No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID CRAIG MILAM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Kelly Margolis Dagger
Counsel of Record
Ellis & Winters LLP
Post Office Box 33550
Raleigh, North Carolina 27636
(919) 865-7000
Kelly.dagger@elliswinters.com
Counsel for Petitioner
David Craig Milam

QUESTION PRESENTED

Whether the district court erred by denying Petitioner's motion to withdraw his guilty plea.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

- *United States v. David Milam*, No. 7:19-cr-102, United States District Court for the Eastern District of North Carolina. Judgment entered July 31, 2023.
- *United States v. David Milam*, No. 7:19-cr-176, United States District Court for the Eastern District of North Carolina. Judgment entered July 31, 2023.
- *United States v. David Milam*, No. 4:22-cr-25, United States District Court for the Eastern District of North Carolina. Judgment entered July 31, 2023.
- *United States v. David Milam*, Nos. 23-4527 (L), 23-4528, 23-4529, United States Court of Appeals for the Fourth Circuit. Judgment entered August 13, 2025.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

CITATION OF PRIOR OPINIONS

The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix 1-19 to the petition and is reported at *United States v. Milam*, 150 F.4th 320 (4th Cir. Aug. 13, 2025).

The opinion of the United States District Court for the Eastern District of North Carolina appears at Appendix 20-27 to the petition and is unpublished and available on Westlaw at *United States v. Milam*, Nos. 7:19-CR-102, 7:19-CR-176, 2023 WL 3485238 (E.D.N.C. May 16, 2023).

Both opinions are cited as "App." followed by the relevant appendix page number(s) in this petition.

JURISDICTIONAL STATEMENT

This petition seeks review of the Fourth Circuit's decision affirming the district court's denial of Mr. Milam's motion to withdraw his guilty pleas in two federal prosecutions and affirming Mr. Milam's sentences in three federal prosecutions.

In 7:19-cr-102 (E.D.N.C.) ("the firearm case"), Mr. Milam was charged by indictment with possession of a firearm having previously been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924. JA26.[1] In 7:19-cr-176 (E.D.N.C.) ("the drug case"), Mr. Milam was charged by criminal information with conspiracy to distribute and possess with intent to distribute controlled substances, including 500 grams or more of a mixture and substance containing

[1] Citations to "JA" are to the joint appendix filed with the Fourth Circuit.

methamphetamine, and 100 grams or more of heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and possession with intent to distribute a quantity of methamphetamine and a quantity of heroin, in violation of § 841(a)(1). JA54-55. In 4:22-cr-25 (E.D.N.C.) ("the assault case"), Mr. Milam was charged by indictment with forcibly assaulting a federal officer in the performance of the officer's duties, causing bodily injury, in violation of 18 U.S.C. § 111(b). JA92.

Mr. Milam pleaded guilty without a plea agreement to the indictment in the firearm case. JA3, JA40-53. Mr. Milam pleaded guilty pursuant to a plea agreement to the information in the drug case. JA12, JA68-91; *see* JA325-331. More than two and a half years after his pleas, Mr. Milam moved to withdraw his guilty pleas in the firearm case and the drug case. JA6, JA15, JA95-110. The district court denied Mr. Milam's motion, thus allowing Mr. Milam's guilty pleas in the firearm case and the drug case to stand. App. 20-27. In the assault case, Mr. Milam pleaded guilty to the indictment without a plea agreement after the district court denied his motion to withdraw his pleas. JA22-23, JA196-208.

The district court heard the three cases together for sentencing, imposing a 300-month total term of imprisonment and a five-year total term of supervised release. JA9, JA18, JA23, JA282-283.

On appeal to the Fourth Circuit, the cases were consolidated. Order, *United States v. Milam*, No. 23-4527(L) (4th Cir. Aug. 16, 2023). On August 13, 2025, the Fourth Circuit affirmed the denial of Mr. Milam's motion to withdraw his pleas, and affirmed his convictions and sentence. *See* App. 1.

The petition is being filed within the time permitted by the Rules of this Court. *See* S. Ct. R. 13. This Court has jurisdiction to review the Fourth Circuit's decision pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Investigation and arrests on firearm and drug charges

On March 13, 2019, the Onslow County Sheriff's Office in Jacksonville, North Carolina, conducted surveillance of a home in Sneads Ferry, North Carolina, where they believed that David Milam and Carolee Simpson lived. JA442. Officers had learned during their investigation that the home was a meeting place for the Aryan Kings street gang. JA442.

When they approached the house, officers met Mr. Milam, Ms. Simpson, and Brian Pearce. JA442. Officers detained and searched all three individuals, finding no contraband. JA442. Inside the house, officers found items related to the Aryan Kings, including swastikas, the Aryan creed, and gas masks, and, in the master bedroom, a loaded .40 caliber pistol. JA442. Officers charged Mr. Milam, who had a prior felony conviction, with possessing the firearm. JA442. Mr. Milam was arrested and released. *See* JA442.

Mr. Pearce later admitted that he had flushed three ounces of crystal methamphetamine down a toilet before officers entered Mr. Milam's house on March 13, 2019. JA442. On May 22, 2019, officers returned to the home. JA48, JA442. Officers saw Mr. Milam leave the home in a car and then stopped him when he committed a traffic violation. JA48-49, JA442. Mr. Milam was driving the car

with Robert Harmer in the front passenger seat. JA442. Mr. Harmer revealed that he had a "speaker box" in his pants pocket, prompting officers to search Mr. Harmer and find a box containing a spoon and a syringe loaded with heroin. JA443. Upon a search of the car, officers found $14,612 in cash, two grams of marijuana, and packaging materials. JA49, JA443; *see* JA172-173.

