Appendix 1
Sixth Circuit Opinion Affirming District Court's Judgment (February 11, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Re: Case Nos. 23-5270/23-5436, *USA v. Curtis Miller*
Originating Case No. : 5:21-cr-00111-10

Dear Counsel,

The Court issued the enclosed opinion today in these cases.

Enclosed are the court's unpublished opinion and judgment, entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Sincerely yours,

s/Cathryn Lovely
Opinions Deputy

cc: Mr. Robert R. Carr

Enclosures

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION
File Name: 25a0079n.06

Nos. 23-5270/5436

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CURTIS DEWAYNE MILLER (23-5270); CRAIG DUPREE ROBERTSON (23-5436), Defendants-Appellants.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY OPINION

Before: CLAY, WHITE, and NALBANDIAN, Circuit Judges.

HELENE N. WHITE, Circuit Judge. Defendants-Appellants Curtis Dewayne Miller and Craig Dupree Robertson appeal the district court's denial of their motions to withdraw their guilty pleas. They also challenge various determinations made at sentencing, and Robertson raises a claim that counsel constructively denied him assistance during his sentencing. For the following reasons, we AFFIRM the district court in all respects.

I. Facts

In October 2021, a grand jury indicted Robertson and others on charges of conspiracy to distribute methamphetamine and fentanyl, possession with intent to distribute methamphetamine and fentanyl, conspiracy to commit money laundering, and other crimes. In June 2022, a superseding indictment added Miller to the drug-distribution and money-laundering conspiracy counts and also charged him with possession with intent to distribute. This indictment also included additional charges of possession with intent to distribute against Robertson. Robertson

pleaded not guilty to the charges, but two days before Miller's and Robertson's November 1, 2022, trial date, Robertson moved for rearraignment. On November 1, 2022, the district court engaged in a change-of-plea colloquy with Robertson, in which the court warned him that he faced a statutory maximum penalty of life imprisonment, and Robertson pleaded guilty (without a plea agreement) to all charges. On December 8, 2022, Robertson's counsel ordered a transcript of the November 1 proceedings.

On October 13, 2022, the district court denied Miller's motion to continue the November 1, 2022, trial. Miller's attorney then messaged Miller to say that although Miller should be able to waive his right to a speedy trial, "this is the one judge in America who will [get in Miller's way in doing so]." R. 421-1, PID 1911. As trial approached, Miller's counsel advised him that given the charges and evidence, counsel believed that if Miller "sen[t] this to a jury," he was "really going to regret it." *Id.* at 1915. By the time the trial began, the government had dismissed the money-laundering conspiracy and possession-with-intent-to-distribute charges against Miller. Because Robertson and other coconspirators had pleaded guilty by this time, Miller was the only remaining defendant.

On November 3, 2022, after three days of trial, the jury deadlocked, and the district court declared a mistrial. The district court granted the government's motion to reinstate the money-laundering-conspiracy charge, and Miller's second trial began on December 13, 2022. After the government concluded its opening statement, it called Sabrina Hager, the lead federal agent in the investigation, as a witness. Agent Hager testified that Robertson was the "head of the local [drug-trafficking] organization" and that Miller, who is Robertson's cousin, was Robertson's "right hand." R. 463, PID 2244–45. According to Agent Hager, Miller's responsibilities included acting as a "drug courier" and "stash house guardian," and he "assisted in money laundering as well." *Id.*

at 2245. Greg Wilson—another cousin of Robertson's, and Miller's brother—resided in California and acted as the organization's "supplier." *Id.* at 2245–46. Drugs arrived from California by automobile or mail. Brenda Nicole Fugate operated as the group's "primary distributor," and Miller delivered drugs to her for distribution. *Id.* at 2247, 2250. Through a network of subordinate dealers operating across several Kentucky counties, Fugate had the ability to distribute around twenty pounds of methamphetamine per week. In February 2021, Robertson directed Fugate to rent an apartment that the parties refer to as the Steeplechase apartment. Although the lease bore Fugate's name, Miller lived there from February to May 2021.

On December 14, the second day of the second trial, Miller pleaded guilty to the drug-distribution-conspiracy charge. However, Miller moved to withdraw his guilty plea by a letter dated January 11, 2023, but not filed until January 20, 2023.[1] Miller claimed that his attorney had "coerc[ed] [him] with impermissible pressure": first, by emphasizing "the fear of rec[ei]ving a life sentence if I continued with trial"; second, by claiming that the district court and Assistant U.S. Attorney "had taken out a personal v[e]ndetta against" Miller and "would continue to re-try [Miller] until" a jury convicted him; third, by "threaten[ing] and coerc[ing]" Miller's family members to beg him to plead guilty; and fourth, by "promis[ing] that [counsel] would not defend [Miller] or prepare for another trial," including by declining to object to certain aspects of the government's opening statement at Miller's second trial. R. 407, PID 1868–69. Miller requested new counsel and a hearing to withdraw his guilty plea.

[1] Within the body of the letter, Miller indicates that he may have in fact written it on January 13, 2023. *See* R. 407, PID 1868 (claiming that Miller's attorney had not filed the motion to withdraw "to this date of 01-13-23").

By January 12, 2023, the district court had already granted Miller's counsel permission to withdraw from the case. In a March 2023 memorandum opinion and order, the district court, after considering the applicable factors, rejected Miller's request to withdraw his guilty plea because Miller's counsel had not "exert[ed] undue influence or coercion" on Miller and because "Miller's motion [was] based on a tactical calculation" rather than a "fair and just reason." R. 431, PID 2005.

The district court sentenced Miller to 320 months' incarceration on March 27, 2023. Several aspects of the sentencing are at issue on appeal. First, although Miller's attorney argued that the district court should attribute only 4.5 pounds of methamphetamine to Miller, the district court instead found 39.5 pounds to be the "bare minimum number that should be attributed to" him. R. 493, PID 2585. This greater drug quantity increased Miller's offense level by four. Second, the district court applied a drug-house enhancement based on Miller's residence in the Steeplechase apartment; this determination added two points to Miller's offense level. Third, Miller requested a two-point minor-participant reduction based on, in his view, his relatively limited role in the drug-trafficking conspiracy. The district court declined to apply the reduction, finding that Miller's participation in the scheme indicated that he "understood the scope and the structure of the criminal activity" and acted as the "right-hand man of the main participant," Robertson. *Id.* at 2589.

Shortly before Miller's sentencing, Robertson advised the district court in a letter filed on March 16, 2023, that he "fe[lt] as though [his] lawyer ha[d] manipulated [him] into signing a plea agreement that" did not "represent[] [him] best." R. 436, PID 2015. Robertson claimed that he "felt scared at the time of [his] rearrai[gn]ment and made agreements [he] wish[ed]" he had not. *Id.* He therefore requested a change of counsel. (He did not, at that time, expressly mention withdrawing his guilty plea.) The district court addressed this issue at a hearing on March 27,

2023, and in an ex parte discussion, Robertson stated that although he did not claim complete innocence, he also denied a lot of the charges. R. 500, PID 2696–97; *see also id.* at 2697–98 (acknowledging that he was guilty of conspiracy but expressing concern about conduct of co-defendants in which he played no part). Robertson also reiterated that his counsel advised him to plead guilty to avoid a life sentence, but upon seeing the presentence report, he believed that he was going to get a life sentence anyway. At the conclusion of this hearing, the district court agreed to appoint Robertson new counsel.

In a letter filed on April 25, 2023, Robertson expressly sought to withdraw his guilty plea on the ground that his attorney advised him that he "would be given leniency" if he pleaded guilty, "but that does not seem to be the case." R. 467, PID 2374. Robertson also claimed that the fear, stress, and anxiety caused by a potential life sentence and its impact on his family members prevented him from "fully grasp[ing] the severity of" pleading guilty. *Id.* The district court held a hearing on Robertson's motion to withdraw his guilty plea on May 1, 2023. The district court questioned Robertson's request by highlighting Robertson's prior admission of guilt and asking, "So your position now is you lied to me at the time you entered your guilty plea?" R. 504, PID 2876. Robertson, referencing the evidence introduced at Miller's first trial, reiterated that "that wasn't [Robertson's] stuff, the evidence stuff, the meth." *Id.* at 2877. The district court then read the transcript of Robertson's change-of-plea hearing and again asked Robertson whether his admissions were "all a lie[.]" *Id.* at 2884. Robertson reiterated that his attorney had pressured him and that Robertson wanted to withdraw his guilty plea "the day after" he had entered it. *Id.* at 2894. The district court denied Robertson's motion to withdraw his guilty plea after considering the relevant factors and concluding that none supported Robertson's request.

The district court ultimately sentenced Robertson to 490 months' incarceration to be served consecutively to Robertson's sentence in an Indiana criminal case. At sentencing, the district court gathered information about the Indiana case in part by questioning Patricia Morgan, who was Robertson's girlfriend and whose name Robertson had used to send narcotics through the mail, leading to the Indiana charges. The government, in support of its requested sentence, cited Robertson's criminal history, including that the Indiana case was pending when Robertson engaged in the instant conspiracies. The district court then reviewed the applicable factors under 18 U.S.C. § 3553(a), highlighting Robertson's significant criminal history and his role "at the top of the pyramid." R. 505, PID 2847–48. The district court did not, however, expressly tie any of these considerations to its determination that Robertson's sentence should "run consecutive[ly] to any additional penalty that may be imposed in the case from Indiana." *Id.* at 2851; *see also id.* at 2854 (again noting that the sentence would be consecutive without further explanation).

After discussing Robertson's sentence, the district court "ask[ed] counsel to state any objections that they may have . . . to the sentence that has been announced," including whether "either party would like the Court to make additional findings to support any of the matters that have been announced." *Id.* at 2857. Neither the government nor Robertson's attorney lodged any further objections or requested additional findings. *Id.* at 2857–58. Robertson, after being advised of his appellate rights, "object[ed] to the sentence" without further explanation and "object[ed] to ineffective assistance of counsel" on the bases that they did not "see eye to eye," and that Robertson had whispered statements to counsel that counsel did not state on the record. *Id.* at 2859. The district court determined that it was not necessary to rule on those objections at that time.

II. Analysis

A. Withdrawal of Robertson's and Miller's Guilty Pleas

We review the denial of a motion to withdraw a guilty plea for abuse of discretion. *United States v. Bashara*, 27 F.3d 1174, 1180 (6th Cir. 1994), *superseded on other grounds*, U.S. Sent'g Guidelines Manual § 3B1.1 cmt. n.2 (U.S. Sent'g Comm'n 1993), *as recognized in United States v. Caseslorente*, 220 F.3d 727 (6th Cir. 2000). As applicable here, Rule 11 of the Federal Rules of Criminal Procedure provides that once a district court accepts a defendant's guilty plea, the defendant may withdraw it before sentencing if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). The defendant has the burden of establishing a fair and just reason. *United States v. Triplett*, 828 F.2d 1195, 1197 (6th Cir. 1987) (gathering cases).

