

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 17 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

VINCENT RAYMOND RIOS,

Defendant-Appellee.

No. 20-10199

D.C. No. 1:16-cr-00039-1

MEMORANDUM*

Appeal from the United States District Court
for The District of Guam
Frances Tydingco-Gatewood, Chief District Judge, Presiding

Argued and Submitted February 15, 2022
Honolulu, Hawaii

Before: HAWKINS, R. NELSON, and FORREST, Circuit Judges.

Vincent Rios, a native of the Northern Mariana Islands and Chamorro speaker, appeals the denial of his motion to withdraw his guilty plea. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. First, Rios argues that his plea was not knowing and voluntary because the court failed to advise him of his *Apprendi* right to a jury finding of drug type and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

quantity. Because Rios did not object, we review for plain error. *United States v. Bain*, 925 F.3d 1172, 1176 (9th Cir. 2019). In *United States v. Minore*, we held that the same type of *Apprendi* error did not seriously affect the fourth element of plain error “[b]ecause overwhelming evidence existed that [the defendant] trafficked in drug quantities . . . in excess of those necessary” for a life sentence. 292 F.3d 1109, 1118–1120 (9th Cir. 2002). Likewise, Rios’s claim fails. Rios stipulated in his plea agreement to receiving over eighteen pounds of 97% pure crystalline methamphetamine. A jury would have needed to find only fifty grams of pure methamphetamine to qualify for the sentence imposed. See 21 U.S.C. § 841(b)(1)(A)(viii). Failure to advise Rios of this right did not seriously undermine the fairness or integrity of the judicial proceedings. Thus, this error does not invalidate his plea.

2. Rios next asserts that his guilty plea was not knowing and voluntary because his English proficiency was insufficient to understand his plea. We review *de novo* whether a defendant’s plea was knowing and voluntary, and we review a district court’s factual findings for clear error. *United States v. Kaczynski*, 239 F.3d 1108, 1114 (9th Cir. 2001). And the district court’s denial of a motion to withdraw a plea is reviewed for abuse of discretion. *United States v. Nostratis*, 321 F.3d 1206, 1208 (9th Cir. 2003). “Where the district court conducts a thorough Rule 11 hearing, this is strong evidence that the defendant comprehended the plea agreement.” *Id.* at

1209. The Rule 11 inquiry here was thorough, and the court could reasonably have chosen to discredit Rios's claim that he did not understand his plea, which Rios raised only after receiving the presentence report and recommended sentencing range. Nothing in the record makes the court's conclusion that Rios spoke English sufficiently well for his plea to be voluntary clear error. *See id.* at 1208–10.

In addition, Rios argues that the court erred by requiring him to raise his hand to receive interpretation rather than receive it continuously. Although Rios's constitutional right to an interpreter would be satisfied by having an interpreter “by [his] side continuously interpreting the proceedings,” “[a]s long as the defendants’ ability to understand the proceedings and communicate with counsel is unimpaired, the appropriate use of interpreters in the courtroom is a matter within the discretion of the district court.” *United States v. Lim*, 794 F.2d 469, 470–71 (9th Cir. 1986) (quotation marks and citation omitted). Rios did not object below, and the court’s finding that Rios understood English fairly well did not constitute plain error. *See Bain*, 925 F.3d at 1176.

3. Finally, Rios argues that his plea is invalid due to the advice of his counsel. Claims of ineffective assistance of counsel are generally not appropriate on direct appeal. *United States v. Ross*, 206 F.3d 896, 900 (9th Cir. 2000). We do not find the record here sufficiently developed to allow review or that the legal representation

was so inadequate that it obviously denied Rios his Sixth Amendment right to counsel. *Id.* We therefore decline to address this issue.

AFFIRMED.

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,) Court of Appeals No. 20-10199
)
 Plaintiff,) District Court No. 16-00039
)
 vs.)
)
VINCENT RAYMOND RIOS,)
)
 Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANCES TYDINGCO-GATEWOOD
CHIEF JUDGE
OCTOBER 15, 2019; 2:59 P.M.
HAGATNA, GUAM

Hearing on Motion to Withdraw Plea of Guilty

03:00:02PM

Proceedings recorded by *mechanical stenography*.