Officers obtained a warrant for Mr. Milam's house. JA49, JA443; *see* JA126-138. Inside the house, officers found two pistols, a .22 caliber handgun, two assault-style rifles, ammunition, high-capacity magazines, 31.9 grams of methamphetamine, and 27.5 grams of heroin. JA49, JA139-140. Mr. Milam admitted to being involved in methamphetamine and heroin trafficking. JA443.

2019 charges and guilty pleas

On May 23, 2019, Mr. Milam was charged by criminal complaint in the firearm case. JA2. A grand jury then indicted Mr. Milam, on June 12, 2019, on one count of possession of a firearm having previously been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924. JA3, JA26. On August 13, 2019, Mr. Milam pleaded guilty to the indictment without a plea agreement. JA3, JA47.

On November 18, 2019, Mr. Milam was charged by criminal information in the drug case. JA12. The government alleged that Mr. Milam engaged in a conspiracy to distribute and possess with intent to distribute controlled substances, including 500 grams or more of a mixture and substance containing methamphetamine, and 100 grams or more of heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and that he possessed with intent to distribute a quantity of

methamphetamine and a quantity of heroin, in violation of § 841(a)(1). JA54-55. Mr. Milam pleaded guilty to both charges pursuant to a plea agreement on January 15, 2020. JA12, JA86, JA325-331.

Pamlico County Jail incident and 2021 indictment

While awaiting sentencing on the firearm and drug charges, Mr. Milam was detained at the Pamlico County Jail in Bayboro, North Carolina. JA443. On July 23, 2021, Mr. Milam refused orders to pack his belongings and move to another cell. JA443. Mr. Milam then got into a fistfight with correctional officers. JA443-444. Mr. Milam and one of the officers were injured in the fight. JA444.

Based on this fight, on April 26, 2022, Mr. Milam was indicted in the assault case on a single charge of forcibly assaulting a federal officer in the performance of the officer's duties, causing bodily injury, in violation of 18 U.S.C. § 111(b). JA21, JA92.

Motion to withdraw guilty pleas in firearm and drug cases

On October 20, 2022, Mr. Milam moved to withdraw his guilty pleas in both the firearm and drug cases. JA6, JA15, JA95-110.[2] Mr. Milam argued that the government had violated his rights under the Fifth Amendment as interpreted in *Brady v. Maryland*, 373 U.S. 83 (1963), and under Rule 16 of the Federal Rules of Criminal Procedure, by failing to disclose a complete copy of the search warrant and

[2] Mr. Milam filed identical motions to withdraw in the firearm and drug cases. *See* App. 21 (noting that motions to withdraw were identical). The parties have included only a single copy of the motion, related filings, hearing transcripts, and orders in the joint appendix.

supporting affidavit that enabled officers to search his home on May 22, 2019, where the officers uncovered drugs, firearms, and other incriminating evidence. JA95, JA97-98; *see* JA139-140. Mr. Milam further argued that his prior counsel had rendered ineffective assistance by failing to identify and correct the government's discovery violation. JA95.

Mr. Milam argued that the complete copy of the search warrant affidavit—which he only got when his new counsel requested it in 2022, JA98, JA124—revealed deficiencies in the officers' showing of probable cause that he did not have the opportunity to consider before entering his pleas in the firearm and drug cases. *See* JA98-101, JA103-105.

Mr. Milam argued that at least two of the factors recognized in *United States v. Moore*, 931 F.2d 245 (4th Cir. 1991), weighed in favor of allowing him to withdraw his pleas. JA103. First, Mr. Milam argued that the government's failure to timely produce the search warrant affidavit prevented him from considering a suppression motion and, therefore, his guilty pleas were not knowing and voluntary. JA103-105. Second, Mr. Milam argued that he did not have the close assistance of competent counsel when he entered the pleas, because his counsel failed to identify and address the discovery violation. JA105-107. If he had had the opportunity to consider a motion to suppress, Mr. Milam argued, the outcome would likely have been different. *See* JA108. Mr. Milam asserted that he had a meritorious challenge to the search warrant under *United States v. Lalor*, 996 F.2d 1578 (4th Cir. 1993),

because there was nothing in the supporting affidavit linking the location to be searched to the suspected criminal activity. JA108-109.

In response, the government argued that Mr. Milam did not offer credible evidence that his guilty pleas were not knowing or voluntary. JA334. The government admitted that it did not provide all the pages of the search warrant application because of what it said was a scanning error. JA334-335. The government argued that, as to the drug case, Mr. Milam did not have the same discovery rights as in the firearm case, because Mr. Milam was never indicted in the drug case, and instead pleaded guilty to a criminal information. JA335-336.

According to the government, the missing pages of the search warrant application were not material. JA336. The government argued that the complete search warrant affidavit supported the probable cause finding, and that Mr. Milam could not show that having the complete affidavit would have caused him to file a suppression motion or go to trial. JA336. The government asserted that the search warrant affidavit was sufficient under *Lalor*, and that even if the warrant was defective, suppression would be inappropriate under the good faith exception recognized in *United States v. Leon*, 468 U.S. 897 (1984). JA337. The government also noted that it had incriminating evidence against Mr. Milam other than the evidence obtained pursuant to the search warrant. JA337.

The government argued that other factors weighed against Mr. Milam's motion, including that Mr. Milam had not asserted legal innocence, that he waited more than two years after pleading guilty to attempt to withdraw his pleas, that he

had the close assistance of competent counsel, and that withdrawal of the pleas would prejudice the government and waste judicial time and resources. JA338-343. Among other things, the government argued that Mr. Milam pleaded guilty in the drug case to have the chance at a lower sentence. JA335, JA341-342. The government further argued that Mr. Milam sought to withdraw his pleas in the firearm and drug cases only after being indicted in the assault case and suggested that the motion to withdraw was a "tactical decision based on the sentence he is now facing." JA342.