We have explained that "the aim of the rule is to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant 'to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes he made a bad choice in pleading guilty.'" *Bashara*, 27 F.3d at 1181 (quoting *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) (per curiam)). To assess whether a defendant has established a "fair and just reason" or is instead "mak[ing] a tactical decision," courts consider the following factors:

> (1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

Id. These factors "are a general, non-exclusive list and no one factor is controlling." *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996) (per curiam); *see also United States v. Haygood*, 549 F.3d 1049, 1052 (6th Cir. 2008) ("The relevance of each factor will vary according to the 'circumstances surrounding the original entrance of the plea as well as the motion to withdraw.'" (quoting *Triplett*, 828 F.2d at 1197)).

1. Robertson

The district court did not abuse its discretion when it considered the *Bashara* factors and concluded that Robertson failed to establish a fair and just reason to withdraw his guilty plea. First, the district court held that Robertson had not sought to withdraw his guilty plea until "around the middle of March [2023]"—or 4.5 months after the November 1, 2022, guilty plea—when Robertson's counsel stated that a conflict with Robertson required counsel to withdraw from the case. R. 504, PID 2902. The district court found this to be "a significant period of time" that "elapsed without any indication of dissatisfaction either with counsel or that the defendant had changed his mind." *Id.* at 2902–03. The district court concluded that the circulation of the presentence report (and its guidelines range of life imprisonment) "may have been the precipitating factor that then led to [Robertson's mid-March] letter." *Id.* at 2903.

Second, the district court found that it had "not been given a straight answer that [it] could accept as to if there was a valid reason for requesting to withdraw earlier, more close in time to the time the plea was entered in the case." *Id.* Third, the district court acknowledged that Robertson at times "asserted innocence in the case," but at his change-of-plea hearing, Robertson also "freely and voluntarily acknowledged his guilt to each of th[e] counts" with which he was charged. *Id.* at 2903–04. Fourth, the district court noted that Robertson "entered a plea on the morning of trial after a significant amount of information, discovery had been provided, including plea agreements

in the case from co-defendants. And at that time, it would have been known to the defendant and his counsel that there were several co-defendants that were lined up to testify in the case against him." *Id.* at 2904. Fifth, the district court found that Robertson was "competent and able to understand the questions" when entering his guilty plea, had "some college education," and had "work experience." *Id.* Sixth, based on Robertson's criminal record, the district court found that he had "significant experience" with the criminal justice system. *Id.* at 2905. Seventh, the district court found that even if the foregoing factors favored permitting Robertson to withdraw his guilty plea, the "significant prejudice" to the government from having to try the case again would outweigh those considerations. *Id.*; *see also id.* at 2874–75 (discussing prejudice).

Robertson claims that the district court erred in several ways. First, he argues that the district court impermissibly evaluated Robertson's guilt when it referred to the strength of the government's potential case against him. We do not share Robertson's interpretation of the district court's comments. *See* R. 504, PID 2875–76, 2899. The court referenced the "mountain of evidence presented against" Robertson in Miller's trial only after Robertson stated, "I always told [counsel] that I wasn't there, that wasn't my stuff, like, it wasn't mine." *Id.* at 2875. The district court tied this observation to the third *Bashara* factor—whether the defendant has asserted or maintained his innocence—by contrasting Robertson's recent assertions of innocence with his admissions of guilt at his change-of-plea hearing. *Id.* at 2875–83. Within this context, the district court was simply pressing Robertson to explain the discrepancy between his initial sworn statements in tendering his guilty plea and his more recent claim of innocence. Similarly, when the district court stated that "there was a lot of [direct and circumstantial evidence] . . . presented during Mr. Miller's trial," the court did so to clear up Robertson's apparent mistaken belief that, in the court's words, Robertson "couldn't be convicted of some of these offenses" unless he was

"caught red-handed with drugs in [his] possession." *Id.* at 2899. Again, context makes clear that the district court did not decline to permit Robertson to withdraw his guilty plea because the court itself impermissibly concluded that Robertson was guilty.

Second, Robertson argues that rather than focusing on the *Bashara* factors, the district court was more interested in "browbeat[ing]" Robertson regarding his prior admissions of guilt and warning Robertson that his seeking to withdraw his guilty plea could cause him to lose the two-point reduction for acceptance of responsibility. Robertson Br. 12–13. The district court indeed challenged Robertson regarding whether he "lied" when he acknowledged guilt as to all charges at his change-of-plea hearing. R. 504, PID 2876, 2883–84. However, context indicates that the court was simply attempting to elicit a final, informed answer from Robertson regarding his guilt or innocence—an inquiry that bears on several *Bashara* factors, including whether Robertson consistently maintained his innocence, as well as the circumstances underlying the entry of the guilty plea. Contrary to Robertson's assertion that this issue was "a centerpiece of [the district court's] inquiry," Robertson Br. 12, the district court ultimately reviewed all *Bashara* factors and did not place undue weight on Robertson's vacillation.

Nor do we find any basis to fault the district court for advising Robertson of the potential consequences of his motion to withdraw his guilty plea. The record indicates that Robertson was not afraid to reject the advice of counsel and make requests to the district court directly (rather than through counsel). Robertson acknowledged that the district court had answered "every question [and] every letter" of his and that he "appreciate[d] that." R. 504, PID 2896. It was therefore not inappropriate for the district court to inform Robertson of his options and their consequences—as it had done throughout the case—especially when the district court's warning was accurate. *Cf. United States v. Wallace*, 832 F. App'x 949, 952–53 (6th Cir. 2020) (stating that

because a district court may decline an acceptance-of-responsibility reduction where it determines that a defendant's objection is a "false denial or frivolous," it was not abuse of discretion for the court to accurately warn the defendant of this possibility, nor did it chill defense counsel's representation of the defendant).[2]

Third, Robertson challenges the district court's evaluation of the *Bashara* factors. Addressing the first factor—the amount of time that elapsed between the plea and the motion to withdraw it—Robertson argues that the district court incorrectly found the relevant delay to be the 4.5 months between Robertson's guilty plea on November 1, 2022, and the mid-March indications that Robertson was dissatisfied with his attorney and might want to withdraw his guilty plea. Robertson points to his statement at the May 2023 hearing that he "want[ed] to withdraw . . . [t]he day after [he] did it," but counsel "didn't let [him]." R. 504, PID 2894. For further support, Robertson points to the fact that on December 8, 2022, his attorney ordered a transcript of Robertson's change-of-plea hearing, which counsel allegedly would not have done unless Robertson and counsel discussed the plea shortly after the hearing on November 1, 2022.

But it was not an abuse of discretion for the district court to reject this claim. As the court reasoned, Robertson had "been writing to [the court] quite a bit in the case," *see, e.g.*, R. 151 (letter from Robertson requesting a new attorney); R. 153 (letter from Robertson requesting a bill of particulars), yet Robertson did not indicate that he wished to withdraw his guilty plea until mid-March, after he would have received the presentence report that recommended a guidelines range

[2] We reject Robertson's claim that the government failed to address the argument that the district court considered improper factors in its *Bashara* analysis and has therefore forfeited the issue. The government addressed the improper-factors argument, including the district court's consideration of the evidence against Robertson and his previous sworn admissions of guilt. *See* Gov't Br. 29–30.

of life, R. 504, PID 2901–03; *see United States v. Carpenter*, 554 F. App'x 477, 482 (6th Cir. 2014) (doubting that the defendant's counsel coerced him into pleading guilty where the "timing suggests that [the defendant] was disappointed with the recommended sentencing range and chose as a strategic matter to attempt to withdraw his guilty plea and take his chances at trial").[3] The district court did not abuse its discretion in finding that the 4.5-month delay favored denying Robertson's motion. *See United States v. Ellis*, 470 F.3d 275, 281–82 (6th Cir. 2006) (gathering cases approving denials for delays of as little as five weeks); *cf. United States v. Durham*, 178 F.3d 796, 798–99 (6th Cir. 1999) (77-day delay was "[t]he strongest factor supporting the district court's denial of [the defendant's] motion").

Robertson's willingness to contact the district court also cuts against him for purposes of the second factor, the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings. As the district court found, Robertson failed to provide any explanation for why he waited until mid-March to send a letter to the district court. *Cf. Carpenter*, 554 F. App'x at 482 (rejecting the defendant's argument that changing counsel delayed his motion, because "if [the defendant] really wished to withdraw his guilty plea, he could have expressed his intention to the court").

Nor did the district court abuse its discretion in concluding that the remaining *Bashara* factors favor denying Robertson's motion. Regarding the third factor—whether the defendant has

[3] Robertson replies that there is no specific evidence in the record indicating that he reviewed the presentence report before moving to withdraw his guilty plea, but the district court did not abuse its discretion by considering the "totality of the circumstances pertaining to the timing of [the defendant's] motion." *Carpenter*, 554 F. App'x at 482. Nor are we persuaded by Robertson's claim that the district court did not consider that the delay may have been caused by Robertson's counsel's international travel for "most of February." Robertson Reply 2. As the district court emphasized, Robertson was not shy about reaching out to the court directly.

asserted or maintained his innocence—Robertson argues that because he "did protest his innocence at several points in the proceedings[,] . . . this factor also weighs in" his favor. Robertson Br. 14–15. Such a finding would be inconsistent with our case law. Robertson accepted complete responsibility at the change-of-plea hearing, asserted partial innocence and partial guilt at the ex parte hearing, and finally asserted total innocence at sentencing. That vacillation is a far cry from the "vigorous and repeated protestations of innocence" that "may support the decision to allow withdrawal of a guilty plea." *Carpenter*, 554 F. App'x at 482 (quoting *United States v. Baez*, 87 F.3d 805, 809 (6th Cir. 1996)). Instead, "claims of innocence are not convincing when the defendant has vacillated over time." *Id.*; *see also United States v. Martin*, 668 F.3d 787, 796 (6th Cir. 2012) ("In seeking withdrawal of the plea, [the defendant's] only concern seemed to be with the length of the sentence and not the adjudication of guilt. Statements of guilt under oath at a plea hearing support the district judge's decision not to permit withdrawal.").

As to the circumstances underlying the entry of the guilty plea, Robertson claims that on receiving certain pretrial discovery from the government, his counsel advised him to plead guilty to avoid a life sentence. Robertson argues that although he has said that he would not have pleaded guilty but for this guidance, "[c]ounsel was never asked what advice he gave Robertson, or the circumstances surrounding that weekend" before trial. Robertson Br. 15. The government, in turn, points its finger at Robertson, who bears the burden of establishing grounds for withdrawing his guilty plea and could have offered counsel's testimony. The evidence that we *do* have before us indicates that Robertson understood the charges, appreciated the attendant penalties (including a potential life sentence), and entered his guilty plea without any promises or threats affecting his decision. *See* R. 379, PID 1793–94, 1798.

Robertson acknowledges that the sixth factor—the defendant's prior experience with the criminal justice system—supports denying his motion.