Veronica F. Flores, CSR-RPR
Official Court Reporter
520 W. Soledad Avenue
Hagatna, Guam 96910

1 THE COURT: You brought that one in for Rios, his 04:14PM
2 former Counsel's declaration. Okay, that's Mr. Torres's 04:15PM
3 declaration; is that correct? 04:15PM

4 MR. GAVRAS: I believe so, yes. 04:15PM

5 THE COURT: Let's verify that. 70? 04:15PM

6 MR. GAVRAS: Yeah, Counsel's declaration. 04:15PM

7 THE COURT: You have that? 04:15PM

8 MR. GAVRAS: And 72, I believe. 04:15PM

9 THE COURT: Okay, let me make sure I got those. 04:15PM
10 Okay, 70, I got that. And what's the last one? 04:15PM

11 MR. GAVRAS: Next one is 72. 04:15PM

12 THE COURT: Okay, I got 72. Very well. And 04:15PM
13 anyway, the issue is whether or not the defendant is -- was 04:15PM
14 proficient in English and whether or not he understood his 04:15PM
15 motion to withdraw his guilty plea. He's indicating that he 04:15PM
16 was not proficient or understanding of his guilty plea, so the 04:15PM
17 Court now has listened to Mr. Laguana, who has testified in 04:15PM
18 Court that he has spoken to the defendant for about four hours 04:16PM
19 and that he's a Chamorro interpreter for the courts and that 04:16PM
20 he believes that the defendant understands English fairly 04:16PM
21 well, has a basic comprehension of the English language and he 04:16PM
22 also believes that -- that when it comes to technical and/or 04:16PM
23 legal terms, the defendant would look to him and he would have 04:16PM
24 to explain those, if the defendant did not understand them. 04:16PM
25 And that occurred when he met with the defendant during the 04:16PM

1 period of time that he met with him and with his Counsel and I 04:16PM
2 think without his Counsel, if I'm not mistaken. Is that 04:16PM
3 right, Mr. Gavras? You met him one time with the interpreter 04:16PM
4 and one time without him? 04:16PM

5 MR. GAVRAS: Yes. 04:16PM

6 THE COURT: Okay. So there were two times. 04:16PM
7 Okay. And the Court also listened to the testimony of -- 04:17PM
8 okay, so for purposes of this motion to reassert, the Court 04:17PM
9 also asked Mr. Laguana if the defendant was told or -- if 04:17PM
10 certain terms were explained to him, legal terms, for example, 04:17PM
11 waiver, meaning give it up, that he believes that the 04:17PM
12 defendant would understand it so long as he was told that -- 04:17PM
13 that was the explanation when it came to legal terms. 04:17PM

14 The Court has also looked at -- well, I 04:17PM
15 considered the exhibits that were brought in by U.S. Attorney 04:17PM
16 Ms. San Nicolas. And the first one I think is very telling 04:17PM
17 that Mr. Rios does understand a lot of technical terms. I 04:17PM
18 think she points out, like preinvestigative report, statute of 04:17PM
19 limitations, cooperation, maximum sentence, offers, violate. 04:18PM
20 I mean these are words that were pulled out of the Pay Tel 04:18PM
21 tape recording of Exhibit 1-B. And so he does understand some 04:18PM
22 of these technical terms that I think were also noted within 04:18PM
23 the plea agreement that he previously signed. 04:18PM

24 Then with regard to his Exhibit 2, I mean 04:18PM
25 prosecutor's Exhibit 2, it does show that the defendant can 04:18PM

1 write, I mean I don't think he writes like a college graduate, 04:18PM
2 but he does write such that someone could understand what he's 04:18PM
3 trying to get across, in Exhibit 2. He talked -- he says the 04:18PM
4 word expired, he misspelled word "pursue" but he does use the 04:18PM
5 word pursue. He talks about texting and getting on Facebook 04:19PM
6 and so forth. 04:19PM