Hearing on motion to withdraw guilty pleas

The United States Magistrate Judge held an evidentiary hearing on the motion to withdraw on February 8, 2023. JA8, JA16; *see* JA346-414.

Mr. Milam's defense counsel at the time of his guilty pleas, Assistant Federal Public Defender Rosemary Godwin, testified for the government. *See* JA349. Ms. Godwin discussed her representation of Mr. Milam in the drug and firearm cases, including her advice to Mr. Milam that he had the option to contest the search warrant and to plead not guilty. JA352; *see* JA349-354. Ms. Godwin testified that Mr. Milam was intent on pleading guilty promptly in the firearm case, despite her suggestion to "slow it down" and consider the defenses and a "search warrant issue." JA354-355. According to Ms. Godwin, she and Mr. Milam were aware that a potential drug prosecution was forthcoming, and Mr. Milam believed that if he quickly pleaded guilty in the firearm case, he might avoid further prosecution. *See* JA356 ("I told him there was no guarantee the government would

not move forward on the drug case . . . . [H]e wanted to just try to shut it down at ten years, take the chance that it wouldn't get any worse and if the drug case was going to come, he wanted to negotiate and cooperate.").

Ms. Godwin recounted negotiating a plea agreement for Mr. Milam to avoid indictment in the drug case. JA357-362. She explained that she obtained a plea offer where Mr. Milam would have a stipulated drug weight to limit his sentencing exposure, he would avoid a charge under 18 U.S.C. § 924(c), and he would the opportunity to receive other benefits. JA357.

Ms. Godwin testified that she would not have given Mr. Milam any different advice if she had had the complete search warrant. JA363. She testified about Mr. Milam's "urgency to plead" and said, "He wasn't wanting to hear defenses. He wasn't wanting to hear 'Let's explore suppression issues.'" JA363. Ms. Godwin testified that Mr. Milam "was worried to death something was going to surface that was going to be a bigger problem for him than what we were reading in this discovery." JA365.

Ms. Godwin further testified that Mr. Milam's sentencing hearing was delayed by the COVID-19 pandemic. JA363-364.

Ms. Godwin testified that, in the summer of 2021, someone sent what appeared to be legal mail from Ms. Godwin to the jail where Mr. Milam was detained. JA364. The apparent legal mail was fake—the mail was used to smuggle drugs into the jail. JA364. The government suspected Mr. Milam of being involved

with the fake legal mail. JA364-365. As a result, Ms. Godwin withdrew from representing Mr. Milam. JA364.

On cross-examination, Ms. Godwin testified that she could not recall whether she reviewed the search warrant with Mr. Milam. JA371. Ms. Godwin further testified about her consultations with Mr. Milam and his decision to plead guilty in the firearm and drug cases. JA371-380.

Mr. Milam did not put on evidence. *See* JA393. Mr. Milam's counsel argued that Mr. Milam had not entered knowing and voluntary pleas because of the government's failure to produce the complete search warrant affidavit. JA396. Mr. Milam's counsel explained that the court did not need to consider whether the search warrant was supported by probable cause, either with or without the complete affidavit; rather, the question for the court was whether the unproduced evidence was material to Mr. Milam's decision to plead guilty. JA398-399. Mr. Milam's counsel argued that it was not possible to "advise a client about the viability of a pretrial motion to suppress without having the benefit of having reviewed that full, correct copy of the warrant yourself." JA399-400.

The government's counsel argued that the *Moore* factors weighed against allowing Mr. Milam to withdraw his pleas. JA408. According to the government's counsel, Mr. Milam made a knowing and voluntary decision after weighing his options; he delayed substantially in seeking to withdraw his pleas; and the government would be prejudiced by withdrawal because witnesses' memories might be affected by the passage of time. JA408-409.

Denial of motion to withdraw guilty pleas

After the hearing, the United States Magistrate Judge issued a memorandum and recommendation that the motion to withdraw guilty pleas be denied. JA150-163. The magistrate judge found that Ms. Godwin's testimony was not necessary to the disposition of the motion, so it did not discuss her testimony. JA151.

The magistrate judge found that the first *Moore* factor, whether the defendant had offered credible evidence that his pleas were not knowing and voluntary, weighed against Mr. Milam. JA153-159. The magistrate judge noted that there was a circuit split as to whether *Brady* requires disclosure of exculpatory information in the guilty plea context. JA153-154. Assuming, without deciding, that *Brady* applied, the magistrate judge found that there was no *Brady* violation because the undisclosed evidence was not material. JA154. The magistrate judge found that the undisclosed pages of the search warrant application strengthened the probable cause showing, and those pages were "decidedly not material because there is no reasonable probability that Defendant would have proceeded differently by not pleading guilty and pursuing a suppression motion had the evidence been disclosed." JA156; *see* JA157-159.

Turning to whether Mr. Milam had the close assistance of competent counsel, the magistrate judge also found that this factor weighed against Mr. Milam. JA159-161. The magistrate judge found that Mr. Milam failed to demonstrate prejudice from counsel's allegedly deficient performance, where the search warrant was supported by a "strong showing of probable cause." JA160. The magistrate

judge found that Mr. Milam "failed to demonstrate there is a reasonable probability that had counsel obtained the full search warrant and affidavit, Defendant would have pursued a baseless suppression motion and gone to trial rather than pleading guilty." JA160. The magistrate judge also noted that Mr. Milam stated in the Rule 11 colloquy that he was satisfied with Ms. Godwin's representation, and that the record demonstrated that Ms. Godwin negotiated favorable plea terms. JA160-161.