Given that we affirm the district court's determinations regarding the first six *Bashara* factors, we need not consider the seventh—potential prejudice to the government—because "the government is not required to establish prejudice that would result from a plea withdrawal, unless and until the defendant advances and establishes a fair and just reason for allowing the withdrawal." *United States v. Spencer*, 836 F.2d 236, 240 (6th Cir. 1987); *accord, e.g.*, *Alexander*, 948 F.2d at 1004; *Triplett*, 828 F.2d at 1198. That said, a district court may nonetheless "consider potential prejudice in exercising its discretion in considering the motion," *Spencer*, 836 F.2d at 240, and the district court did not abuse its discretion in determining that this factor also favored denying Robertson's motion. In *Martin*, the defendant pleaded guilty on the second day of trial but sought to withdraw that guilty plea three months later at sentencing. 668 F.3d at 790–91. We held that when a defendant pleads guilty after "the government was prepared for (and had started) what was shaping up to be a lengthy trial[,] . . . the amount of time and effort it would take to restart a trial and the effect of delay on individuals' memories would be prejudicial." *Id.* at 797.[4] Further, we have previously noted that where codefendants were prepared to testify against a defendant, and that defendant seeks to withdraw his guilty plea after the district court sentenced the cooperating codefendants, the government suffers prejudice from the possibility that such

[4] Robertson cites *Martin*'s reference to a second trial starting "years later" as a point of distinction from this case, where Robertson requested to withdraw his plea 4.5 months later and a second trial would (in the best case) begin some short time thereafter. Robertson Br. 16. But the *Martin* defendant had similarly sought to withdraw his guilty plea three months after entering it, yet we stated on appeal that "the government would have to begin anew now *several years later* should he be allowed to withdraw." 668 F.3d at 789, 797 (emphasis added). Our use of "years later" makes clear that we did not consider solely the three months between the *Martin* defendant's guilty plea and the motion to withdraw it.

witnesses "would be less willing to cooperate in a future trial." *United States v. Mendoza-Almendarez*, 437 F. App'x 394, 399 (6th Cir. 2011); *United States v. Carson*, 32 F.4th 615, 625 (6th Cir. 2022) (considering that "the government 'might be hampered in its ability to bring back for testimony' the already-sentenced codefendants." (quoting *United States v. Carson*, No. 18-cr-204(2), 2021 WL 2581300, at *2 (S.D. Ohio June 23, 2021))). This factor therefore favors denying Robertson's motion.

In sum, the district court did not abuse its discretion when it denied Robertson's motion to withdraw his guilty plea.

2. Miller

Miller presents the fourth *Bashara* factor—the circumstances underlying the entry of the guilty plea—as the primary consideration that favors permitting him to withdraw his guilty plea. Miller argues that his counsel's statements to him, before and after the first trial, led Miller to believe "that the deck was stacked against him and that a plea was really his only option." Miller Br. 10. The district court discounted this claim on various bases. First, notwithstanding counsel's warnings before both trials, Miller had the confidence to reject that advice and proceed to trial both times. Second, the core of Miller's counsel's advice concerned the strength of the government's case and the risk that Miller could face life imprisonment if he proceeded to trial, and it was counsel's obligation to inform Miller of these risks. The district court further noted that although the statutory maximum of life imprisonment exceeded Miller's likely sentencing guidelines range, counsel's overestimation was not a basis to withdraw Miller's guilty plea under our case law. Third, at Miller's change-of-plea hearing, he affirmed under oath that no one had "in any way forced [him] to enter a guilty plea in the case." R. 424, PID 1949.

The district court did not abuse its discretion in finding that the circumstances surrounding Miller's guilty plea did not favor granting his motion. Miller claims that (1) after the district court denied Miller's motion to continue the trial, Miller's counsel told him that "this is the one judge in America who will [get in Miller's way]," R. 421-1, PID 1911; (2) Miller's counsel predicted that if Miller "sen[t] this to a jury," he was "really going to regret it," *id.* at 1915; and (3) as Miller's second trial approached, his counsel overemphasized the probability of receiving a life sentence for proceeding with another trial, stated that the district court and prosecution had a vendetta against Miller, had Miller's family members pressure him to plead guilty, and threatened not to defend Miller at the second trial, R. 407, PID 1868–69.

But as the district court noted, the weight of the comments made before the first trial is mitigated by the fact that Miller did not feel so coerced that he could not reject the advice and proceed to trial. The same is true of the second trial, but to a lesser extent, because Miller pleaded guilty on the second day of that trial and had received messages from counsel on the first day and the morning of the second. *See* R. 421-1, PID 1932–33. But as to both trials, "[c]ounsel must bring to bear his or her professional experience and judgment in advising the defendant during the course of a prosecution. The probability of conviction and the factors affecting sentencing are proper subjects of the attorney's advice." *United States v. Dumersier*, 19 F.3d 20 (6th Cir. 1994) (per curiam) (unpublished table decision) (internal citation omitted) (citing *Smith v. United States*, 265 F.2d 99, 100–01 (D.C. Cir. 1959)); *see also United States v. Juncal*, 245 F.3d 166, 172 (2d Cir. 2001) ("Nor does defense counsel's blunt rendering of an honest but negative assessment of appellant's chances at trial, combined with advice to enter the plea, constitute improper behavior or coercion that would suffice to invalidate a plea."); *United States v. Buckles*, 843 F.2d 469, 472 (11th Cir. 1988) ("A defendant cannot complain of coercion where his attorney, employing his

best professional judgment, recommends that the defendant plead guilty."); *United States v. Vargas*, 601 F. App'x 481, 482 (9th Cir. 2015) ("[A] frank assessment of [the defendant's] predicament does not amount to coercion," and, in fact, "trial counsel would have been derelict in his duty to [the defendant] had he not provided an honest opinion of [the defendant's] chances of success if he took his case to trial."). And although counsel indeed overestimated when he stated that "your guidelines will be 'life,'" R. 421-1, PID 1926, we have held that "the mere fact that an attorney incorrectly estimates the sentence a defendant is likely to receive is not a 'fair and just' reason to allow withdrawal of a plea agreement," *United States v. Stephens*, 906 F.2d 251, 253 (6th Cir. 1990); *see also Ramos v. Rogers*, 170 F.3d 560, 565 (6th Cir. 1999) (holding that a "proper colloquy can be said to have cured any misunderstanding [a defendant] may have had about the consequences of his plea"); R. 424, PID 1952 (informing Miller that until the district court "resolve[s] any objections" to the presentence report, "it will be impossible for the Court *or for your attorney* to know exactly what the guideline range would be in this matter" (emphasis added)).[5]

Finally, the district court reasonably emphasized Miller's sworn statements at his guilty-plea hearing. Miller testified that he understood the charges, was satisfied with his attorney's representation, and was not "in any way forced . . . to enter a guilty plea in the case." R. 424,

[5] We likewise reject Miller's claim that his counsel encouraged (or, in Miller's view, coerced) Miller's family members to pressure him to plead guilty. First, Miller has not pointed us to evidence in the record that these communications occurred. Second, "[w]e have consistently held that 'family pressure . . . is not the type of coercion that makes a defendant's acceptance of a guilty plea involuntary.'" *United States v. Baker*, No. 21-3159, 2022 WL 1017957, at *5 (6th Cir. Apr. 5, 2022) (quoting *United States v. Gasaway*, 437 F. App'x 428, 435 (6th Cir. 2011)), *cert. denied*, 143 S. Ct. 242 (2022). Similarly, the record contradicts Miller's claim that counsel refused to represent him at the second trial. Counsel in fact messaged Miller that notwithstanding counsel's concerns about the second trial, counsel had "gone above and beyond" offering Miller the representation he was "entitled to under the [C]onstitution." R. 421-1, PID 1928.

PID 1948–49. We have repeatedly held that absent exceptional circumstances, a defendant is bound by such statements. *See Baker v. United States*, 781 F.2d 85, 90 (6th Cir. 1986) ("[W]here the court has scrupulously followed the required procedure, 'the defendant is bound by his statements in response to that court's inquiry.'" (quoting *Moore v. Estelle*, 526 F.2d 690, 696–97 (5th Cir. 1976))); *Smith v. Cook*, 956 F.3d 377, 394 (6th Cir. 2020) ("Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." (alterations omitted) (quoting *Lee v. United States*, 582 U.S. 357, 369 (2017))); *United States v. Todaro*, 982 F.2d 1025, 1030 (6th Cir. 1993) ("[A] defendant who expressly represents in open court that his guilty plea is voluntary 'may not ordinarily' repudiate his statements to the sentencing judge." (quoting *Fontaine v. United States*, 411 U.S. 213, 215 (1973))).[6]

The district court's application of the remaining *Bashara* factors was also sound. As to the length of and reason for delay in filing a motion to withdraw the guilty plea, the first and second factors, Miller presents a closer case than Robertson. But the district court did not abuse its discretion when it found that, regardless whether the delay was thirty-seven days (using the date on which Miller filed his motion) or twenty days (crediting Miller's claim that he asked counsel to file a motion on January 3, 2023), Miller's request was tactical.

Given that the cornerstone of the inquiry "is to allow a hastily entered plea made with unsure heart and confused mind to be undone," *Bashara*, 27 F.3d at 1181 (internal quotation marks

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[6] Although we affirm the district court's conclusion that Miller's attorney did not coerce Miller into pleading guilty, we must note that counsel's bluntness was at times unprofessional. *See* R. 421-1, PID 1928, 1930–32. Counsel's patent frustration with Miller may provide some basis to question counsel's ability to effectively represent Miller, but Miller has not raised an ineffective assistance of counsel claim at this time, and any such claim is best explored through a motion pursuant to 28 U.S.C. § 2255. *See infra* § II.D.

omitted), we "look with particular favor on . . . motions made . . . within a few days after the initial pleading," *Spencer*, 836 F.2d at 239 (quoting *United States v. Roberts*, 570 F.2d 999, 1008 (D.C. Cir. 1977)). Although a twenty-day delay falls among the shorter delays in our cases, the district court doubted that it took Miller that much time to realize that his decision was the product of alleged coercion. Miller has, indeed, failed to explain, before the district court or this court, his reasons for waiting twenty days before expressing a desire to withdraw his guilty plea. Searching for context, the district court noted the uncommon situation Miller found himself in: When he pleaded guilty, he did so after sitting through the government's entire case in the first trial and the government's opening statement and first witness at the second trial—that is, he pleaded guilty with "full and complete knowledge of the evidence that likely would be considered by the jury." R. 431, PID 1997. The district court found that this timing suggested that Miller's decision to plead guilty was a voluntary, informed one—not a product of coercion.

We took a similar approach in *Carpenter*, where we faulted the defendant for "kn[owing] at the [plea] hearing the grounds upon which he [sought] to withdraw his plea," but we also acknowledged that "under some circumstances, it might be unreasonable for this court to expect a defendant to accuse his attorney of coercion when the attorney stands by his side to represent him." 554 Fed. App'x at 481–82. In those circumstances, "coercion both forces a defendant into pleading guilty and prevents the defendant from attempting to withdraw his plea." *Id.* Ultimately, we resolved the situation by finding that "the timing of [the defendant's] motion to withdraw his guilty plea remain[ed] suspect," because the defendant did not promptly file his motion even with new counsel, and when he did file it, he did so shortly after learning of an unfavorable sentencing-range recommendation. *Id.* at 482. Here, we cannot say that the district court abused its discretion in finding a somewhat short delay problematic given the unique circumstances of Miller's guilty plea.