7 So I mean it seems like, to the Court, that Mr. 04:19PM
8 Rios does have, and I would agree even in speaking to him in 04:19PM
9 Court in the limited time I've spoken to him, that he does 04:19PM
10 speak English fairly well and then -- and so the whole issue 04:19PM
11 with regard to this motion to reassert -- motion to reassert 04:19PM
12 the motion to withdraw the guilty plea is... um... whether or 04:19PM
13 not -- whether or not the Court believes that -- the evidence 04:19PM
14 presented so far has made it such that a defendant's 04:19PM
15 understanding of the English language was so poor and 04:19PM
16 insufficient to understand speaking with his attorneys and 04:19PM
17 withdrawing his motion to withdraw his guilty plea. And so 04:19PM
18 what the Court will do is I'm -- I'm allowing the motion to -- 04:20PM
19 here's the motion to reassert the motion to withdraw the 04:20PM
20 guilty plea, what I'm going to do is I'm going to deny the 04:20PM
21 motion to reassert the motion to withdraw the guilty plea but 04:20PM
22 I'm going to make a ruling on the substantive motion, I'm 04:20PM
23 going to go ahead and rule on it. I think we never got to my 04:20PM
24 ruling because he withdrew. Any objection to that, Ms. San 04:20PM
25 Nicolas or Mr. Gavras? 04:20PM

1	MR. GAVRAS: Your Honor, I think in my motion, I	04:20PM
2	reasserted the arguments Mr. Torres made.	04:20PM
3	THE COURT: So you want to incorporate by	04:20PM
4	reference everything that's happened before?	04:20PM
5	MR. GAVRAS: Yes.	04:20PM
6	THE COURT: Correct? So you have no objection to	04:20PM
7	the Court just making my ruling on --	04:20PM
8	MR. GAVRAS: No.	04:20PM
9	THE COURT: -- the underlying motion?	04:20PM
10	MR. GAVRAS: No.	04:20PM
11	THE COURT: Okay, you want to let your client	04:20PM
12	know that? Since he's... I'm going to make my ruling.	04:20PM
13	MR. GAVRAS: The Court is denying the motion to	04:20PM
14	reassert the substantive motion? The Court has ruled on that;	04:21PM
15	correct, Your Honor?	04:21PM
16	THE COURT: Yeah, yeah.	04:21PM
17	MR. GAVRAS: Okay.	04:21PM
18	(Counsel conferred with client and interpreter.)	04:22PM
19	MR. GAVRAS: Thank you, Judge.	04:22PM
20	THE COURT: So he understands that I'm not	04:22PM
21	granting his motion to reassert his withdrawal but -- his	04:22PM
22	motion to withdraw the guilty plea, but because I declared it	04:22PM
23	moot earlier, okay, just for the sake of argument, I declared	04:22PM
24	it moot earlier because there was a motion to withdraw, but	04:22PM
25	you know, we've already had all of the arguments, the Court	04:22PM

1 has never made a ruling. But I think I can make a ruling at 04:22PM
2 this time. So based on his English proficiency, etc., etc., 04:22PM
3 even considering all the evidence that was brought forward, so 04:23PM
4 I'll just make a ruling on the substantive motion. 04:23PM

5 MR. GAVRAS: That's fine. I would like to say 04:23PM
6 one thing, judge. You asked me if he understood that you 04:23PM
7 ruled on the one but you haven't ruled on the other one. I 04:23PM
8 don't believe he actually understands that. I explained it to 04:23PM
9 him, but I don't think he needs to understand it for purposes 04:23PM
10 of where we're at right now. 04:23PM

11 THE COURT: All right. Well, did his Chamorro 04:23PM
12 interpreter speak to him? 04:23PM

13 MR. GAVRAS: It's a very difficult thing to 04:23PM
14 explain. 04:23PM

15 INTERPRETER: It's very difficult. 04:23PM

16 THE COURT: Just tell him I'm going to rule on 04:23PM
17 his motion to withdraw the guilty plea. 04:23PM

18 MR. GAVRAS: He understands that, what he doesn't 04:23PM
19 understand is it's an academic exercise, you've already denied 04:23PM
20 him the ability to reassert it. That's the problem. 04:23PM

21 THE COURT: Well, in essence, I am allowing him 04:23PM
22 to -- when you think about it, he's still -- underlying motion 04:23PM
23 still here, so I'm going to rule on it, the original motion. 04:24PM

24 MR. GAVRAS: Okay, maybe I misunderstood. 04:24PM

25 THE COURT: Yeah, I'm still going to rule on it 04:24PM

1 because I declared it moot because he withdrew it. 04:24PM

2 MR. GAVRAS: Right. 04:24PM

3 THE COURT: But I'm actually allowing -- in many 04:24PM
4 ways I'm allowing him to reassert it because I'm going to rule 04:24PM
5 on it. But do you understand what I'm saying? 04:24PM