As to the remaining *Moore* factors, the magistrate judge found that they were either neutral or weighed against Mr. Milam. JA161. Mr. Milam had not asserted legal innocence; therefore, that factor weighed against him. JA161. Although Mr. Milam delayed more than three years in the firearm case and almost three years in drug case before moving to withdraw his pleas, the magistrate judge found that this factor was neutral, where the basis for the motion was not discovered until new counsel appeared, and new counsel filed the motion "reasonably promptly." JA161-162. The magistrate judge agreed that the government would be prejudiced by withdrawal, and that this factor weighed against Mr. Milam. JA162. As to the final factor, inconvenience and waste of judicial resources, the magistrate judge found that it was "at best neutral." JA162.

Having considered all the *Moore* factors, the magistrate judge recommended that the district court deny the motion to withdraw. JA162.

Mr. Milam objected to the memorandum and recommendation. JA164-176. Mr. Milam argued that the magistrate judge improperly focused on whether the court would have granted or denied a motion to suppress evidence, if Mr. Milam had

challenged the sufficiency of the search warrant affidavit. JA164. Mr. Milam continued to assert that he had shown the requisite fair and just reason to withdraw his plea, and that his motion should therefore be granted. JA164-165.

As to the undisclosed pages of the search warrant affidavit, Mr. Milam argued that the lack of disclosure, even if not a *Brady* violation, meant his pleas were not knowing and voluntary. JA165-166. Mr. Milam argued that the undisclosed pages did not have to be material under *Brady* to warrant granting the motion to withdraw. JA166. Rather, citing to *United States v. Fisher*, 711 F.3d 460, 469 (4th Cir. 2013), Mr. Milam argued that, because the lack of complete production rendered Mr. Milam's pleas not "knowing," the court was not required to determine whether there was a *Brady* violation. JA166-167.

Mr. Milam also objected to the memorandum and recommendation to the extent that the magistrate judge found Ms. Godwin's testimony unnecessary to the disposition of the motion to withdraw. JA167. Mr. Milam argued that the testimony was important, and that it showed that Ms. Godwin had not read the search warrant, let alone reviewed it with Mr. Milam. JA168. Mr. Milam continued to assert that he had not entered his guilty pleas with the "close assistance of competent counsel." JA171.

Although Mr. Milam argued that he did not need to show that a suppression motion would have been successful, he objected to the magistrate judge's conclusion that such a motion would have been "baseless," and explained why there could have been a valid basis to move to suppress. JA171-176.

On May 16, 2023, the district court overruled Mr. Milam's objections, adopted the magistrate judge's memorandum and recommendation, and denied Mr. Milam's motion to withdraw his guilty pleas. App. 20-27. The district court ruled that Mr. Milam had to show that the undisclosed evidence was material to his choice to plead guilty, and that he had failed to make that showing. *Id.* 23. The district court rejected the argument that Mr. Milam could not have had the close assistance of competent counsel when his attorney never read the search warrant. *Id.* 24. The court ruled that Mr. Milam was required to show that, but for his counsel's errors, he would not have pleaded guilty, and that he had not made that showing. *Id.*

The district court concluded, in summary, that Mr. Milam failed to show that but for either the discovery violation or the alleged ineffective assistance, he would have insisted on proceeding to trial. *Id.* 26 Based on the first and fourth *Moore* factors and the totality of the circumstances, the district court determined that withdrawal of the pleas was not warranted. *Id.*

Arraignment and guilty plea in assault case

Having lost his motion to withdraw his guilty pleas in the firearm and drug cases, Mr. Milam proceeded to arraignment in the assault case. JA22; *see* JA187-208. On June 7, 2023, Mr. Milam pleaded guilty to the indictment in the assault case without a plea agreement. JA22, JA204.

Sentencing

All three cases were set for a single sentencing hearing. JA9, JA17, JA23. As to the firearm case, the court sentenced Mr. Milam to a 120-month term of

imprisonment and a three-year term of supervised release. JA282-283, JA265-266. As to the drug case, on the conspiracy charge, the court sentenced Mr. Milam to a 300-month term of imprisonment and a five-year term of supervised release; on the possession with intent to distribute charge, the court sentenced Mr. Milam to a 240-month term of imprisonment and a three-year term of supervised release. JA282-283, JA265-266. As to the assault case, the court sentenced Mr. Milam to a 240-month term of imprisonment and a three-year term of supervised release. JA282-283, JA266. The court ordered all sentences to run concurrently, producing a 300-month total term of imprisonment, and a five-year total term of supervised release. JA282-283.

Notices of appeal

Mr. Milam timely filed notices of appeal in all three cases. JA9, JA18, JA23; *see* JA288. The Fourth Circuit consolidated all three cases for appeal. Order, *United States v. Milam*, No. 23-4527(L) (4th Cir. Aug. 16, 2023).

Fourth Circuit proceedings

On appeal, Mr. Milam argued that the district court abused its discretion by denying his motion to withdraw his guilty pleas in the firearm and drug cases. Def.'s Opening Br. 31-41, *United States v. Milam*, No. 23-4527(L) (4th Cir. Dec. 8, 2023). Mr. Milam argued that his guilty pleas were not knowing and voluntary because he and his counsel did not have half the search warrant that led to the search of his home and the discovery of drugs and firearms at the time he entered the pleas. *Id.* 32-33. He further argued that he lacked the close assistance of

competent counsel at the time of his pleas, because his counsel did not review the discovery carefully enough to discern that the government had not produced the complete search warrant affidavit. *Id.* 38. He also advanced arguments about his sentence. *Id.* 43-56.

