

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1293

UNITED STATES OF AMERICA

v.

SALAHUDIN SHAHEED,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
District Court No. 2-15-cr-00187-002
District Judge: The Honorable Harvey Bartle, III

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
April 24, 2017

Before: SMITH, Chief Judge, McKEE, and RENDELL, Circuit Judges

JUDGMENT

This cause came on to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted on April 24, 2017.

On consideration whereof, it is now hereby ADJUDGED and ORDERED that the judgment of the District Court entered February 8, 2016, be and the same is hereby AFFIRMED. All of the above in accordance with the opinion of this Court.

Attest:

s/ Marcia M. Waldron
Clerk

DATED: May 5, 2017



Teste: *Marcia M. Waldron*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

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(Filed: May 5, 2017)

OPINION*

SMITH, Chief Judge

* This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

The defendant, Salahudin Shaheed, appeals the denial of his motion to withdraw his guilty plea. Shaheed pled guilty at the beginning of his trial shortly after the second of his two codefendants pled guilty. He pled guilty to one count each of (1) conspiracy to commit Hobbs Act robbery, (2) attempted Hobbs Act robbery, and (3) federal kidnapping. More than two months after he pled guilty, but before his sentencing, Shaheed filed a pro se motion to withdraw his guilty plea. The District Court appointed new counsel for Shaheed and held a two-day evidentiary hearing on his motion. Following the hearing, the District Court denied the motion. Shortly thereafter, the District Court sentenced Shaheed to 240 months' imprisonment on the first two counts and 365 months' imprisonment on the third count, each sentence to be served concurrently. Because Shaheed has failed to sufficiently demonstrate entitlement to withdrawal of his guilty plea, we will affirm.

I

The District Court had jurisdiction under 18 U.S.C. § 3231, and we have jurisdiction pursuant to 28 U.S.C. § 1291.

We review the denial of a motion to withdraw a guilty plea for abuse of discretion. *See United States v. Siddons*, 660 F.3d 699, 703 (3d Cir. 2011). We

review the District Court's findings of fact related to the motion for clear error.

See United States v. Martinez, 785 F.2d 111, 113 n.1 (3d Cir. 1986).

II

"[W]ithdrawal of a guilty plea is not an absolute right," *United States v. Wilson*, 429 F.3d 455, 458 (3d Cir. 2005), and so a "defendant is not entitled to withdraw [a] plea simply at his whim," *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003). Rather, under Rule 11(d)(2)(B) of the Federal Rules of Criminal Procedure, "[a] defendant may withdraw a plea of guilty . . . after the court accepts the plea, but before it imposes sentence if . . . the defendant can show a fair and just reason for requesting the withdrawal." The defendant has the burden of showing a fair and just reason for withdrawal of his guilty plea, and that burden is "substantial." *Jones*, 336 F.3d at 252. To determine whether a defendant has made that requisite showing, a district court must consider three factors: "(1) whether the defendant asserts his innocence; (2) the strength of the defendant's reasons for withdrawing the plea; and (3) whether the government would be prejudiced by the withdrawal." *Id.*

Shaheed directs his arguments at each of those three factors. First, as to his innocence, he claims he asserted and has demonstrated his innocence. Second, regarding the strength of his reasons for withdrawing his plea, Shaheed argues that

his trial counsel misled him into believing he could raise disputed factual matters at his sentencing; he was under duress when he pled guilty because he lacked glasses; his trial counsel told him that his mother wanted him to plead guilty; and someone had threatened his sister that she would be killed if he did not plead guilty. Third, as to prejudice, Shaheed contends that the Government has not shown it would be prejudiced by the plea withdrawal. Those arguments fail to make an adequate showing that Shaheed should have been permitted to withdraw his guilty plea.