6 MR. GAVRAS: I do. (Laughing.) I understand it 04:24PM
7 like I understand a 404(b) instruction, Your Honor. 04:24PM

8 THE COURT: Okay. Ms. San Nicolas? 04:24PM

9 MS. SAN NICOLAS: Your Honor, I think that just 04:24PM
10 informing the defendant that you're going -- you will rule on 04:24PM
11 his motion to withdraw -- 04:24PM

12 THE COURT: The underlying motion. 04:24PM

13 MS. SAN NICOLAS: On the substantive motion, I 04:24PM
14 think that is sufficient, I think that is correct. 04:24PM

15 THE COURT: Yeah, I think it's sufficient. We'll 04:24PM
16 just rule on it because you've gone this far, you've had so 04:24PM
17 many attorneys and now the issue has been brought to light 04:24PM
18 that you've indicated that you think he needs an interpreter, 04:24PM
19 I still don't see your client and I don't see Mr. Laguana 04:24PM
20 interpreting for him, so it seems to me, based on my watching 04:25PM
21 him today in Court, that he -- everything seems pretty 04:25PM
22 simplistic to him and that he's able to understand the -- 04:25PM
23 understand the proceedings. He's not raised his hand, he's 04:25PM
24 not reached over to Mr. Laguana. Mr. Laguana has not gone 04:25PM
25 over and spoken to him, so I note that for the record as well. 04:25PM

1 And I note that during the time that both Counsels were making
2 the -- making your arguments, the only time -- he just reached
3 -- just like went over to Mr. Laguana for a few seconds, but
4 not very long. I just noticed that one time.

04:25PM

5 All right. Proceed, Counsels. Let me just make
6 my ruling then. All right. So let me just -- all right. So
7 the Court is going to rule on the underlying motion to
8 withdraw the guilty plea for the reasons stated herein, the
9 motion is hereby denied. Okay. So I'm denying the motion to
10 withdraw. And I'm going to incorporate by reference
11 everything I just discussed about Mr. Laguana, everything
12 that's happened today in this hearing, plus the exhibits that
13 the prosecutor already brought in, so I'll incorporate that by
14 reference.

04:25PM
04:25PM
04:26PM
04:26PM
04:26PM
04:26PM
04:26PM
04:26PM
04:26PM
04:26PM

15 The Court notes that after I accepted the
16 defendant's plea but before sentencing, 11(d)(2)(B) permits
17 the defendant to withdraw his guilty plea if he can show a
18 fair and just reason, *United States v. McTiernan*, 546 F.3d
19 1160, 1167, (9th Circuit, 2008). Although the standard
20 requiring a fair and just reason is to be applied liberally,
21 the defendant bears the burden, it's the defendant's burden,
22 it's up to him to prove that a fair and just reason exists.
23 *U.S. v. Turner*, 898 F.2d, 705, 713, (9th Circuit, 1990).

04:26PM
04:26PM
04:26PM
04:26PM
04:26PM
04:27PM
04:27PM
04:27PM
04:27PM

24 So there are certain grounds for withdrawing a
25 plea of guilty, that includes inadequate Rule 11 colloquy,

04:27PM

1 erroneous or improper illegal advice, newly-discovered 04:27PM
 2 evidence, intervening circumstances, or any other reason that 04:27PM
 3 did not exist when the plea was entered. *United States versus* 04:27PM
 4 *Jones*, 417 [sic] F.3d, 1136, 1141 (9th Circuit, 2007). In 04:27PM
 5 defendant's motion, he states that he made numerous requests 04:27PM
 6 for his Counsel to withdraw his guilty plea. He never 04:27PM
 7 received discovery documents from his Counsel. He did not 04:27PM
 8 have adequate assistance to review his plea agreement which 04:28PM
 9 amounts to his guilty plea was not knowingly and voluntarily 04:28PM
 10 given, and he was told by his lawyer, Mr. Trapp, that by 04:28PM
 11 accepting the plea agreement, he would get out of jail and was 04:28PM
 12 looking at a 10 to 20 years' sentence. In his declaration, 04:28PM
 13 and this is ECF 69, the defendant states he only has a seventh 04:28PM
 14 grade education, and reads, writes English poorly and he has 04:28PM
 15 problems comprehending, the meaning or intentions of what he 04:28PM
 16 is reading, however, the defendant did not indicate that he 04:28PM
 17 has a problem comprehending what is orally being communicated 04:28PM
 18 to him. 04:28PM