The foregoing also makes clear that neither *Carpenter* nor this opinion imposes, as Miller claims, an impossible requirement that defendants must move to withdraw their guilty plea at the same time they enter it.[7]

Turning to maintenance of innocence, it is indeed true, as Miller argues, that he acknowledged guilt only at his change-of-plea hearing, and any defendant seeking to withdraw a guilty plea will necessarily seek to retract that lapse in maintaining innocence. But it is likewise true that Miller did not make "vigorous and repeated protestations of innocence." *Id.* at 482 (quoting *Baez*, 87 F.3d at 809). The district court noted that Miller reportedly made no claim of innocence in plea negotiations or shortly before pleading guilty. And as the government points out, Miller's letter requesting withdrawal of his guilty plea focuses more on his claim of coercion and arguably asserts only an equivocal claim of innocence. *See* R. 407, PID 1868–70 (seeking "to have [Miller's] guilt or innocence to be determined at trial, where [Miller] believe[s] the truth would come out"). On the other hand, we acknowledge that Miller asserted his innocence to his attorney in at least two messages and also went to trial before pleading guilty. *See* R. 421-1, PID 1924, 1933. This factor, therefore, is neutral.

Miller describes the fifth and sixth factors—his nature and background, and his prior experience with the criminal justice system—as "minimal when compared to the other[]" codefendants. Miller Br. 15. He acknowledges, however, that he "knows how to read and write"; "had the capacity to understand his actions"; and "has some experience with the criminal justice

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[7] Finally, even if the length of delay should be found to favor Miller, it would only do so "slightly." *United States v. Lewis*, 800 F. App'x 353, 357 (6th Cir. 2020) ("Even if we were to accept 'two to three weeks' as the applicable time period, at best it would weigh only slightly in [the defendant's] favor." (citing *United States v. Jannuzzi*, No. 07-4521, 2009 WL 579331, at *3 (6th Cir. Mar. 6, 2009))). And given that the remaining factors, on balance, more convincingly favor denying Miller's motion, the district court still would not have abused its discretion.

system"—two convictions of possession with intent to distribute, the most recent in 2008. *Id.* The government emphasizes that this last conviction was in federal court, and although it was in 2008, Miller was under supervised release through 2015. The district court did not abuse its discretion in concluding that Miller's background and prior experience with the criminal justice system favor denying his motion.

In sum, the first factor (the time between the guilty plea and the motion to withdraw) at most only slightly favors granting Miller's motion; the second (reason for delay), fifth (Miller's nature and background), and sixth (prior experience with the criminal justice system) factors do not support Miller's request; the fourth factor (circumstances underlying the guilty plea), which represents the crux of Miller's argument, also does not support his request; and the third factor (maintenance of innocence) is neutral. On balance, this supports the district court's conclusion that Miller sought to withdraw his guilty plea for tactical reasons, not "fair and just" ones. As with Robertson's motion, the lack of a fair and just reason means that the government need not establish prejudice. But for the same reasons set forth in connection with Robertson's request, granting Miller's motion would have likewise prejudiced the government.

B. Calculating Miller's Offense Level

Miller challenges various aspects of his sentencing: the drug quantity attributable to him; a drug-house enhancement; and the denial of a minor-participant reduction. We affirm as to each issue.

1. Miller's Drug Quantity

"We review the district court's factual determination of the quantity of drugs involved in an offense for clear error." *United States v. McReynolds*, 69 F.4th 326, 331–32 (6th Cir. 2023) (citing *United States v. Russell*, 595 F.3d 633, 646 (6th Cir. 2010)). There is no clear error if the

district court's drug approximation is "supported by 'competent evidence in the record.'" *Id.* at 332 (quoting *United States v. Mahaffey*, 53 F.3d 128, 132 (6th Cir. 1995)); *United States v. Ward*, 68 F.3d 146, 149 (6th Cir. 1995) ("An approximation by a court is not clearly erroneous if it is supported by . . . 'some minimum indicium of reliability beyond mere allegation.'" (quoting *United States v. Smith*, 887 F.2d 104, 108 (6th Cir. 1989))).

"To calculate drug-quantity, '[t]he district court can make a reasonable estimate based on physical evidence or testimony.'" *United States v. Gardner*, 32 F.4th 504, 524 (6th Cir.) (quoting *United States v. Tisdale*, 980 F.3d 1089, 1096 (6th Cir. 2020)), *cert. denied sub nom. Carey v. United States*, 143 S. Ct. 251 (2022). A defendant is accountable "for drug quantities 'with which he was directly involved' or that were 'reasonably foreseeable' to him as part of a criminal conspiracy." *Id.* (quoting *United States v. Young*, 847 F.3d 328, 367 (6th Cir. 2017)). "The government has the burden of proving by a preponderance of the evidence the amount of drugs for which a defendant is accountable." *McReynolds*, 69 F.4th at 332 (quoting *Mahaffey*, 53 F.3d at 131).

At Miller's sentencing, the government sought to attribute 39.5 pounds of methamphetamine to him. The government again called Agent Hager to testify about five drug transactions involving Miller. Three transactions—totaling 4.5 pounds of methamphetamine—are not disputed: two instances of Miller delivering one pound of drugs to Fugate, and one instance of Miller receiving proceeds from Fugate for 2.5 pounds. Miller takes issue with the remaining two transactions involving thirty-five pounds in total.

According to Agent Hager, on March 30, 2021, Miller and Robertson met suppliers from California, including Wilson, at Robertson's residence. The suppliers pulled into Robertson's garage and closed the garage door. Agent Hager testified that "all individuals were inside to

include Mr. Miller," and that the drugs were unloaded from the suppliers' vehicle for about an hour. R. 493, PID 2539. Miller exited the front door carrying a green box that he eventually put into the trunk of a vehicle. *Id.*; *see also id.* at 2542 (testifying that "Miller was inside with all of them" before exiting the house with the green box). Shortly after, Miller and an unknown woman left the Robertson residence in that car and went to the Steeplechase apartment, while the California suppliers eventually left in another vehicle. Fugate then arrived and pulled into Robertson's garage, where she picked up a fifteen- to twenty-pound load of methamphetamine in a cooking pot that "appeared to be a portion of" the stockpile delivered by the California suppliers and unloaded in Robertson's garage. *Id.* at 2541, 2543; *see also* R. 345, PID 1605–06 (testimony from Fugate that although she did not witness it firsthand, she believed the drugs were from "[t]he car [that] back[ed] out earlier and hit the Monte Carlo," which, as confirmed by Agent Hager's testimony, was the California suppliers' car). Fugate did not know whether Miller himself had placed anything into the drug-filled cooking pot that Fugate picked up on March 30. Authorities confirmed Miller's and Fugate's involvement with the drug shipment by reviewing footage from a pole camera posted outside Robertson's residence, consulting GPS tracking data on the vehicle driven by Miller, listening to a recorded call that Fugate placed to an incarcerated coconspirator while Fugate was in Robertson's garage, and interviewing Fugate herself.

The second transaction that Miller disputes occurred on April 18–19, 2021, and followed activity similar to that on March 30. Miller and Robertson again met California suppliers, including Wilson, at Robertson's residence; Robertson's garage was cleared of other vehicles; and the California suppliers pulled one of their vehicles into the garage and the garage door was closed. During this time, an unknown man arrived with an empty satchel; he eventually left the Robertson residence with the satchel full. Robertson, Miller, and the California suppliers then left in their

respective vehicles. Fugate arrived about one hour later, and Robertson, Miller, and the California suppliers returned to meet her. Fugate left the Robertson residence with a large cooking pot that she told investigators contained about twenty pounds of methamphetamine. (Agent Hager clarified that although Fugate would later provide inconsistent information about whether the cooking pot contained ten, fifteen, or twenty pounds of methamphetamine, her initial report to investigators was "confident" that it was twenty pounds, and she again reiterated that it was twenty pounds in preparation for the second trial.) Fugate did not state that Miller handed her the cooking pot, but she did tell authorities that he was present in the garage. Finally, Agent Hager testified that Miller both received deposits and proceeds, likely from methamphetamine distribution, and made deposits into Wilson's account, likely for the purchase of drugs from California, all around February 2021 through March 2021.

Miller argues that "[a]lthough Fugate's testimony connected Miller to 4.5 pounds of meth," Miller was not present for Fugate's pickup of fifteen to twenty pounds of methamphetamine on March 30, 2021, and although Miller was in the Robertson residence when Fugate picked up twenty pounds of methamphetamine on April 18–19, 2021, no testimony indicated that Miller was aware of what was in the cooking pot that Fugate used for the pickup. Miller Br. 17–18. Miller also argues that the distribution of such large quantities was inconsistent with his own participation in drug distribution, and therefore the cooking-pot deliveries were not foreseeable to him. The district court did not agree, citing Miller's role as Robertson's right hand. The district court further cited Miller's presence at the unloading of the California suppliers' vehicle, as well as the sums of money deposited into Miller's account and the money he deposited in others' accounts, as evidence that large-scale distribution was foreseeable to Miller.

Because these determinations are supported by competent evidence in the record, the district court did not clearly err. Miller's presence at the March and April 2021 deliveries and his handling of at least a portion of the conspiracy's proceeds and payments suggests, at least by a preponderance of the evidence, that he was aware of the scale of the methamphetamine distribution. Fugate and others visited the Robertson residence to pick up their allotments while Miller was there, similarly rendering it foreseeable to Miller that the California deliveries were indeed being distributed. Agent Hager explained the various means that investigators used to verify the information presented to the district court. We have no basis to conclude that attributing 39.5 pounds of methamphetamine to Miller was clear error.

2. Miller's Drug-House Enhancement

"[W]e review the district court's interpretation of the Guidelines de novo, and its factual findings for clear error." *United States v. Taylor*, 85 F.4th 386, 388 (6th Cir. 2023). When we review the application of the guidelines to the facts, however, "[w]e have . . . not spoken with a uniform voice." *Id.* (citing *United States v. Bell*, 766 F.3d 634, 636 (6th Cir. 2014)); *see also United States v. Tripplet*, 112 F.4th 428, 434–35 (6th Cir. 2024) (Murphy, J., concurring in part and concurring in the judgment) (raising the issue of mixed questions and calling for a determination of whether a given mixed question "comes with more of a legal than a factual hue"). But because Miller's arguments fail even under de novo review, and he argues only that the district court "clearly erred" in applying the drug-house enhancement, Miller Br. 18, we need not resolve this debate now, *see Taylor*, 85 F.4th at 388.

"[T]he drug-house enhancement applies to anyone who (1) knowingly (2) opens or maintains any place (3) for the purpose of manufacturing or distributing a controlled substance." *United States v. Johnson*, 737 F.3d 444, 447 (6th Cir. 2013); *see also* U.S. Sent'g Guidelines

Manual § 2D1.1(b)(12) (2021). The district court determined that Miller maintained the Steeplechase apartment as a drug house.[8] Only the second element is at issue here: Miller argues that he lacked sufficient control of the Steeplechase apartment to justify the enhancement. *See* U.S. Sent'g Guidelines Manual § 2D1.1 cmt. n.17 (2021) ("Among the factors the court should consider in determining whether the defendant 'maintained' the premises are (A) whether the defendant held a possessory interest in (*e.g.*, owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises.").