The Fourth Circuit heard oral argument and issued a published opinion on August 13, 2025, affirming the district court's denial of the motion to withdraw guilty pleas, and affirming Mr. Milam's convictions and sentences. App. 1. The Fourth Circuit concluded that Mr. Milam failed to show that his guilty pleas were not knowing and voluntary, because, in short, he had "not shown that the government's scanning error was material to his decision to plead guilty." *Id.* 13. The Fourth Circuit further concluded that Mr. Milam failed to show that he lacked the close assistance of competence counsel at the time of his pleas. *Id.*

MANNER IN WHICH THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The question presented was argued and reviewed below when Mr. Milam moved to withdraw his guilty pleas in the drug and firearm cases and then argued on appeal that the district court erred by denying that motion. JA6, JA15, JA95-110; Def.'s Opening Br. 31-41, *United States v. Milam*, No. 23-4527(L) (4th Cir. Dec. 8, 2023). The question was decided when the Fourth Circuit rejected Mr. Milam's argument and affirmed the convictions and sentences. *See* App. 1. Mr. Milam's argument is appropriate for this Court's consideration.

REASON FOR GRANTING THE WRIT

Mr. Milam acknowledges that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." S. Ct. R. 10. Mr. Milam nevertheless recognizes that this Court's discretion is not limited by Rule 10. Mr. Milam respectfully asks the Court to exercise its discretion to review his case although the error involves the misapplication of a properly stated rule of law.

DISCUSSION

THE DISTRICT COURT ERRED BY DENYING MR. MILAM'S MOTION TO WITHDRAW HIS GUILTY PLEA.[3]

A defendant may withdraw a guilty plea after the district court accepts the plea, but before the court imposes a sentence, if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B); *see United States v. Hyde*, 520 U.S. 670, 671 (1997). A properly conducted plea colloquy, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, raises a presumption that the plea is final and binding. *See United States v. Bowman*, 348 F.3d 408, 414 (4th Cir. 2003). The defendant bears the burden of establishing a fair and just reason for withdrawal. *See Hyde*, 520 U.S. at 671 (under similar

[3] Mr. Milam argued in the Fourth Circuit that the appeal waiver in his plea agreement did not bar appellate review of the denial of his motion to withdraw his guilty plea. *See* Def.'s Opening Br. 30-31, *United States v. Milam*, No. 23-4527(L) (4th Cir. Dec. 8, 2023). The Government did not invoke the appeal waiver. Gov't Resp. Br. 45 n.4, *United States v. Milam*, No. 23-4527(L) (4th Cir. Feb. 15, 2024).

circumstances, "a defendant may not withdraw his plea unless he shows a 'fair and just reason' under Rule 32(e)").[4]

District courts consider a variety of factors in determining whether to exercise their discretion to grant a motion to withdraw a plea, including:

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

Moore, 931 F.2d at 248. "[A] district court typically should balance these factors, along with any other pertinent information, to reach its decision." *United States v. Thompson-Riviere*, 561 F.3d 345, 348 (4th Cir. 2009). The first, second, and fourth factors are "generally the most significant." *United States v. Kramer*, No. 21-4424, 2022 WL 2987964, at *1 (4th Cir. July 28, 2022) (per curiam); *see also United States v. Sparks*, 67 F.3d 1145, 1154 (4th Cir. 1995) ("The factors that speak most straightforwardly to the question whether the movant has a fair and just reason to upset settled systemic expectations by withdrawing her plea are the first, second, and fourth.").

According to circuit precedent, an appellate court reviews an order denying a defendant's motion to withdraw a guilty plea "to determine whether the district

[4] The *Hyde* Court considered a motion to withdraw a plea under a prior version of the Federal Rules of Criminal Procedure where the "fair and just reason" standard was found in Rule 32. Rule 11(d) is now the applicable rule. *See United States v. Bowman*, 348 F.3d at 411.

court abused its discretion in determining that [the defendant] had not shown a 'fair and just reason' for being allowed to withdraw his plea[.]" *United States v. Craig*, 985 F.2d 175, 178 (4th Cir. 1993) (per curiam). The first and fourth factors warranted allowing Mr. Milam to withdraw his guilty pleas, so the district court abused its discretion by denying Mr. Milam's motion and the Fourth Circuit erred by affirming that denial.

A. Mr. Milam Credibly Asserted That His Plea Was Not Knowing and Voluntary.

To be binding, a guilty plea must be entered "knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences." *United States v. Moussaoui*, 591 F.3d 263, 278 (4th Cir. 2010) (quotation omitted). The district court erred by finding that Mr. Milam had not credibly asserted that his plea was not knowing and voluntary, *see* App. 20-27, and the Fourth Circuit erred by affirming that finding, *see* App. 12-13.

Mr. Milam offered credible evidence that he did not enter his pleas knowingly and voluntarily, because it is undisputed that he did not have complete discovery from the government at the time of his pleas. JA103-105; *see Moore*, 931 F.2d at 248. Mr. Milam contends that he could not plead guilty knowingly and intelligently when he and his counsel did not have half of the search warrant affidavit that led to the search of his home and the discovery of drugs and firearms. *See* JA116-123, JA126-140.