First, Shaheed “did not meaningfully reassert his innocence” after pleading guilty. *Id.* at 253. “Bald assertions of innocence are insufficient to permit a defendant to withdraw his guilty plea.” *Id.* at 252; *see also United States v. Brown*, 250 F.3d 811, 818 (3d Cir. 2001) (“Assertions of innocence must be buttressed by facts in the record that support a claimed defense.” (quoting *United States v. Salgado-Ocampo*, 159 F.3d 322, 326 (7th Cir. 1998))). In his initial motion to withdraw his plea, Shaheed made no assertion of innocence. Only after reviewing the Government’s response to his motion, in which the Government noted that Shaheed failed to reassert innocence, did Shaheed claim his innocence. Shaheed now argues that the lack of DNA or fingerprint evidence demonstrates his innocence. He also points out that none of the victim’s descriptions of the

perpetrators resembled him. The lack of DNA or fingerprint evidence does not meaningfully suggest Shaheed's innocence; many criminal cases have no such evidence. Nor does the misdescription of the perpetrators meaningfully support Shaheed's assertion of innocence, given that the victim was bound and blindfolded and her assailants wore masks. Shaheed also faced significant evidence of guilt, including his purchase of the Taser that was used on the victim and inculcating testimony from at least one of his codefendants who had already pled guilty. Shaheed says nothing to cast doubt on this substantial evidence. We therefore conclude that Shaheed failed to demonstrate that the first *Jones* factor supports his motion. *See Martinez*, 785 F.2d at 113 n.1 (noting that the "weight of a defendant's assertions . . . are preeminently issues for the hearing Court to decide" (alteration in original) (quoting *Gov't of V.I. v. Berry*, 631 F.2d 214, 220 (3d Cir. 1980))).

Second, Shaheed's reasons for withdrawing his plea are unpersuasive. He makes four arguments as to this second *Jones* factor.

He first contends that his trial counsel told him that he would be able to raise disputed matters at his sentencing hearing. The District Court did not clearly err in rejecting that contention. Trial counsel was an experienced federal criminal attorney. When directly asked by the District Court at the withdrawal motion

hearing whether he ever advised Shaheed that "he was to defer any objections or any comments with respect to the guilty plea until right before sentencing," Shaheed's trial counsel adamantly responded that he had not and recalled explaining to Shaheed that there "was no going back" if he pled guilty. JA506. Shaheed points to nothing in the record to undermine that assertion, and the District Court consequently made no clear error in crediting trial counsel's testimony.

Shaheed next claims that he did not have his glasses to read his guilty plea and that his trial counsel spoke too softly to him when reading him the plea. Shaheed, though, did not raise these issues before the District Court at his plea colloquy. The District Court specifically asked Shaheed whether he understood the guilty plea document, and he said that he did. Moreover, his trial counsel testified that, when he read Shaheed the guilty plea, Shaheed heard him and understood what he was saying. The District Court did not find Shaheed's assertion to the contrary to be credible. The District Court did not err.

Shaheed also asserts that his trial counsel told him that his mother wanted him to plead guilty when she purportedly did not. Trial counsel, however, received a text message from Shaheed's mother the night before Shaheed pled guilty stating that she had spoken with Shaheed and that he should "take" the

guilty plea. JA228. And even if his mother did not want him to plead guilty, it cannot be ignored that Shaheed was thirty-four years old at the time of the plea, is intelligent, and was a business owner. He cannot blame his mother's wishes, whether genuine or not, for his decision to plead guilty. This is hardly the stuff of genuine duress.

Finally, Shaheed argues that his sister was threatened that she would be killed if he did not plead guilty. The District Court concluded that no threat occurred, and, even if it did, it did not influence Shaheed's decision. The circumstances surrounding the threat support the District Court's conclusion about the veracity of Shaheed's claim. Shaheed did not explain why anyone would make such a threat. The first threat, which allegedly occurred a day before Shaheed pled guilty, was not reported to police until almost a week after Shaheed had pled guilty, and the purported police report concerning the threat was never submitted into evidence. Shaheed's sister refused to cooperate with the FBI in investigating the alleged threat. She also claimed that she received a second threat *after* Shaheed had already pled guilty, undermining the claimed reason for the supposed threat. For his own part, Shaheed never told his trial counsel about the threat. Shaheed also failed to satisfactorily explain why he explicitly stated at his change of plea hearing that no one made a threat to induce him to plead if this threat did

actually occur. *See Siddons*, 660 F.3d at 703 (“[A] defendant must also ‘give sufficient reasons to explain why contradictory positions were taken before the district court.’” (quoting *Jones*, 336 F.3d at 253)). Even if the threat before Shaheed pled guilty occurred, Shaheed claims that his mother’s whispered statement in court, telling him no more than “somebody has threatened [your sister] over this,” put him under such duress that he pled guilty the next day. JA254. Yet, despite having the opportunity to follow up with his mother the night she told him of the threat, he and his mother made no mention of the threat during their multiple telephone conversations. Thus, given his complete lack of knowledge about the circumstances of the threat, the record fails to show that any purported threat influenced Shaheed to plead guilty to multiple federal crimes. The District Court therefore did not err in rejecting Shaheed’s argument that a threat to his sister caused him to plead guilty.