"If a defendant does not have a legal interest in the premises, the enhancement may still apply if the government makes a sufficient showing of de facto control." *United States v. Hernandez*, 721 F. App'x 479, 484 (6th Cir. 2018) (first citing *United States v. Russell*, 595 F.3d 633, 644 (6th Cir. 2010); and then citing *United States v. Tippins*, 630 F. App'x 501, 504 (6th Cir. 2015)). The "long list of things that can provide evidence of maintenance . . . include 'control, duration, acquisition of the site, renting or furnishing the site, supervising, protecting, supplying food to those at the site, and [maintaining] continuity.'" *Id.* (emphasis omitted) (quoting *Russell*, 595 F.3d at 644). Finally, "[a]lthough a person need not be present at the location constantly for the enhancement to apply, the word *maintains* 'contemplates a defendant who is more than a casual visitor.'" *Id.* (quoting *United States v. Flores-Olague*, 717 F.3d 526, 532 (7th Cir. 2013)).

[8] At the apartment, Miller provided meth to Fugate on at least one occasion and received proceeds from her on at least one other. According to Agent Hager, investigators also found baggies and wrapping in the apartment's trash consistent with the enterprise's practice of packaging drugs in that manner. Agent Hager also testified that Fugate told authorities that her coconspirators used the Steeplechase apartment to break down drugs and cut it for redistribution. And, after searching the apartment, investigators found a wall safe containing drug residue, baggies, scales, and a firearm.

Robertson paid for the Steeplechase apartment, and Fugate executed the lease in her name. Fugate understood that the apartment would be used as a stash house. However, neither Robertson nor Fugate lived there; only Miller lived there "consistently"—including by parking his car there and staying overnight—at least between late February 2021 and early May 2021. R. 493, PID 2555, 2565. Although a surveillance camera captured others occasionally staying at the residence "for a couple of nights," only Miller "resided" there. *Id.* at 2555–56. Further, while Miller was living there, Fugate "was not given a key or door code or any access, unless permitted by Mr. Miller." *Id.* at 2557.

Miller argues that the district court incorrectly focused on the amount of time Miller spent at the apartment, not the extent of his control over the residence. First, the district court discussed Miller's length of stay *in response to* Miller's argument at sentencing that he was only at the Steeplechase apartment for a small portion of the overall conspiracy. *See* R. 493, PID 2580–81, 2588. Second, and in any event, the factor of control clearly does not favor Miller because he was the only person to live there consistently, including by parking there and staying overnight. *Cf. Russell*, 595 F.3d at 645 (noting that vehicles belonging to the defendant were registered to or parked at the drug house as relevant evidence that the defendant maintained the premises). Miller conducted drug trafficking business for the duration of his time there, and he regulated Fugate's access to the residence while he resided there. He therefore exhibited the "control, duration, . . . supervising, protecting, . . . and [maintaining] continuity" that distinguishes him from a "casual visitor" and that, instead, supports applying the drug-house enhancement even under a de novo standard of review. *Hernandez*, 721 F. App'x at 484 (internal quotation marks omitted).

3. Miller as a Minor Participant

We "review 'a district court's decision concerning a defendant's role in an offense' for clear error." *McReynolds*, 69 F.4th at 332 (quoting *United States v. Gates*, 461 F.3d 703, 709 (6th Cir. 2006)); *see also United States v. Miller*, 56 F.3d 719, 720 (6th Cir. 1995) (applying clear-error review to request for minor-participant reduction). Miller "has the burden of proving mitigating factors justifying a reduction for being a minor participant by a preponderance of the evidence." *Miller*, 56 F.3d at 720 (citing *United States v. White*, 985 F.2d 271, 274 (6th Cir. 1993)).

Miller must establish that he was "'substantially less culpable than the average participant' in the criminal enterprise." *Id.* (quoting *United States v. Smith*, 918 F.2d 664, 669 (6th Cir. 1990)). We consider the "totality of the circumstances," including "the degree to which the defendant understood the scope and structure of the criminal activity"; "the degree to which the defendant participated in planning or organizing the criminal activity"; "the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority"; "the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts"; and "the degree to which the defendant stood to benefit from the criminal activity." U.S. Sent'g Guidelines Manual § 3B1.2 cmt. n.3(C) (2021).

The district court did not clearly err in deciding that these factors supported denying Miller's request for a minor-participant reduction. Miller and Robertson were seen together "[i]f not every day, very consistently every other day." R. 493, PID 2551. The record supports the conclusion that Miller occupied a position of trust and importance to Robertson, the enterprise's leader, distinct from that of a foot soldier or other similar minor participant. Miller and Robertson went to the bank together; Miller was trusted to make payments to the California suppliers; he was

present when significant shipments from the California suppliers arrived and were unloaded; he occasionally provided drugs to and collected proceeds from Fugate, the organization's chief distributor; and, as we found above, he resided in and maintained control over a stash house for the benefit of the drug-distribution operation.

Miller again attempts to limit his participation to only three drug transactions—corresponding to the 4.5 pounds of methamphetamine discussed in the drug-quantity section above—an argument we have already rejected. The district court did not clearly err when it found that this underestimated Miller's position in the criminal enterprise. Nor does Miller's lieutenant position make him a "follower" deserving of minor-participant status. Whether Miller "exercise[d] any decision-making authority" is but one factor of many provided by the sentencing guidelines. *See United States v. Nelson*, No. 20-2083, 2022 WL 620152, at *3 (6th Cir. Mar. 3, 2022) (affirming denial of minor-participant reduction where, even though the defendant may have lacked decision-making authority, she nonetheless accompanied the ringleader on trips, contributed resources to the trips, and distributed drugs obtained on the trips). The record more than supported a conclusion that notwithstanding an apparent lack of executive-planning authority, Miller nonetheless significantly "understood the scope and structure of the criminal activity" and participated in and was responsible for key portions of the conspiracy's operations. *See* U.S. Sent'g Guidelines Manual § 3B1.2 cmt. n.3(C) (2021).[9]

[9] Miller also asks us to compare the drug quantity attributable to him—17.9172 kilograms—with the seemingly far greater quantities attributed to coconspirators like Fugate (10,829.8905 kilograms) and Robertson (507,579.39 kilograms). *See* R. 457, PID 2117, 2123. As the government points out, however, the Fugate and Robertson figures are *converted* drug weights. When we appropriately convert Miller's quantity to 35,834 kilograms, it becomes apparent that the quantity attributable to him is second only to Robertson, the leader of the operation. This comparison therefore does not suggest that Miller was "substantially less culpable than the average participant." *Miller*, 56 F.3d at 720 (internal quotation marks omitted).

Accordingly, we find no error in the denial of the minor-participant reduction.

C. Robertson's Consecutive Terms

When a defendant attacks a consecutive sentence on the basis that the district court failed to justify its decision, we typically review for abuse of discretion. *United States v. King*, 914 F.3d 1021, 1024 (6th Cir. 2019). If the defendant failed to object at the sentencing hearing, however, we review for plain error. *Id.* Robertson concedes that he failed to object and, therefore, plain-error review applies. Plain error is a "demanding standard" and consists of "an error that is 'so plain that the trial judge was derelict in countenancing it.'" *King*, 914 F.3d at 1024 (quoting *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc)).

District courts have the discretion to impose terms of imprisonment concurrently or consecutively and must, in exercising that discretion, consider the factors set forth in 18 U.S.C. § 3553(a). 18 U.S.C. § 3584(a), (b). Section 3553(a)(4) and (5), in turn, require a district court to consider the sentencing guidelines and pertinent policy statements—here, those found in U.S. Sent'g Guidelines Manual § 5G1.3(d) & cmt. n.4(A) (2021). "The sentencing court has an obligation to 'adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.'" *United States v. Morris*, 71 F.4th 475, 482 (6th Cir. 2023) (quoting *Gall v. United States*, 552 U.S. 38, 50 (2007)). District courts need not, however, "conduct a separate Section 3553(a) analysis for the concurrent or consecutive nature of the sentence," *United States v. Berry*, 565 F.3d 332, 343 (6th Cir. 2009), nor must they "state a 'specific reason' for a consecutive sentence," *United States v. Johnson*, 640 F.3d 195, 209 (6th Cir. 2011). As long as the district court "makes *generally clear* the rationale under which it has imposed the consecutive sentence," that decision will survive even abuse-of-discretion review. *Johnson*, 640 F.3d at 209 (quoting *United States v. Owens*, 159 F.3d 221, 230 (6th Cir. 1998)).

Here, the district court questioned a witness about Robertson's Indiana criminal case; heard argument from the government about Robertson's criminal history, which included discussion of that case; and thoroughly reviewed the section 3553(a) factors. The district court did not expressly tie these considerations to the imposition of a consecutive sentence, nor did it or any party discuss section 5G1.3(d) of the sentencing guidelines. The district court did, however, "look at the seriousness of this case, . . . look at these factors of 3553, [and] look at issues of deterrence" before imposing a sentence that "will run consecutive to any additional penalty that may be imposed in the case from Indiana." R. 505, PID 2850–51; *see also id.* at 2853–54 (stating that "the following sentence is sufficient but . . . not greater than necessary to comply with the purposes of Title 18, Section 3553(a)").

We confronted similar circumstances in *United States v. Ward*, 436 F. App'x 601 (6th Cir. 2011). There, the parties applied the wrong subsection of section 5G1.3, and the district court did not tie its consideration of the section 3553(a) factors to its decision to impose a consecutive sentence. We affirmed nonetheless, because "on plain error review, so long as the district court clearly stated that the sentence was imposed pursuant to the § 3553(a) factors, we will not require it to say more." *Ward*, 436 F. App'x at 605 (citing *United States v. Harmon*, 607 F.3d 233, 239 (6th Cir. 2010)). As set forth above, the district court here likewise clearly imposed Robertson's sentence pursuant to and immediately following its consideration of the section 3553(a) factors. *See Morris*, 71 F.4th at 483 ("[A] district court does not abuse its discretion where it imposes a consecutive sentence 'in conjunction with or immediately following the court's invocation of the § 3553(a) factors . . . .'" (quoting *United States v. Kitchen*, 428 F. App'x 593, 597 (6th Cir. 2011))). This case is a far cry from *Morris*, a case that Robertson cites for support, where upon resentencing the defendant, "[t]he only explanation clear from the record [wa]s that the district court wanted to

impose the same sentence it had previously imposed, despite the significant reduction in the advisory Guidelines range." *Id.* Accordingly, the district court did not commit plain error by imposing a consecutive sentence here.