19 At the change of plea colloquy on March 29, 2017, 04:28PM
 20 Judge Manibusan thoroughly questioned the defendant. He 04:28PM
 21 thoroughly asked Mr. Rios to determine whether his guilty plea 04:28PM
 22 was voluntary and knowing. At no time did Mr. Rios ever state 04:28PM
 23 that he was not understanding what was being asked of him. 04:29PM
 24 Mr. Rios says that his former attorney, Howard Trapp, told him 04:29PM
 25 to just answer the questions with "Yes, Your Honor." The 04:29PM

1	Court finds this allegation to be unsubstantiated. Defendant	04:29PM
2	was sworn to tell the truth, Mr. Rios was sworn to tell the	04:29PM
3	truth, the whole truth and nothing but the truth and he agreed	04:29PM
4	to this to answer truthfully and not to just say "yes" to the	04:29PM
5	Court's questions. Judge Manibusan asked him, "did you	04:29PM
6	understand the charges against you in the information?"	04:29PM
7	Mr. Rios responded in the affirmative. Judge Manibusan	04:29PM
8	further inquired, do you -- "have you fully discussed the	04:29PM
9	charges in the information and the case in general with your	04:29PM
10	attorney?" And whether he was fully satisfied with his	04:29PM
11	attorney's representation and any advice given to him in his	04:29PM
12	case by his lawyer. Again, the defendant responded "yes" to	04:30PM
13	both of those questions. The defendant was present while	04:30PM
14	there were changes made in his plea agreement that were being	04:30PM
15	discussed and when it was made in the courtroom. After the	04:30PM
16	defendant initialed those changes, the Judge Manibusan	04:30PM
17	subsequently asked him, "did you have an opportunity to read	04:30PM
18	and discuss the plea agreement with your lawyer before you	04:30PM
19	signed it?" Again, the defendant said "yes." Not only did	04:30PM
20	the defendant represent to the judge that he understood the	04:30PM
21	charges against him, but he also told the Court that he	04:30PM
22	understood the terms of the plea agreement.	04:30PM
23	When asked if anyone has made any promise or	04:30PM
24	assurance that is not in the plea agreement, to persuade him	04:30PM
25	to accept it, defendant initially said "yes," but when further	04:30PM

1 examined and the Court re-asked the question, the defendant 04:30PM
2 then said "no." To ensure that the defendant understood the 04:30PM
3 question, the Court went back to the exact same question later 04:31PM
4 on and asked him "has anyone made any promises to you, 04:31PM
5 Mr. Rios, to plead guilty other than those which are in your 04:31PM
6 plea agreement?" And he said "no." Judge Manibusan also 04:31PM
7 asked him if he was pleading guilty of his own free will 04:31PM
8 because he is in fact guilty of the offenses and Mr. Rios said 04:31PM
9 "yes." Then the Court discussed the penalties he was facing, 04:31PM
10 the judge informed him he was facing no less than 20 years but 04:31PM
11 no more than life for the offense of conspiracy to distribute 04:31PM
12 methamphetamine. 04:31PM

13 The Court also informed him that he was facing a 04:31PM
14 maximum of 30 years imprisonment for the offense of attempted 04:31PM
15 possession of methamphetamine with intent to distribute, the 04:31PM
16 Court also thoroughly went over the other penalties he was 04:31PM
17 facing as a result of his guilty plea. After explaining to 04:31PM
18 the defendant the penalties for each count, the Court again 04:31PM
19 inquired if he understood his sentencing exposure and Mr. Rios 04:31PM
20 said "yes." The judge went -- moved on to the offenses he was 04:32PM
21 pleading guilty to and all of its essential elements. 04:32PM

22 The Court went over the elements of the offenses, 04:32PM
23 the defendant said he understood the elements. The Court 04:32PM
24 instructed the defendant to review certain paragraphs of the 04:32PM
25 plea agreement, which were the facts to support the elements 04:32PM

