UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4081

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BROCK BRIAN BEEMAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Roderick Charles Young, District Judge. (2:20-cr-00056-RCY-DEM-1)

Submitted: June 29, 2023 Decided: July 12, 2023

Before KING and AGEE, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed in part, dismissed in part by unpublished per curiam opinion.

ON BRIEF: William J. Dinkin, WILLIAM J. DINKIN, PLC, Richmond, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Elizabeth M. Yusi, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brock Brian Beeman appeals his conviction and 60-month sentence imposed pursuant to his guilty plea to interstate communication with intent to injure. On appeal, Beeman challenges the denial of his motion to withdraw his guilty plea and asserts that the Government violated Fed. R. Crim. P. 32 at sentencing. The Government has filed a motion to dismiss on the basis of Beeman's waiver in his plea agreement. We grant the motion in part and dismiss Beeman's appeal from his sentence. We affirm his conviction.

We review de novo the validity of an appeal waiver and "will enforce the waiver if it is valid and the issue appealed is within the scope of the waiver." *United States v. Adams*, 814 F.3d 178, 182 (4th Cir. 2016). "An appellate waiver is valid if the defendant's agreement to the waiver was knowing and intelligent." *United States v. Thornsbury*, 670 F.3d 532, 537 (4th Cir. 2012). "Generally, . . . if a district court questions a defendant regarding the waiver of appellate rights during the Rule 11 colloquy and the record indicates that the defendant understood the full significance of the waiver, the waiver is valid." *United States v. McCoy*, 895 F.3d 358, 362 (4th Cir. 2018) (internal quotation marks omitted). "[T]he issue ultimately is evaluated by reference to the totality of the circumstances," considering "the particular facts and circumstances surrounding th[e] case, including the background, experience, and conduct of the accused." *United States v. Blick*, 408 F.3d 162, 169 (4th Cir. 2005) (internal quotation marks omitted).

Beeman asserts that his mental health conditions and low intelligence interfered with his ability to enter a knowing and voluntary waiver of his right to appeal. However, at his plea hearing, Beeman admitted that he discussed the plea agreement with his counsel

and voluntarily signed it. The court specifically advised Beeman regarding the appeal waiver, and Beeman testified that he understood it. Beeman testified that he was a high school graduate, could read and write, was not on medication, could understand the proceedings, and was able to communicate with his attorney. Moreover, the appeal waiver's terms were clear and unambiguous. Beeman does not make any argument that, even if the plea agreement as a whole was found to be knowing and voluntary, the waiver itself was still invalid. Thus, unless Beeman's plea was unknowing or involuntary, the appeal waiver is valid and enforceable as to matters within its scope.

The language of Beeman's appeal waiver is broad, generally encompassing any challenge to his convictions and any challenge, on any ground, to a sentence within the statutory maximum. The waiver expressly exempts only ineffective assistance of counsel claims determined to be cognizable on direct appeal. However, even a valid waiver will not foreclose appellate review of a criminal judgment "on certain limited grounds." *McCoy*, 895 F.3d at 363 (internal quotation marks omitted). "An appeal waiver will not bar appellate review where a plea-withdrawal motion incorporates a *colorable* claim that the plea agreement itself—and hence the waiver of appeal rights that it contains—is tainted by constitutional error." *United States v. Cohen*, 888 F.3d 667, 683 (4th Cir. 2018) (internal quotation marks omitted).

We find that Beeman's claim that the district court did not appropriately consider his low intelligence and mental health conditions in finding that his plea was knowing and voluntary falls within the compass of these narrow exceptions. While the challenges Beeman raises to the plea-withdrawal proceedings do not rely on claims of ineffective

assistance of counsel,[1] his assertions that he was not able to understand the proceedings or appropriately communicate with counsel, if found to be true, would call into question the knowing and voluntary nature of the plea. Accordingly, we deny the motion to dismiss with regard to Beeman's challenge to the denial of his motion to withdraw his plea, and we consider the claim on the merits.

We review for abuse of discretion the denial of a motion to withdraw a guilty plea. *United States v. Nicholson*, 676 F.3d 376, 383 (4th Cir. 2012). "A defendant has no absolute right to withdraw a guilty plea." *Id.* at 383-84. To withdraw a guilty plea prior to sentencing, a defendant must "show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). "The defendant bears the burden of demonstrating that withdrawal should be granted." *United States v. Thompson-Riviere*, 561 F.3d 345, 348 (4th Cir. 2009) (alteration and internal quotation marks omitted). Beeman argues that the district court erred in denying his motion to withdraw his guilty plea because it failed to consider that the information at the plea hearing was not simplified for him in accordance with the Bureau of Prison's (BOP) recommendations.[2]

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[1] In his brief on appeal, Beeman challenges only the district court's consideration of his motion to withdraw his plea, which Beeman litigated pro se. Beeman does not explicitly challenge the district court's findings at the Rule 11 hearing where Beeman was represented by counsel, presumably because the findings were made prior to the competency evaluation that documented Beeman's low intelligence and history of mental health issues.