D. Robertson's Claim of Constructive Denial of the Assistance of Counsel at Sentencing

Robertson also challenges the adequacy of his representation at sentencing. In Robertson's view, his attorney spoke infrequently and addressed inconsequential matters. In particular, Robertson faults counsel for failing to sufficiently argue for reductions to Robertson's guidelines range; for inadequately crossing Morgan, the government's first witness; for declining to cross the government's second witness, Agent Hager, or call any witnesses on Robertson's behalf; and for failing to discuss the mitigating factors set forth in 18 U.S.C. § 3553. At the sentencing hearing, Robertson "object[ed] to ineffective assistance of counsel" because the two did not "see eye to eye" and "there's been things that [Robertson] . . . whispered . . . to her" that "she didn't repeat." R. 505, PID 2859. The district court determined that it was not "necessary for the Court to address those objections," because "[w]ith regard to any claim of ineffective assistance of counsel, those challenges are usually made following any direct appeal." *Id.*

Robertson frames his claim as one for constructive denial of the assistance of counsel, which "occurs where 'counsel entirely fails to subject the prosecution's case to meaningful adversarial testing,' or another 'constitutional error of the first magnitude' violating the right to counsel is shown." *United States v. Detloff*, 794 F.3d 588, 593 (6th Cir. 2015) (quoting *Moss v. Hofbauer*, 286 F.3d 851, 860 (6th Cir. 2002)); *see also Phillips v. White*, 851 F.3d 567, 580 (6th Cir. 2017) (constructive denial occurs "when counsel's performance is so defective that he may as well have been absent"). "Constructive denial of counsel constitutes structural error requiring no further showing of prejudice." *Detloff*, 794 F.3d at 594; *see also United States v. Cronic*, 466 U.S.

648, 658 (1984) ("There are . . . circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified").[10] We have consistently held, however, that we "will not review a claim of ineffective assistance on direct appeal except in rare cases where the error is apparent from the existing record." *United States v. Lopez-Medina*, 461 F.3d 724, 737 (6th Cir. 2006) (citing *United States v. Gardner*, 417 F.3d 541, 545 (6th Cir. 2005)); *see also Detloff*, 794 F.3d at 595 (applying this reluctance to claims of constructive denial).

This is not a case in which the parties had the opportunity to develop a record regarding this claim, and the district court never ruled on it. *Cf. United States v. Hynes*, 467 F.3d 951, 969–70 (6th Cir. 2006) (taking up claim "in the interest of judicial economy" because "the district court ruled on the claim as part of [the defendant's] motion for a new trial, both parties agree that the record is sufficiently developed to permit review, and the claim is easily resolved"). We do not know why Robertson's counsel conducted a narrow cross-examination of Morgan and declined to cross-examine the government's second witness, why his counsel emphasized certain factors in her statement preceding Robertson's allocution, or whether there were any witnesses or evidence that counsel should have brought to the district court's attention. *See Lopez-Medina*, 461 F.3d at 737 (deferring consideration of claim where "[t]he record contains no evidence regarding why, for example, defense counsel chose not to file any additional motions beyond his initial motion to suppress or why he chose not to challenge the agents as experts on matters pertaining to narcotics trade").

[10] For presumed prejudice under *Cronic* to apply, the constructive denial must occur "during a critical stage of trial." *Phillips*, 851 F.3d at 580. Sentencing is a critical stage. *Id.* (gathering cases).

We also note that "we have applied *Cronic*" and its presumption of prejudice "only where the constructive denial of counsel and the associated collapse of the adversarial system is imminently clear." *Moss*, 286 F.3d at 861. In addition, "the deprivation of counsel must persist throughout the given stage," otherwise we must instead review under *Strickland v. Washington*, 466 U.S. 668 (1984), not *Cronic*. *Phillips*, 851 F.3d at 580 (citing *Bell v. Cone*, 535 U.S. 685 (2002)). To the extent that analysis under *Strickland* may be more appropriate than under *Cronic*, the fact that the parties have not offered any alternative arguments under that framework provides yet another reason to defer consideration of this claim to any future motion pursuant to 28 U.S.C. § 2255.

We therefore decline to consider this portion of Robertson's appeal at this time.

III. Conclusion

For the above reasons, we AFFIRM the district court in all respects.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 23-5270/5436

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CURTIS DEWAYNE MILLER (23-5270); CRAIG DUPREE ROBERTSON (23-5436),

Defendants - Appellants.

FILED
Feb 11, 2025
KELLY L. STEPHENS, Clerk

Before: CLAY, WHITE, and NALBANDIAN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED in its entirety in regards to both defendants.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

Appendix 2
District Court Order Denying Miller's Motion To Withdraw His Guilty Plea (March 9, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
(at Lexington)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal Action No. 5: 21-111-DCR-10
	)	
V.	)	
	)	**MEMORANDUM OPINION**
CURTIS DEWAYNE MILLER,	)	**AND ORDER**
	)	
Defendant.	)	

*** *** *** ***

On the second day of a second trial, Defendant Curtis Miller decided to plead guilty to one count of conspiring to distribute methamphetamine. [Record No. 374] Then, several weeks following his guilty plea, he filed a *pro se* motion to withdraw the guilty plea. [Record No. 407] Miller claims that his trial attorney, John Oakley, coerced him into pleading guilty by "assur[ing] [him] before and each morning of trial that [he] would be guaranteed life [imprisonment]" if he continued with his trial. [*Id.*]

Miller's motion will be denied because he has not presented a fair and just reason for withdrawing his guilty plea under Rule 11 of the Federal Rules of Criminal Procedure. Further, granting the relief sought by the defendant would severely prejudice the United States.

I. Background

A federal grand jury indicted Miller for one count of conspiring to distribute controlled substances in violation of 21 U.S.C. § 846 (Count 1), one count of possessing with the intent to distribute controlled substances in violation of 21 U.S.C. § 841(a)(1) (Count 2), and one count of conspiring to commit money laundering in violation of 18 U.S.C. § 1956(h) (Count

8). [Record No. 165] Miller proceeded to trial on November 1, 2022, after the Court denied the defendant's motion for a continuance. [Record Nos. 288, 289, 331] However, the Court declared a mistrial on November 3, 2022, because the jurors were deadlocked and unable to return a verdict. [Record No. 334]

The defendant's retrial began on December 13, 2022. [Record No. 372] At the beginning of the second day of trial, attorney Oakley notified the Court that Defendant Miller wished to enter a guilty plea. [Record No. 373] Under the parties' open plea agreement, Miller indicated a desire to enter a guilty plea to Count 1 of the superseding indictment in exchange for the government's dismissal of Count 8. (Count 2 was dismissed earlier in the proceedings.)

Miller was then placed under oath and questioned pursuant to Rule 11 of the Federal Rules of Criminal Procedure. [Record No. 424, pp. 4-8] The following colloquy occurred:

THE COURT: Mr. Miller, let me confirm that you have, in fact, received a copy of the superseding indictment in the case and that you've had adequate opportunity to discuss the charges with your attorney; is that correct?

MILLER: Yes.

THE COURT: Do you feel like you understand the charges that have been made against you in the case?

MILLER: Yes, sir.

THE COURT: And at this time, are you satisfied with the advice and representation given to you by your attorney?

MILLER: Yes, sir.

THE COURT: I understand that it's your intention to enter a guilty plea without a written plea agreement; is that accurate?

MILLER: Yes, sir.

THE COURT: . . . My understanding is that although you're entering an open plea, there's not a written plea agreement, part of your agreement with the government is that if you

enter a guilty plea to Count 1 that it will move to dismiss Count 8 . . . and it will not reinstate or move to reinstate Count 2.

MILLER: Yes.

THE COURT: Is that . . . the extent of the agreement you have with the government?

MILLER: Yes.

THE COURT: All right. Have any other promises been made to you by any person in exchange for you agreeing to enter a guilty plea in the case?

MILLER: No, sir.

THE COURT: Has anyone made any threats or in any way forced you to enter a guilty plea in the case?

MILLER: No, sir.

THE COURT: Has anyone told you that you would receive a specific sentence if you entered a guilty plea?

MILLER: No.

[*Id.* at pp. 6-8]

Thereafter, the undersigned reviewed the statutory penalties, relevant parts of the United States Sentencing Guidelines, and the statutory factors of 18 U.S.C. § 3553(a) that would be considered before a sentence would be imposed. [*Id.* at pp. 8-13] Next, the Court reviewed Count 1 of the superseding indictment and asked Miller to explain, in his own words, what he did to commit the conspiracy offense. The defendant responded by admitting that he "assisted [his] cousin, Craig Robertson, into selling methamphetamine." [*Id.* at p. 14] He further confirmed that his actions occurred during the time and in the location identified in the superseding indictment.

More specifically, Miller confirmed that he knowingly assisted his cousin in distributing "a detectable amount of methamphetamine," and that the amounts involved in his

offense were "greater than 500 grams." [*Id.* at p. 15] Finally, after summarizing the elements of the offense, the Court inquired whether the defendant believed that the United States could prove those elements beyond a reasonable doubt "if [the] case were to continue with the trial." The defendant responded in the affirmative. [*Id.* at pp. 15-16] After concluding that the defendant was competent and that his plea was knowing and voluntary, the undersigned accepted the defendant's guilty plea and scheduled a sentencing hearing for March 24, 2023. [*Id.* at p. 17] And following the entry of Miller's guilty plea, the Court excused the jury. [Record No. 373]

On January 12, 2023, Oakley filed a motion to withdraw as counsel of record for Miller. [Record No. 402] He explained that Miller expressed a desire to withdraw his guilty plea and that the defendant believed that he [Oakley] had pressured him to plead guilty at trial. The Court granted Oakley's motion and appointed new counsel for all further proceedings. [Record No. 403] On January 20, 2023, Miller's *pro se* motion to withdraw his guilty plea was filed in the record. [Record No. 407]

Miller has provided transcripts of a portion of his communications with Oakley in support of his motion to withdraw. [Record No. 421-1] The communications largely relate to the period prior to and during the first trial held in November 2022. The conversations reflect that Miller maintained his innocence at that time and asserted that his case was fraudulent. [*See id.* at pp. 19, 20, 21.] Prior to the defendant's first trial, Oakley advised Miller of the different phases of trial preparation and indicated several times that he was thoroughly preparing for trial. [*See, e.g., id.* at pp. 9-10, 21.] Counsel advised Miller of the consequences of proceeding to trial, mentioning that if Miller were convicted, he would face a potential sentence of life imprisonment. [*Id.* at p. 24] Oakley also noted that Miller could plead guilty

and stated that he had "options that can put [him] back in [his] children's life [sic] without having to roll the dice at a jury trial." [*Id.* at p. 19]

After the defendant's first trial ended in a mistrial, Oakley cautioned Miller against going to trial a second time, emphasizing that the government's case would be stronger at retrial. [*Id.* at p. 29] But despite warning the defendant that "there's no beating this case," Oakley reaffirmed that he was prepared to represent Miller going forward. [*See id.* at pp. 24-25.] Notably, there is no record of communications between counsel and Miller from December 13, 2022 (the first day of Miller's retrial), through January 3, 2023 (the day the defendant first contacted Oakley about withdrawing his plea agreement).