"Often the decision to plead guilty is heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of

securing leniency should a guilty plea be offered and accepted." *Brady v. United States*, 397 U.S. 742, 756 (1970). Contrary to the Fourth Circuit's conclusion, the government's discovery error was material to Mr. Milam's guilty pleas. *See* App. 12-13. As Mr. Milam argued to the district court and in the Fourth Circuit, if he had known about the complete search warrant affidavit before pleading guilty, he might have appraised the government's evidence differently. JA108-109. Mr. Milam would have had the opportunity to argue that the search warrant affidavit did not support the finding of probable cause because the affidavit did not establish an adequate nexus between the suspected criminal activity and his home. *See Lalor*, 996 F.2d at 1583 ("In this and other circuits, residential searches have been upheld only where some information links the criminal activity to the defendant's residence.").

Case law does not support the Fourth Circuit's conclusion that the government's deficient discovery understated probable cause, and Mr. Milam would have been even more likely to plead guilty if he had the complete warrant affidavit. App. 12. Mr. Milam did not have the chance to argue in a suppression motion that his case was similar to *United States v. Brown*, 828 F.3d 375, 382-83 (6th Cir. 2016), where the court concluded that there was insufficient information in a search warrant affidavit to support a search of a drug dealer's home, although the warrant contained information about suspected narcotics in the defendant's car. Here, as in *Brown*, the search warrant affidavit did not establish a nexus between the suspected criminal activity and the location to be searched. *See id.* at 384.

According to the affiant, Mr. Milam was a leader in the Aryan Kings, a gang allegedly involved in violence and drug distribution. JA135. Officers saw two men deliver some furniture to 1417 Old Folkstone Road, Mr. Milam's house; when officers stopped the men for a traffic violation, one of the men had a bag of suspected methamphetamine small enough to fit inside his pack of cigarettes. JA135. While that stop was in progress, officers stopped another vehicle that left the residence, driven by Mr. Milam with Robert Harmer as the passenger. JA136. According to the affiant, Mr. Harmer had a loaded syringe with suspected heroin in his pocket and Mr. Milam claimed ownership of a black bag containing cash and marijuana. JA136.

These facts are insufficient to support the affiant's assertion—and the magistrate's finding—that there was probable cause to search Mr. Milam's home. *See* JA136. The affidavit contains no information or observations about Mr. Milam purportedly storing drugs inside his home. *See* JA136. The affidavit suggests only that two people who had left Mr. Milam's home had user amounts of drugs on their persons, and that Mr. Milam claimed ownership of an unspecified amount of marijuana stored in his car. *See* JA136.[5]

The Fourth Circuit recognized in *United States v. Grossman*, 400 F.3d 212, 218 (4th Cir. 2005), that under the circumstances of that case, it was reasonable to suspect that a known drug dealer stored drugs in homes to which he had keys. In

[5] Other investigative materials provided by the government show that the bag contained two grams of marijuana. *See* JA173.

Grossman, one search warrant affidavit included information from a reliable informant who identified the defendant as a drug dealer and an officer's observations of the defendant's suspicious behavior just outside the home's front door. *Id.* That search warrant led to evidence that the defendant had another apartment, where officers got a search warrant and found 4.5 kilograms of cocaine. *Id.* at 215-16. Based on that evidence, officers obtained a search warrant for a third residence where the defendant was known to stay. *Id.* at 216. The *Grossman* court concluded that the warrants were supported by probable cause. *Id.* at 217.

Grossman is inapposite to the facts of this case, where the affiant offered no information to establish that Mr. Milam was a known drug dealer. *See* JA135-136. Unlike in *Grossman*, there was no reliable informant claiming that Mr. Milam was a drug dealer, and there was no series of searches turning up evidence that Mr. Milam was a drug dealer. *Compare Grossman*, 400 F.3d at 215-17 *with* JA135-136. The affiant's assertion that Mr. Milam claimed ownership of a bag of marijuana in his car was the only evidence implicating Mr. Milam in drug activity. *See* JA135-136. This assertion did not permit an inference that Mr. Milam was the kind of committed, long-time drug dealer who would necessarily keep drugs in his home. *See United States v. Roman*, 942 F.3d 43, 53 (1st Cir. 2019) (ruling that affidavit did not support nexus between drug activity and defendant's home, where there was nothing in affidavit about length of defendant's involvement in drug trafficking or drug activity at his residence).

Further, having the complete search warrant affidavit would have allowed Mr. Milam to consider and discuss with counsel whether there was a basis to challenge the affidavit under *Franks v. Delaware*, 438 U.S. 154 (1978). JA175. Mr. Milam argued in the district court that some of the statements in the complete search warrant affidavit were inconsistent with other evidence. *See* JA175. According to the district court, these inconsistencies are "beside the point that the totality of the circumstances support a determination of probable cause based upon the information in the affidavit." App. 25. But Mr. Milam did not have the chance to investigate whether the inconsistencies reflected misrepresentations by law enforcement, and if so, whether those misrepresentations invalidated the search warrant. *See* JA175; *see, e.g.*, *Roman*, 942 F.3d at 52 (concluding that search warrant affidavit, stripped of misrepresentations, did not establish nexus between defendant's drug activity and his home).

The Fourth Circuit erred to the extent it relied on the testimony of Mr. Milam's former counsel that she had encouraged him to slow down and consider whether he may have a "search warrant issue." *See* App. 13. Ms. Godwin's testimony in that regard cannot be squared with her failure to ever notify the government of the alleged scanning error. *See* JA106-107. If Ms. Godwin had read the search warrant affidavit at all, she would have noticed the error. She did not, so the only reasonable conclusion is that she never read the affidavit and thus could not have discussed it with Mr. Milam.

Mr. Milam offered credible evidence that his pleas were not knowing and voluntary, and the Fourth Circuit erred by affirming the district court's contrary finding. *See* App. 12-13; JA165-167.