[2] After Beeman's guilty plea, the BOP conducted a competency examination and found that Beeman was competent and malingering. However, the BOP noted that, due to certain limitations, Beeman's comprehension of legal information would benefit from a simplified presentation and frequent breaks.

In deciding whether to grant a motion to withdraw a guilty plea, the district court typically considers the following six factors announced in *United States v. Moore,* 931 F.2d 245 (4th Cir. 1991) (the "*Moore* factors"):

> (1) whether the defendant has offered credible evidence that his plea was not knowing or not voluntary; (2) whether the defendant has credibly asserted his legal innocence; (3) whether there has been a delay between the entering of the plea and the filing of the motion to withdraw the plea; (4) whether the defendant had the close assistance of competent counsel; (5) whether withdrawal will cause prejudice to the government; and (6) whether it will inconvenience the court and waste judicial resources.

Nicholson, 676 F.3d at 384 (citing *Moore*).

After the BOP's examination and especially considering its finding of malingering, we find that the district court was not required to void the plea and hold a new plea hearing with simplified instructions. The record provides no support for the conclusion that Beeman was unable to understand the consequences of his plea absent further simplification. First and foremost, Beeman affirmed at his plea hearing that his plea was voluntary and free of improper outside influence and that he understood the proceedings. Critically, such declarations "carry a strong presumption of verity." *United States v. Lemaster*, 403 F.3d 216, 221 (4th Cir. 2005) (internal quotation marks omitted).

Second, the BOP did not conclude that Beeman could not understand his plea absent simplification, and in fact, its finding of competency would undermine such an argument. Third, Beeman made rational pro se arguments following his plea, engaged with counsel and the court at the plea colloquy, responded appropriately, and appeared oriented and mentally present in court. Fourth, Beeman does not specify on appeal which instructions or information were too complex to understand. Finally, the remaining *Moore* factors

weighed heavily against permitting withdrawal of the plea, and Beeman does not address any other factors on appeal. Accordingly, the district court did not abuse its discretion in denying Beeman's motion to withdraw his guilty plea. As such, his plea and the waiver within are valid and enforceable.

We find that Beeman's remaining appellate issues invoking Rule 32 fall within the appeal waiver's scope. As such, we find that Beeman's appellate waiver bars his challenges to his sentence, and we thus grant the motion to dismiss with regard to these claims. We deny the remainder of the motion and affirm Beeman's conviction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART,
DISMISSED IN PART

And I believe that is part of the statement of facts. I can't find it off the top, but I know that it is referenced in the PSR as well.

THE COURT: Okay.

MR. STOKER: As well as other victims, Judge. There were other victims in separate calls that are referenced in the PSR.

THE COURT: Okay.

MR. STOKER: Paragraph 9 references the threat to her child, to the Victim A.M.'s child.

THE COURT: Okay.

MR. STOKER: And that would be my argument to those two points, Judge, just off the cuff here.

THE COURT: Okay. Thank you very much.

All right, Mr. Beeman. Any response? You don't have to, but any response?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. Hold on one second. All right. I'm going to take a brief recess. I'll be right back.

(Recess from 10:41 a.m. to 10:49 a.m.)

THE COURT: All right. So, again, the Court at the conclusion of Mr. Beeman's guilty plea filed or endorsed a sentencing procedures order, and that order set forth the procedure for filing objections to the findings in the presentence report. I also discussed that with Mr. Beeman

during his guilty plea colloquy. Specifically, I informed Mr. Beeman that there could be an opportunity where he would review the presentence report, and he may see something that he objected to or thought was wrong, and in that instance, his lawyer -- at the time he had a lawyer -- was to discuss that objection with the United States and with the probation officer, and if all three of them agreed that that item was incorrect, then the item would be changed. I would be made aware of the change, and that would be the end of it. However, I also advised Mr. Beeman that there could be a situation where he sees something in the presentence report that he believes is incorrect, and that the government or the probation officer believes the item is correct. In that instance, what would happen is that they would -- Mr. Beeman would file a position with the Court identifying what he believes is incorrect in the presentence report and explaining why he believes it's incorrect. That would give the United States an opportunity to respond and explain to the Court why they believed that the item in the presentence report is correct. And then I explained to Mr. Beeman that at his sentencing hearing that I would then make a decision, either the item in the presentence report is correct and stays as is, or it's incorrect and it needs to be edited somehow.

Now today we're at the sentencing hearing, and

Mr. Beeman has raised two objections to the presentence report, but did not follow that procedure that I outlined both at his plea hearing and that's captured in the Sentencing Procedures Order, which I endorsed the day of his guilty plea and was filed as part of this case.

Nevertheless, the Court will take up and address the two objections raised by Mr. Beeman here at the ninth hour or at the eleventh hour, I should say.