After Miller expressed a desire to withdraw his guilty plea in January, Oakley suggested that he [Oakley] file a motion to withdraw as counsel of record for the defendant. Oakley reasoned that he was not willing to file a motion to withdraw the defendant's guilty plea alleging that he "forced [Miller] to do something [the defendant] didn't want to do." [*Id.* at p. 31] After Oakley was permitted to withdraw, Miller filed the *pro se* motion. [Record No. 407] Attorney Pamela Ledgewood was initially appointed as replacement counsel for Miller for further proceedings. However, attorney Ledgewood was unwilling, from an ethical standpoint, to file the materials that Miller wished to file in support of his motion to withdraw his guilty plea. As a result, attorney Ledgewood was relieved of further representation of the defendant and attorney Kevin West was appointed for Miller. [Record Nos. 422, 423]

The United States opposes the defendant's motion. [Record No. 426] It contends that the delay in filing the motion to withdraw, the circumstances surrounding the defendant's guilty plea, and Miller's familiarity with the criminal justice system, weigh against permitting him to withdraw his guilty plea. [Record No. 426] Specifically, the government notes that

Miller's "sworn declarations" professing his guilt at his re-arraignment flatly contradict the assertions in his messages to Oakley that he is factually innocent of the conspiracy charge. [*Id.* at p. 8] Additionally, the government emphasizes that the defendant's decision to proceed to trial on two occasions undermines his claim that counsel coerced him to plead guilty (based primarily on communications before the first trial in November 2022), demonstrating that "[h]e was fully aware of his constitutional right to have a jury unanimously determine his guilt." [*Id.* at p. 9]

During the evidentiary hearing requested by the defendant and held on March 8, 2023, counsel for Miller explained that the defendant no longer wished to present evidence or testimony regarding the motion to withdraw his guilty plea. Instead, he argued that the defendant should be permitted to withdraw his guilty plea because attorney Oakley pressured him into pleading guilty as outlined in Miller's prior, unsworn statements. Specifically, he asserted that Oakley claimed that he would not vigorously represent the defendant if he continued with the second trial and that the defendant would face severe penalties if convicted by a jury.

The United States argues that the defendant has failed to meet his burden of establishing a "fair and just reason" for withdrawing his plea under Rule 11 of the Federal Rules of Criminal Procedure. As it explains, the defendant made no indication that he was innocent of the crime charged during final plea negotiations occurring December 14, 2022, nor did he suggest that his attorney had forced him to plead guilty in his sworn statements to the Court. Moreover, the United States noted that the defendant's prior experience in both state and federal criminal proceedings undermines any suggestion that he did not understand the consequences of deciding to plead guilty.

II. Legal Standard

"A defendant does not have an absolute right to withdraw a guilty plea." *United States v. Ellis*, 470 F.3d 275, 281 (6th Cir. 2006) (citations omitted). Rule 11(d)(2)(B) of the Federal Rules of Criminal Procedure provides that a defendant may withdraw his guilty plea "after a court accepts the plea, but before it imposes [a] sentence," if the defendant can demonstrate a "fair and just reason for requesting the withdrawal." As the Sixth Circuit has explained, the purpose of Rule 11 is to permit "a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant 'to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty.'" *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) (per curiam) (citation omitted).

Courts consider several factors in determining whether to grant a defendant's request to withdraw his guilty plea. They include, but are not limited to, the following: "(1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted." *United States v. Bashara*, 27 F.3d 1174, 1181 (6th Cir. 1994), *abrogated on other grounds by United States v. Caseslorente*, 220 F.3d 727 (6th Cir. 2000). "The relevance of each factor will vary according to the 'circumstances surrounding the original entrance of the plea as well as the

motion to withdraw.'" *United States v. Haygood*, 549 F.3d 1049, 1052 (6th Cir. 2008) (citation omitted).

III. Analysis

1. The Delay in Filing the Motion to Withdraw

Initially, courts consider "the length of time between the entry of the guilty plea and the filing of the motion to withdraw it." *United States v. Spencer*, 836 F.2d 236, 239 (6th Cir. 1987). "The shorter the delay, the more likely a motion to withdraw will be granted, and a defendant's reasons for filing such a motion will be more closely scrutinized when he has delayed his motion for a substantial length of time." *United States v. Baez*, 87 F.3d 805, 808 (6th Cir.1996) (citation omitted). Courts also evaluate this factor on a case-by-case basis, as the Sixth Circuit has not "fashioned a precise cut-off point beyond which delay is unreasonable." *United States v. Carpenter*, 554 F. App'x 477, 481 (6th Cir. 2014).

That said, the Sixth Circuit has "affirmed decisions denying the withdrawal of a guilty plea after delays as short as one or two months." *United States v. Carpenter*, 554 F. App'x 477, 481 (6th Cir. 2014) (citing *Spencer*, 836 F.2d at 239 (upholding district court's denial of motion to withdraw filed 35 days after defendant pleaded guilty)); *see also United States v. Carr*, 740 F.2d 339, 345 (5th Cir. 1984) (upholding denial of motion to withdraw filed twenty-two days after guilty plea was entered). In this case, this factor weighs against granting Miller's request.

Miller moved to withdraw his guilty plea on January 20, 2023—37 days after he pleaded guilty. [Record Nos. 374, 407] And even if the Court were to consider the date Miller messaged Oakley requesting to withdraw his plea as the date he initially sought to move for withdrawal, that shorter delay would nonetheless weigh against granting the defendant's

motion. [Record No. 421, p. 30] A delay of several weeks suggests that his request to withdraw constitutes a tactical decision, rather than an earnest attempt to undo a plea that was entered into unknowingly. *Compare United States v. Roberts*, 570 F.2d 999, 1008 (D.C. Cir. 1977) (granting a motion to withdraw a guilty plea filed "a few days after the initial pleading"), *with Carr*, 740 F.2d at 345 (denying a motion to withdraw filed "twenty-two days" after defendant pleaded guilty).

But in this case, there are additional reasons for concluding that Miller's delay was a tactical decision. The defendant did not enter a guilty plea with any confusion regarding the evidence to be presented by the government during trial or his role in the conspiracy charged in Count 1 of the Superseding Indictment. Instead, he proceeded to trial on two separate occasions with full knowledge of the evidence presented during the first trial and an extensive summary of the evidence the government would present during the second trial, based on opening statements and after hearing significant evidence on the first day of the second trial. And the defendant had the opportunity to assess the jury selected on both occasions.

The undersigned concludes that Miller decision to enter a guilty plea was based on full and complete knowledge of the evidence that likely would be considered by the jury. Such knowledge is glaringly absent in most cases in which a defendant enters a plea and then later seeks to reverse that decision. The lapse of time between Miller's guilty plea and his later motion to withdraw the motion does not support the relief sought by the defendant.

2. The Reason for the Defendant's Delay

Relatedly, Miller has not explained why he waited over five weeks to file his motion to withdraw. And even if the time is reduced by any confusion regarding whether Oakley would be filing the motion, relief under this factor is still not warranted. When considering whether

a defendant's delay in filing was excusable under this factor, courts look to when the defendant became aware of the grounds for his motion to withdraw his plea. As such, "even a relatively short delay is damaging to a defendant when he knew at the time of his plea hearing the grounds upon which he could seek to withdraw his plea." *Carpenter*, 554 F. App'x at 481. In *Carpenter*, the Sixth Circuit found that the defendant's delay in filing was not excusable because the defendant knew of the basis for his request to withdraw—namely, that his attorney "encouraged him to make up a story to appease the court" when pleading guilty—at the time of his plea hearing. *Id.*

The *Carpenter* court recognized that "certain abusive or coercive behavior might excuse an otherwise lengthy delay because, by its nature, the coercion both forces a defendant into pleading guilty and prevents the defendant from attempting to withdraw his plea," but it nonetheless found that the defendant's delay remained suspect. First, the court noted that the defendant's reason for delay was unconvincing because he waited an additional three months after obtaining standby counsel to file his motion. *Id.* at 482. Additionally, the court was not convinced that the defendant had no choice but to wait to file his motion to withdraw because he was not forced to rely on counsel in voicing his concern over his guilty plea: "if [the defendant] really wished to withdraw his guilty plea, he could have expressed his intention to the court prior to retaining new counsel." *Id.*

As noted above, Miller claims that his motion to withdraw should be granted because Oakley coerced him into entering a guilty plea. [Record No. 407] But following the *Carpenter* court's reasoning, the defendant has failed to explain why he waited twenty days after pleading guilty to seek to withdraw his plea when he was aware of the basis for his motion to withdraw at the time of his plea hearing. 554 F. App'x at 481.

There is no evidence suggesting that Oakley's alleged coercion prevented the defendant from seeking to withdraw his plea at an earlier time. In fact, Oakley himself suggested filing a motion to withdraw as counsel so that Miller could proceed with his motion to withdraw his plea. [Record No. 421-1, p. 31] And Oakley's communications with the defendant once the issue was raised indicate counsel's disagreement with Miller's suggestion of coercion. In short, the defendant has not established that his relationship with his trial attorney prevented him from articulating his concerns over his guilty plea at an earlier time.

But even if the Court assumed that Miller's relationship with Oakley prevented the defendant from filing his motion to withdraw sooner, the defendant nonetheless could have "expressed his intention [to withdraw his plea] to the court." 554 F. App'x at 481. The Court provided Miller with the opportunity to express any dissatisfaction with his attorney at his plea hearing, specifically asking Miller whether he was "satisfied with the representation given to [him] by [his] attorney." [Record No. 424, pp. 6, 7] Miller answered in the affirmative. [*Id.*] His failure to advise the Court of any concern over his attorney's representation or to indicate that he wished to proceed with trial weigh against granting his motion.

3. The Defendant's Assertions of Innocence

The defendant's inconsistent assertions of innocence similarly support denying his motion to withdraw his plea. "[T]he absence of a defendant's vigorous and repeated protestations of innocence support the denial of a motion to withdraw a guilty plea." *United States v. Baez*, 87 F.3d 805, 809 (6th Cir. 1996). Miller's statements to counsel maintaining his innocence are directly contradicted by his admission of guilt during his plea hearing. [*See* Record No. 424, pp. 14, 16.] Moreover, according to the assistant United States attorney who interacted with Miller on the morning of December 14, 2022, the defendant gave no indication

that he was innocent during plea negotiations and immediately before entering his guilty plea. In short, Miller has not presented any reliable evidence to contradict his "solemn declarations in open court" that he was guilty, statements which "carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977).

4. The Circumstances Underlying Entry of the Guilty Plea

Next, the circumstances surrounding entry of Miller's guilty plea do not support granting his motion. Simply put, Miller has not demonstrated that Oakley forced him to plead guilty. Again, Miller claims that Oakley pressured him to change his plea during retrial by threatening him "with the fear of recieving [sic] a life sentence [he] continued with trial." The Sixth Circuit addressed a similar argument in *United States v. Dalalli*, 651 F. App'x 389 (6th Cir. 2016).

