 345. Accordingly, Sabar has failed to demonstrate that the district court abused its discretion in denying his motion to withdraw his guilty plea.

Sabar also asserts that the district court should have conducted an evidentiary hearing on his motion. This, too, is something we review for abuse of discretion. *United States v. Powell*, 354 F.3d 362, 370 (5th Cir. 2003). Although a defendant is not entitled to a hearing, “a hearing is required when the defendant alleges sufficient facts which, if proven, would justify relief.” *Id.* (internal quotation marks and citation omitted). Sabar does not show that his assertions, if true, would overcome the strong presumption in favor of the affirmations he made in the plea proceedings. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977). Thus, the district court did not abuse its discretion by not conducting an evidentiary hearing. *See Powell*, 354 F.3d at 370.

The judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

FAIZAL SABAR

Case Number: 4:19-CR-00019-O(02)

U.S. Marshal's No.: 57211-177

Douglas Allen, Assistant U.S. Attorney

Michael Lehmann, Attorney for the Defendant

On May 13, 2019 the defendant, FAIZAL SABAR, entered a plea of guilty as to Count One of the Superseding Indictment filed on March 20, 2019. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

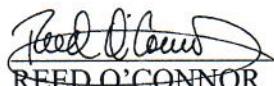
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §1594(c)	Conspiracy to Commit Sex Trafficking	December 15, 2017	One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Superseding Indictment filed on March 20, 2019.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed August 29, 2019.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed August 30, 2019.

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IMPRISONMENT

The defendant, FAIZAL SABAR, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **TWO HUNDRED FORTY (240) months** as to Count One of the Superseding Indictment filed on March 20, 2019. This sentence shall run consecutively to any future sentence which may be imposed in Case Nos. 1531903 and 1531904 in the 297th Judicial District Court, Tarrant County, Texas, and in Case Nos. CP-21-CR-2149-2016 and CP-21-CR-39-2016 in the Court of Common Pleas for Cumberland County, Pennsylvania, which are unrelated to the instant offense.

The Court recommends to the BOP that the defendant be allowed to participate in the Residential Drug Treatment Program, if eligible. The Court further recommends that the defendant be housed at an FCI facility within the State of Pennsylvania, if possible.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **FIFTEEN (15) years** as to Count One of the Superseding Indictment filed on March 20, 2019.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;

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Defendant: FAIZAL SABAR
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- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

refrain from any unlawful use of a controlled substance. The defendant 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;

comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense;

have no contact with the victim(s), including correspondence, telephone contact, or communication through third parties except under circumstances approved in advance by the probation officer and not enter onto the premises, travel past, or loiter near the victims' residences, places of employment, or other places frequented by the victims; and,

participate in sex-offender treatment services as directed by the probation officer until successfully discharged, which services may include psycho-physiological testing to monitor the defendant's compliance, treatment progress, and risk to the community, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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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 Marshal