With respect to the objection to two points for obstruction of justice, Mr. Beeman's objection is overruled. It's not overruled on the basis of the letter that has been given to the Court as Exhibit 1, which was a letter that's characterized by the government as a threat to the previous Assistant United States Attorney who was a part of this case, not that this letter can't be construed as a threat. I'm not passing judgment on that. What I am saying is that that's not included in the presentence report as a basis for the obstruction of justice. What is included in the presentence report is the finding of Mr. Beeman's treatment professionals who concluded that Mr. Beeman was not suffering from a mental health condition such that he couldn't understand and appreciate what was going on in court, and specifically concluded that Mr. Beeman was malingering.

Support for this position is by way of a Fourth

Circuit case entitled *United States of America versus Abdul Karim Bangura*, B-A-N-G-U-R-A, and that is found at 765 Federal Appendix 928. And in that instance the Court applied a two-point enhancement for obstruction of justice where the defendant in that case, Mr. Bangura, was referred for a mental evaluation, and the doctor in that case concluded that Mr. Bangura was in fact malingering. And based on that the Fourth Circuit said it was correct and proper to file a two-point enhancement for obstruction of justice.

And so based on the argument of counsel and the reasoning in that case which I have just cited, Mr. Beeman's objection to the obstruction enhancement, the two-point obstruction enhancement is overruled.

With respect to the enhancement, the two-point enhancement for the threat, which is outlined in the presentence report, and I need to get back to that, the two-point enhancement found at paragraph 26 for specific offense characteristics involving two or more threats, as the Assistant United States Attorney points out, in the statement of facts, which was signed by Mr. Beeman, it delineates that there were multiple threats involving a threat to a woman, a threat to her husband, and a threat to the woman's children. So that, when you add those up, involves more than two threats, and so a two-point

enhancement is proper pursuant to United States Sentencing Guideline 2A6.1(b)(2), and for that reason that objection to the presentence report is overruled.

Mr. Beeman, I think I asked you this. Were there any other objections, corrections, or additions to the presentence report?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay.

Mr. Stoker, I'll ask you, does the government have any additions, corrections, or objections to any of the information in the presentence report?

MR. STOKER: No, Your Honor.

THE COURT: All right. So based on my rulings, the probation officer has determined that Mr. Beeman has a total offense level of 16, and he has a Criminal History Category of VI, which yields an advisory guideline range of 46 to 57 months' imprisonment on Count 3.

Government, are the guidelines correctly calculated?

MR. STOKER: Yes, Your Honor.

THE COURT: All right.

Mr. Beeman, are the guidelines correctly calculated?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Anything else we need to address before we close in this case?

THE DEFENDANT: So what you're saying is when the defendant --

MR. DINKIN: I'm sorry, Judge.

THE COURT: That's all right.

THE DEFENDANT: So what you're saying, Your Honor, is when the defendant gets released, he's not allowed to play PlayStation?

THE COURT: We're not going to argue about it, Mr. Beeman. I've heard your objection. I've overruled it.

THE DEFENDANT: Okay.

THE COURT: That's going to be part of your conditions of supervised release.

THE DEFENDANT: Uh-huh. So, I mean --

THE COURT: Hold on. Mr. Beeman, you're going to get really close to contempt of court, so let's calm down a second.

Is there anything else we need to address before we close this case out?

THE DEFENDANT: Yes, Your Honor. One last thing I would like to address is --

THE COURT: Yes.

THE DEFENDANT: -- I thought there was going to be separate instance where we talk about restitution. If there

wasn't, the Court just ruled it automatically. So I would like to address that here today. I find that restitution should not be -- should not be imposed, because it's not compensable under statutory laws, and ultimately due to the victim downloading apps and security systems and software. I mean, the victim never sustained emotional -- I mean physical harm, like her medical bills.

THE COURT: Okay.

THE DEFENDANT: So I rule against restitution. And the fact of the matter is the defendant doesn't have two cents to his name. How is he going to pay it? So, I mean --

THE COURT: All right.

THE DEFENDANT: -- that's my objection to that.

THE COURT: All right.

Government, I'll let you respond to his objection to the restitution order.

MR. STOKER: Yes, Your Honor. As I outlined in my motion, restitution can be ordered under the statute that the Court cited, provided that it's reasonably related to the criminal acts of the defendant. The restitution is for specifically a home security system, an application that allows the victim to de-anonymize any anonymous callers, and an identity protection service. All of those things are directly related to the conduct of the defendant. I would

note that there were instances where the defendant called the victim, having cited her some very personal information such as previous addresses. So I would say that speaks to having her identity protected. He called her anonymously, so she got this application to de-anonymize. And then, of course, the home security system just to protect herself and her family due to the physical threats made by the defendant.

THE COURT: Right. So as you had detailed in your motion and you just summarized for the Court, the Court has the inherent authority or has the authority to impose restitution under the statutes that I not only recited orally, but are also contained in the order, and that restitution is inextricably intertwined with the instant offense, and so it is appropriate and proper.

And so for that reason, Mr. Beeman, your objection to that, which I am construing your comment as an objection to the restitution, your objection to that will be overruled.

All right. Anything else we need to take up before we conclude this case?

THE DEFENDANT: Yes, Your Honor, one last thing. The Courts ultimately recommend the defendant get mental health treatment in this case. I mean, the defendant wants to get mental health treatment, but due to the lack of