In *Dalalli*, the defendant pleaded guilty on the morning of trial to several counts related to his alleged participation in a conspiracy to defraud the government. The plea was entered, despite having no written plea agreement with the United States. *Id.* at 392. Five months later, the defendant moved to withdraw his plea, alleging that "he had pled guilty because of pressure and emotional exhaustion and because he believed he might face more lenient sentencing with a guilty plea." *Id.* at 394-95. The district court's denial of the motion to withdraw was upheld, in part because of statements from the defendant's attorney that counsel was "prepared to go with trial . . . [and] would finish the trial and do [his] best for [the defendant." *Id.* at 402. Because the record demonstrated that counsel was willing to proceed with trial in the defendant's case and because the defendant provided no evidence of improper coercion, the circuit court concluded that "[i]f there was any pressure on Dalalli to plead guilty, it was pressure he put on himself." *Id.*

In the same way, the partial records of Miller's communications with Oakley demonstrate that Oakley did not pressure the defendant into pleading guilty. First, the defendant cannot rely on counsel's statements prior to his first trial to definitively establish coercion during the second trial, as Miller obviously disregarded those statements when he chose to proceed to trial on both occasions. And Miller has not provided *any* evidence of improper coercion prior to his retrial. Just as counsel in *Dalalli* stated that he was prepared to represent the defendant, Oakley told Miller that even if he thought going to trial was unwise, counsel was ready to provide Miller with the representation he was "entitled to under the [C]onstitution." [Record No. 421-1, p. 25] And while counsel in *Dalalli* only represented the defendant for one day of trial, Oakley's thorough preparation is evidenced by the fact that he represented the defendant at not one, but two trials. Miller cannot point to any evidence in the record to show that Oakley was unprepared or ineffective during the first trial or during the first day of the second trial. In summary, Miller has not offered any evidence upon which the Court can rely to conclude that Oakley coerced him into pleading guilty.

Oakley's statements regarding the government's enhanced preparation for Miller's retrial and the defendant's potential sentence if convicted do not constitute coercion. Rather, Oakley informed the defendant of the consequences of his decision to proceed to trial. As the government correctly notes, Oakley's statement that Miller would face a potential sentence of life imprisonment if convicted is "undoubtedly correct." As the Court noted at the defendant's plea hearing, the charge and drug quantity alleged in Count 1 yields a sentence of "not less than ten years nor more than life by statute." [Record No. 424, p. 8] And while counsel may have overestimated the defendant's sentencing guidelines range, an inaccurate comment does not amount to improper coercion. [Record No. 421-1, p. 23] *See United States v. Stephens*,

906 F.2d 251, 253 (6th Cir. 1990) ("[T]he mere fact that an attorney incorrectly estimates the sentence a defendant is likely to receive is not a 'fair and just' reason to allow withdrawal of a plea agreement.").

Moreover, Oakley's messages to Miller prior to the defendant's retrial do not carry significant weight, as the defendant ultimately chose to proceed to trial a second time. Again, as the government correctly notes, Miller has provided no evidence demonstrating coercion during the window of time that is of great significance to the Court's analysis: the night after the first day of his retrial through the morning of the second day of trial. [*See* Record No. 426, p. 11 ("Miller has provided no explanation as to how his will was overborne after exercising his right to a jury trial.").] Miller did not testify during the evidentiary hearing scheduled at his request and he did not call Oakley as a witness during this hearing. Thus, Miller has not demonstrated that his decision to change his plea was the result of improper coercion or was otherwise made involuntarily.

Finally, Miller's claim that he was coerced lacks credibility because the evidence in the record demonstrates that his plea was voluntary. After ensuring that the defendant was competent and capable of entering a guilty plea, the Court specifically asked Miller whether "anyone made any threats or in any way forced [him] to enter a guilty plea in the case." [Record No. 424, p. 7] Miller confirmed that he had not been threatened or forced into pleading guilty. [*Id.* at p. 8] He has not provided any *reliable* evidence to discredit the Court's extensive "change-of-plea colloquy . . . [which] included all the elements needed to establish a voluntary and knowing plea." *United States v. Powell*, 798 F.3d 431, 434 (6th Cir. 2015).

5. The Defendant's Background

Miller's background also weighs against granting his motion to withdraw. The Court asked Miller several questions during his re-arraignment hearing to confirm that he was competent and capable of entering a guilty plea, specifically inquiring about the defendant's age, education, medical history, and work experience. [Record No. 424, pp. 3-6] None of the defendant's answers suggested that he possessed any characteristics that would prevent him from knowingly, voluntarily or willingly entering a guilty plea. Specifically, the defendant indicated that he attended high school in California, was able to read and write, and was not under the influence of any drugs or alcohol at the time of his plea. [*Id.*] *See United States v. Goddard*, 638 F.3d 490, 495 (6th Cir. 2011) (noting that the defendant's "well-educated" background supported the conclusion that he "understood the consequences of his actions" when pleading guilty).

6. The Defendant's Prior Experience with the Criminal Justice System

The defendant's experience with the criminal justice system supports the conclusion that he is not entitled to the relief sought. Under this factor, courts will hesitate to grant a defendant's motion to withdraw when the defendant has had "sufficient contact with the criminal justice system to fully understand his rights and the process." *Goddard*, 638 F.3d at 495. Here, Miller has prior convictions for possession with the intent to distribute cocaine: one in state court in 1995, and one in federal court in 2008. As the government notes, Miller likely would have qualified as a career offender but for the age of the state court conviction. The defendant is sufficiently familiar with the criminal justice system to understand the consequences of his decision to plead guilty.

7. The Prejudice to the Government

Courts need not address whether granting the defendant's motion to withdraw his guilty plea would prejudice the government if he fails to show a fair and just reason that warrants withdrawal under Rule 11. *See Spencer*, 836 F.2d at 240 ("[T]he government is not required to establish prejudice that would result from a plea withdrawal, unless and until the defendant advances and establishes a fair and just reason for allowing the withdrawal."). Because Miller has not established a fair and just reason for granting his motion to withdraw in this case, "this factor [is] immaterial to the [Court's] decision." *Goddard*, 638 F.3d at 495. However, the Court will nonetheless address this issue.

The undersigned concludes that the government would be severely prejudiced if Miller were permitted to withdraw his guilty plea. In *United States v. Dalalli*, the Sixth Circuit found prejudice to the government when the defendant sought to withdraw a guilty plea that he had entered in the middle of trial. 651 F. App'x at 403. It reasoned that reopening the case would burden the government because the defendant "did not plead guilty until after the government was fully prepared for trial and had finished presenting the first day of its case." *Id.* Additionally, reopening the defendant's case sixth months after he pleaded guilty could prejudice the government's preparation efforts because, "with the passage of time, witnesses' recollections may fade, and even with the power of subpoenas, the government may be unable to secure some of its witnesses." *Id.*

The same circumstances are present here. Miller pleaded guilty on the second day of his second trial. Thus, the government had fully prepared for trial on two occasions and had twice presented its case to a jury. One co-defendant testified during the first trial. Whether she (or others) would testify during a third trial is uncertain. Additionally, the government

would face the prospect of recalling several out-of-state witnesses. Forcing the United States to prepare for trial a third time clearly would be unduly burdensome. Accordingly, issues of prejudice would weigh against granting Miller's motion.

IV. Conclusion

Miller has not demonstrated that a "fair and just reason" exists for granting his motion to withdraw his guilty plea. Instead, the Court concludes Miller's motion is based on a tactical calculation after he knowingly and voluntarily entered a guilty plea. While the defendant may not at this time accept responsibility for his criminal conduct, he is not factually innocent and cannot in good faith claim such at this stage of the proceedings. Finally, the Court concludes that his trial attorney did not exert undue influence or coercion in forcing Miller to enter a guilty plea. Accordingly, it is hereby

ORDERED that Defendant Miller's motion to withdraw his guilty plea [Record No. 407] is **DENIED**.

Dated: March 9, 2023.

Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky

Appendix 3
District Court's Final Judgment
(March 29, 2023)

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of Kentucky – Central Division at Lexington

UNITED STATES OF AMERICA
v.
Curtis Dewayne Miller

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:21-CR-111-S-DCR-10
USM Number: 14571-078
John Kevin West
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Superseding Indictment [DE #165]

☐ 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:

Title & Section	Nature of Offense	Offense Ended	Count
21:846	Conspiracy to Distribute 500 Grams or More of Mixtures or Substances Containing a Detectable Amount of Methamphetamine	September 23, 2021	1

The defendant is sentenced as provided in pages 2 through 7 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) 8 of the Superseding Indictment [DE #165] ☒ 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.

March 27, 2023
Date of Imposition of Judgment

Signature of Judge

Honorable Danny C. Reeves, Chief U.S. District Judge
Name and Title of Judge

March 29, 2023
Date

DEFENDANT: Curtis Dewayne Miller
CASE NUMBER: 5:21-CR-111-S-DCR-10

IMPRISONMENT

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

THREE HUNDRED TWENTY (320) MONTHS

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ 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: Curtis Dewayne Miller
CASE NUMBER: 5:21-CR-111-S-DCR-10

SUPERVISED RELEASE

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

FIVE (5) YEARS

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.

DEFENDANT: Curtis Dewayne Miller
CASE NUMBER: 5:21-CR-111-S-DCR-10

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.
14. You must comply strictly with the orders of your physicians or other prescribing source with respect to the use of any prescribed controlled substances. You must report any changes regarding your prescriptions to your probation officer immediately (i.e., no later than 72 hours). The probation officer may verify your prescriptions and your compliance with this paragraph.

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 _____

DEFENDANT: Curtis Dewayne Miller
CASE NUMBER: 5:21-CR-111-S-DCR-10

SPECIAL CONDITIONS OF SUPERVISION

1. You must refrain from any use of alcohol.
2. You may not use or consume marijuana or marijuana products, even if that controlled substance were to be prescribed to you by a physician, licensed professional or other person.
3. You must participate in urinalysis testing, or any other form of substance abuse testing, as directed by the probation office. You must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any substance abuse testing required as a condition of your release. You must not knowingly use or consume any substance that interferes with the accuracy of substance abuse testing.
4. You must submit your person, offices, properties, homes, residences, vehicles, storage units, papers, computers, other electronic communications or cloud storage locations, data storage locations or media, to a search conducted by the United States probation office. Failure to submit to a search will be grounds for revocation of supervision. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
5. You must provide the probation office with access to any requested financial information.

DEFENDANT: Curtis Dewayne Miller
CASE NUMBER: 5:21-CR-111-S-DCR-10

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$ Community Waived	$ Waived	$ N/A	$ N/A

☐ 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS $ _____ $ _____

☐ 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.

DEFENDANT: Curtis Dewayne Miller
CASE NUMBER: 5:21-CR-111-S-DCR-10

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 $ 100.00 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:

Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
101 Barr Street, Room 206, Lexington, KY 40507

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

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

☐ 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:
As set forth in the Forfeiture Allegation of the Superseding Indictment [DE #165] as it pertains to this defendant, to wit:
a) $25,700 in U.S. Currency;
b) $64,100 in U.S. Currency;
c) a Glock, Model 17, 9mm pistol, bearing serial number SVG346; and
d) miscellaneous ammunition and magazines.

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.