Third, contrary to Shaheed’s assertion, the District Court correctly found that the Government would be prejudiced by the withdrawal of his guilty plea. *See Jones*, 336 F.3d at 252 (stating that the third factor in assessing a guilty plea withdrawal is the Government’s prejudice but noting that “the Government need not show such prejudice when a defendant has failed to demonstrate that the other factors support a withdrawal of the plea”). In particular, the Government “would

have an extremely difficult task to call [the victim] as a witness without causing her a severe emotional setback, even assuming that she would be able to testify.” JA18. The District Court found that the victim, who had been “beaten, bound, gagged, . . . blindfolded,” and “subject to the use of a Taser,” had been attempting to “put her life together” following Shaheed’s guilty plea. *Id.* The Government would, of course, also have to arrange again for other civilian and law enforcement witnesses after already making those preparations once. Under these circumstances, we cannot say that the District Court’s finding of prejudice is clearly erroneous.

III

For the reasons stated above, we will affirm the District Court’s denial of Shaheed’s motion to withdraw his guilty plea.

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA

v.

SALAHUDIN SHAHEED

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAE2:15CR187-02

USM Number: 69537-066

Kenneth C. Edelin, Jr., Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 2, and 3.☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1951(a)	Conspiracy to commit robbery which interferes with interstate commerce	4/8/2015	1
18:1951(a) and 2	Attempted robbery which interferes with interstate commerce and aiding and abetting	4/4/2015	2
18:1201(a)(1) and 2	Kidnapping and Aiding and Abetting	4/4/2015	3

The defendant is sentenced as provided in pages 2 through 5 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) _____ ☐ 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.

Copies to:

Defendant

K. Edelin, Esq.

J. Linchan, Asst

C. Musselman (2), P.O.

PTS

Fiscal

FLU

US Marshal (2)

February 4, 2016

Date of Imposition of Judgment

Signature of Judge

Harvey Bartle III, USDJ

Name and Title of Judge

Date

February 5, 2016

DEFENDANT: SALAHUDIN SHAHEED
CASE NUMBER: DPAE2:15CR187-02

IMPRISONMENT

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

365 months on count 3. 240 months on each of counts 1 and 2. All sentences shall run concurrently.

☐ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SALAHUDIN SHAHEED
CASE NUMBER: DPAE2:15CR187-02

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
5 years on count 3. 3 years on each of counts 1 and 2. All terms of supervised release shall run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: SALAHUDIN SHAHEED
CASE NUMBER: DPAE2:15CR187-02

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00	\$ 0	\$ 9,983.97

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
I.V.	\$9,983.97	\$9,983.97	

TOTALS	\$ <u>9,983.97</u>	\$ <u>9,983.97</u>
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☐ 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:

* 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: SALAHUDIN SHAHEED
CASE NUMBER: DPAE2:15CR187-02

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 \$ 300.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The defendant shall pay a minimum payment of \$25.00 per quarter towards restitution while he is in custody. The defendant shall satisfy the remaining amount due in monthly installments of not less than \$25.00, to commence 30 days after release from confinement.

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

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

☒ Joint and Several

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

Khayree Gay - DPAE2:15CR187-1 - I.V. \$9,983.97
Basil Buie - DPAE2:15CR187-3 - I.V. \$9,983.97

- ☐ 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:

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

UNITED STATES COURT OF APPEALS
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No. 16-1293

UNITED STATES OF AMERICA

v.

SALAHUDIN SHAHEED,
Appellant

(E.D. Pa. No. 2-15-cr-00187-002)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO,
and RENDELL,* Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

* The vote of the Honorable Marjorie O. Rendell, Senior Judge of the United States Court of Appeals for the Third Circuit, is limited to panel rehearing.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ D. Brooks Smith
Chief Circuit Judge

Dated: September 12, 2017

DWB/cc:

Jeanine Linehan, Esq.
Maureen McCartney, Esq.
Kenneth C. Edelin, Jr., Esq.
Salahudin Shaheed