B. Mr. Milam Did Not Have the Close Assistance of Competent Counsel at the Time He Entered the Guilty Plea.

Ineffective assistance of counsel of "constitutional magnitude" can "constitute a 'fair and just reason' for allowing plea withdrawal." *Craig*, 985 F.2d at 179. Counsel's performance must have fallen below an objective standard of reasonableness, and it must have prejudiced the defendant. *See id.*; *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984) (requiring showing of both deficient performance and prejudice to make out ineffective assistance claim). Mr. Milam was denied effective assistance of counsel when his counsel failed to obtain the complete search warrant affidavit and thus necessarily failed to discuss it with him. Mr. Milam further contends that counsel's ineffective assistance was prejudicial.

Counsel's performance is evaluated under "prevailing professional norms." *Jones v. Murray*, 947 F.2d 1106, 1110 (4th Cir. 1991) (quotation omitted). Professional standards require that defense counsel "communicate and keep the client informed and advised of significant developments and potential options and outcomes." *Criminal Justice Standards for the Defense Function* § 4-1.3(d) (Am. Bar Ass'n 4th ed. 2017); *see also Jones*, 947 F.2d at 1110 (citing *Criminal Justice Standards* as setting professional norms). Defense counsel "should keep the client reasonably and currently informed about developments" in the case, "including

developments in pretrial investigation, discovery, disposition negotiations, and preparing a defense." *Criminal Justice Standards for the Defense Function* § 4-3.9(a). When assisting a client in considering a guilty plea, defense counsel should discuss with the client and analyze multiple factors, including "the prosecution's evidence." *Id.* § 4-6.1(b). "It is counsel's duty to ensure that the defendant is sufficiently aware of the facts and circumstances surrounding the plea so that the defendant can make a reasonably informed decision." *Moussaoui*, 591 F.3d at 290.

Here again, the Fourth Circuit erred by relying on Ms. Godwin's testimony that she told Mr. Milam he could file a motion to suppress instead of pleading guilty, and he still chose to plead guilty. *See* App. 14. Mr. Milam's counsel could not have reviewed and informed him about the complete discovery because his counsel did not have the complete search warrant affidavit that allowed officers to search Mr. Milam's home. *See* JA106-107, JA168. Although Ms. Godwin testified that she discussed the search warrant and the possibility of a motion to suppress with Mr. Milam, this statement cannot be true because Ms. Godwin did not have the complete search warrant affidavit. *See* JA168. If she had reviewed the affidavit, she would have noticed that it was incomplete. *See* JA106. Instead, she failed to review it with Mr. Milam and thus failed to give him adequate advice on a possible motion to suppress. JA169-174.

Contrary to the magistrate judge's finding, JA161, Mr. Milam's statements at his arraignments that he was satisfied with his counsel's services, JA43, JA77, do not show that those services were constitutionally sufficient. Mr. Milam, as a non-

lawyer, could not tell the court whether his counsel's advice was constitutionally effective. *See, e.g.*, *United States v. Lough*, 203 F. Supp. 3d 747, 752-54 (N.D. W. Va. 2016) (finding that defendant did not have close assistance of competent counsel despite defendant's statements at arraignment that he was satisfied with counsel's services).

Mr. Milam respectfully contends that his counsel at the time of arraignment rendered constitutionally deficient performance when counsel failed to review and discuss the search warrant with him before he entered his pleas. *See Criminal Justice Standards for the Defense Function* §§ 4-1.3(d), 4-3.9(a), 4-6.1(b). Mr. Milam established by moving to withdraw his guilty plea that he would not have pleaded guilty and would have insisted on going to trial if he had known about the complete search warrant affidavit. *See* JA95-102. Therefore, Mr. Milam was prejudiced by his counsel's ineffective assistance. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (to show *Strickland* prejudice, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial").

C. The Other Relevant *Moore* Factors Did Not Warrant Denying Mr. Milam's Motion to Withdraw His Pleas.

The Fourth Circuit did not reach the remainder of the *Moore* factors. *See* App. 9-15. If this Court grants certiorari, Mr. Milam will argue that those other factors are insufficient to overcome his showing that his pleas were not knowing and voluntary, and that he did not have the close assistance of competent counsel.

On the second factor, Mr. Milam concedes that he did not assert legal innocence; however, this factor is not necessarily required for a court to find a fair and just reason for withdrawal of a guilty plea. *See, e.g.*, *United States v. Yansane*, 370 F. Supp. 3d 580, 590, 592 (D. Md. 2019) (granting motion to withdraw guilty plea despite finding that defendant had not credibly asserted legal innocence).

On the third factor, the district court correctly determined that Mr. Milam moved forward with his motion to withdraw his guilty pleas "reasonably promptly" after learning of the basis for the motion. JA161-162.

"Because withdrawal of a guilty plea almost invariably prejudices the government to some extent and wastes judicial resources, the fifth and sixth factors can weigh in the defendant's favor so long as she shows that the magnitudes of the prejudice and inconvenience are small; the defendant need not show that the effects will be nonexistent." *Sparks*, 67 F.3d at 1154 n.5. A court will not find prejudice because the government will incur "costs that would inevitably attend the trial of a particular case even in the absence of a withdrawn guilty plea." *United States v. Hankins*, No. 2:09-cr-00222, 2010 WL 4642004, at *5 (S.D. W. Va. Nov. 8, 2010) (quotation omitted). The government "must identify some costs specifically resulting from the entry and subsequent withdrawal of the plea." *Id.*