1 and Mr. -- and then Mr. Trapp then spoke up and said that he 04:32PM
 2 met with his client and that they went over the original plea 04:32PM
 3 agreement and that the defendant also understood the charge -- 04:32PM
 4 changes made to the plea agreement at the hearing and they 04:32PM
 5 went over every single one of those sentences and every single 04:32PM
 6 fact contained therein. The Court cites to the transcript of 04:32PM
 7 this proceeding. Mr. Trapp then told the defendant to tell 04:32PM
 8 the judge if he had read the plea agreement and if he was 04:32PM
 9 satisfied with it. Defendant said "yes," he read it and the 04:32PM
 10 Court inquired further and asked if those facts were true and 04:33PM
 11 accurate. And the defendant answered "yes." The evidence 04:33PM
 12 does not support defendant's allegations that his guilty plea 04:33PM
 13 was not knowingly and voluntarily given, that he did not 04:33PM
 14 receive adequate assistance in reviewing his plea agreement or 04:33PM
 15 that he did not have an appreciation of the charges and 04:33PM
 16 penalties against him. The change of plea transcript shows 04:33PM
 17 that he did. 04:33PM

18 The Court notes the solemn declarations in open 04:33PM
 19 Court carries strong presumption of variety and a district 04:33PM
 20 court cannot be expected to accurately assess whether a plea 04:33PM
 21 is voluntary or knowing unless the defendant can't really 04:33PM
 22 convey to the Court what he knows. I cite to *U.S. v.* 04:33PM
 23 *Mayweather*, (9th Circuit, 2010) and *US v. Garcia*, (9th 04:33PM
 24 Circuit, 2005). The Court also finds there's no gross 04:33PM
 25 misinterpretation by Counsel as to the sentencing exposure 04:33PM

1 that Mr. Rios will be facing. Defendant, Mr. Rios, says in 04:34PM
 2 his motion that his former Counsel, Howard Trapp, told him he 04:34PM
 3 would get out of jail, but defendant's responses to the guilty 04:34PM
 4 plea colloquy contradicts this assertion made on the eve of 04:34PM
 5 defendant's sentencing. 04:34PM

6 Defendant told the Court at the change of plea 04:34PM
 7 hearing that there were no other promises made to him outside 04:34PM
 8 of the plea agreement and this is also supported by 04:34PM
 9 Mr. Trapp's declaration where he states that defendant was 04:34PM
 10 advised on several occasions that he was facing life in 04:34PM
 11 prison. 04:34PM

12 Defendant also alleges that he never saw Trapp 04:34PM
 13 after the plea agreement despite calling him numerous times to 04:34PM
 14 see him. Court notes ECF 69. This is contradicted by 04:34PM
 15 credible evidence put on by the prosecutor at the evidentiary 04:34PM
 16 hearing on November 15, 2018. At that hearing, task force 04:34PM
 17 Jeremiah Cruz testified that after the guilty plea hearing, 04:34PM
 18 there were five briefings with the defendant, and at one of 04:35PM
 19 those briefings, that Trapp was present with defendant and for 04:35PM
 20 the rest of those briefings, an investigator from Trapp's law 04:35PM
 21 firm was present at all times. 04:35PM

22 Mr. Rios also alleges that Trapp did not tell 04:35PM
 23 defendant what was in the plea agreement and what it meant and 04:35PM
 24 that he did not go over the entire plea agreement with him. 04:35PM
 25 The Court looked at ECF 69. This is in sharp contrast with 04:35PM

1 what defendant told the Court at the change of plea hearing 04:35PM
 2 when he was under oath. Mr. Rios told the judge that he 04:35PM
 3 understood the terms of the plea agreement, he fully discussed 04:35PM
 4 the charges with Mr. Trapp, and he was fully satisfied, he was 04:35PM
 5 fully satisfied with Mr. Trapp's representation and advice 04:35PM
 6 given to it him. 04:35PM

7 When the plea agreement was amended at the change 04:35PM
 8 of plea hearing, the judge asked if he had an opportunity to 04:35PM
 9 read and discuss the plea agreement with Mr. Trapp and 04:35PM
 10 Mr. Rios said "yes." Mr. Trapp admits that he did not -- that 04:35PM
 11 defendant was not provided with discovery documents because 04:36PM
 12 much of the hard evidence against defendant were the recorded 04:36PM
 13 person telephone calls which defendant made to a co-defendant 04:36PM
 14 from the federal detention facility. Mr. Trapp's declaration 04:36PM
 15 at 751 states along with defendant's representation to the 04:36PM
 16 Court at the change of plea hearing, that he was satisfied 04:36PM
 17 with Trapp's representation of him and did not support 04:36PM
 18 defendant's allegation that his guilty plea was not knowing 04:36PM
 19 and voluntary. 04:36PM

20 So based on all of this, the Court finds that 04:36PM
 21 defendant did not meet his burden of showing that there is a 04:36PM
 22 fair and just reason to withdraw his guilty plea. So the 04:36PM
 23 Court denies the defendant's motion to withdraw his guilty 04:36PM
 24 plea and set this matter for sentencing. Let's do that right 04:36PM
 25 now. Let's set that. Let's get a date. Are you guys ready 04:36PM

UNITED STATES DISTRICT COURT

District of Guam

UNITED STATES OF AMERICA

v.

Vincent Raymond Rios

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:16-cr-00039-001

USM Number: 05262-093

William L. Gavras, Court Appointed Counsel

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 - 4 of an Information

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC §§ 846 and			
841(a)(1) & (b)(1)(A)(viii)	Conspiracy to Distribute Methamphetamine see attached sheet	11/16/2016	1

The defendant is sentenced as provided in pages 2 through 9 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) 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.

6/18/2020

Date of Imposition of Judgment



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Jun 19, 2020

DEFENDANT: Vincent Raymond Rios
CASE NUMBER: 1:16-cr-00039-001

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC §§ 846 and 841(a)(1) & (b)(1)(C)	Attempted Possession of Methamphetamine with Intent to Distribute	11/17/2016	2
18 USC § 1957	Engaging in Monetary Transactions with Proceeds of Specified Unlawful Activity	11/17/2016	3
18 USC § 1957	Engaging in Monetary Transactions with Proceeds of Specified Unlawful Activity	11/17/2016	4

DEFENDANT: Vincent Raymond Rios
CASE NUMBER: 1:16-cr-00039-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Count 1 - 27 Years, Count 2 - 20 Years, Count 3 - 10 Years, Count 4 - 10 Years, all counts to run concurrent, with credit for time served.

The court makes the following recommendations to the Bureau of Prisons:
Defendant participate in the 500 hour intensive drug treatment program.
Defendant be placed in a facility in Portland, Oregon, or close thereto.
Defendant participate in all available vocational and educational programs.

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

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SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Count 1 - 5 Years
Count 2 - 3 Years
Count 3 - 3 Years
Count 4 - 3 Years

All to run concurrently with each other.

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 the location where 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)*

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

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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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

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ADDITIONAL SUPERVISED RELEASE TERMS

1. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days after release from imprisonment and to two or more drug tests thereafter not to exceed 8 drug tests per month. You must not attempt to obstruct or tamper with the testing methods.
2. You must participate in a substance abuse treatment program approved by the U.S. Probation Office. You must also make co-payment for the program at a rate to be determined by the U.S. Probation Office.
3. You must refrain from the use of all alcoholic beverages and be subjected to alcohol testing.
4. You must perform 50 hours of community service, in lieu of a fine, and at the direction of the U.S. Probation Office. The community service will be suspended if you are gainfully employed full-time.

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CRIMINAL MONETARY PENALTIES

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

<u>TOTALS</u>	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$ 400.00	\$	\$	\$	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	

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:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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 payment of \$ 400.00 due immediately, balance due
 not later than _____, or
 in accordance with 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 the period of 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

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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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:
see attached

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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ADDITIONAL FORFEITED PROPERTY

- a. One 2014 Toyota Tundra 4WD CMAX SR5, Guam license no. #MZ2281, Vehicle Identification Number (VIN) 5TFDY5F16EX403387;
- b. One 2016 Toyota 4Runner, Guam license no. SJ3484, VIN No. JTEZU5JR1G5113678;
- c. One 2014 Harley-Davidson VNS, Guam license no. M3631, VIN No. 1HD1HHH12EC806726;
- d. Apusento Gardens Condominium, Unit No. H-310. Lot Number 3381-9-New, Municipality of Ordot-Chalan Pago, Guam, Estate Number 62734, Suburban, as said Lot is described in that consolidation of Lots 3381-1 New and 3381-9New, as shown on Drawing Number L-1048, as L.M. check Number 494 FY89, dated 19 August 89 and recorded on 16 January 90 under Instrument No. 428353 at Land Management; and
- e. Gloria Circle, Dededo, Guam. Lot Number 3, Block No. 6, Dededo, Guam, Estate No. 184, 184, Urban and said lot is marked and designated on Map Drawing No. P-203, dated 7/31/1947 and recorded on 5/4/1998 under Miscellaneous Instrument No. 19, in the Department of Land Management, Government of Guam.