The government made only a conclusory assertion of prejudice in opposition to Mr. Milam's motion to withdraw, arguing that it had relied on Mr. Milam's guilty to plea and "allowed the sentencings of other cooperators who might be needed to testify against [Mr. Milam] at trial to go forward." JA343. The district court, and

not the government, decided when sentencing hearings would be held. The fact that other witnesses had been sentenced did not make them unavailable to the government; rather, based on the government's description of those individuals as "cooperators," JA343, it appears that the witnesses likely were bound by their plea agreements to be available to testify if called. Therefore, any prejudice to the government resulting from the withdrawal of Mr. Milam's plea would have been slight. *See, e.g.*, *United States v. Artabane*, 868 F. Supp. 76, 79 (M.D. Pa. 1994) (mere assertion of prejudice to government was insufficient to warrant denial of motion to withdraw plea where witnesses were local and readily available for trial); *see also Sparks*, 67 F.3d at 1154, n.5 (defendant need not disprove all prejudice to government).

The sixth factor also can weigh in favor of the defendant even if there will be some inconvenience to the court or waste of judicial resources. *See Sparks*, 67 F.3d at 1154 n.5. Allowing Mr. Milam to withdraw his pleas would have required some additional expenditure of judicial resources in the form of further proceedings and trial. However, the cost of additional proceedings, including trial, was outweighed by the interest in allowing Mr. Milam to hold the government to its burden of proof at trial. *See Hankins*, 2010 WL 4642004, at *6 (allowing withdrawal of plea where defendant had legitimate interest in testing possibility of acquittal by holding government to its burden of proof). Therefore, concern for inconvenience to the court and judicial economy did not warrant denial of Mr. Milam's motion.

CONCLUSION

For the reasons shown above, Mr. Milam respectfully contends that the district court erred by denying his motion to withdraw his guilty pleas in the firearm and drug cases, and the Fourth Circuit erred by affirming that denial. Mr. Milam requests that this Court grant certiorari, reverse the Fourth Circuit, and remand for further proceedings in the firearm and drug cases. In addition, because the court held a single sentencing hearing and considered Mr. Milam's convictions on all charges together, Mr. Milam contends that he is entitled to reversal of the judgment in the assault case, and remand for resentencing upon the resolution of the firearm and drug cases. *See, e.g.*, *United States v. Ventura*, 864 F.3d 301, 309 (4th Cir. 2017) ("The sentencing package doctrine accounts for the holistic approach that a district court should employ when sentencing a defendant convicted of multiple offenses.").

This the 12th day of November, 2025.

/s/ Kelly Margolis Dagger
Counsel of Record
Kelly Margolis Dagger
N.C. State Bar No. 44329
ELLIS & WINTERS LLP
Post Office Box 33550
Raleigh, North Carolina 27636
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

Counsel for Petitioner David Craig Milam

APPENDIX

TABLE OF APPENDICES

Page

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4527

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID MILAM,

Defendant - Appellant.

No. 23-4528

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID CRAIG MILAM,

Defendant - Appellant.

No. 23-4529

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID MILAM,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Wilmington and Greenville. Louise W. Flanagan, District Judge. (7:19-cr-00176-FL-1; 7:19-cr-00102-FL-1; 4:22-cr-00025-FL-1)

Argued: March 18, 2025 Decided: August 13, 2025

Before NIEMEYER and RICHARDSON, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Richardson and Judge Floyd joined.

ARGUED: Kelly Margolis Dagger, ELLIS & WINTERS LLP, Raleigh, North Carolina, for Appellant. Lucy Partain Brown, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** Paul K. Sun, Jr., ELLIS & WINTERS LLP, Raleigh, North Carolina, for Appellant. Michael F. Easley, Jr., United States Attorney, David A. Bragdon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

NIEMEYER, Circuit Judge:

David Milam, the leader of the Aryan Kings, a White supremacist group, pleaded guilty on August 13, 2019, to possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). Then, on January 15, 2020, he pleaded guilty to conspiracy to distribute methamphetamine and heroin and to possession with intent to distribute methamphetamine and heroin, in violation of 21 U.S.C. §§ 846 and 841(a)(1). And finally, on June 7, 2023, he pleaded guilty to assaulting persons assisting federal officers in performance of their official duties, in violation of 18 U.S.C. § 111(b). In a single sentencing hearing, the district court imposed a downward variant sentence of 300 months' imprisonment for all three convictions.

Milam sought authorization to withdraw his first two guilty pleas because, as he discovered after pleading guilty, the government's production of discovery included a copy of the search warrant and supporting affidavit that inadvertently omitted every other page. The district court denied his motion, and he now appeals that ruling. He also contends that, during sentencing, the district court erroneously denied him credit for acceptance of responsibility when the government had agreed to it and had not objected to the recommendation in the presentence report that he receive it. Finally, he argues that his 300-month sentence was substantively unreasonable.

For the reasons that follow, we affirm.

I

Officers with the Sheriff's Office in Onslow County, North Carolina, received information that Milam was the leader of the Aryan Kings, a White supremacist street gang, and that the gang met at Milam's residence. Accordingly, they conducted surveillance of his residence. When they observed Milam leaving his residence in an uninsured vehicle, they stopped him and recovered a spoon and a syringe loaded with heroin from a passenger and, from the vehicle, $14,612 in cash, two grams of marijuana, and packaging materials associated with drug trafficking. Milam acknowledged that the cash and the marijuana belonged to him.

That same day, the officers observed another vehicle leaving Milam's residence with an expired license plate, and they also stopped it, recovering crystal methamphetamine.

Based on these stops, the officers obtained a search warrant for Milam's residence and executed it, all again on the same day, May 22, 2019. The officers recovered two 9mm pistols, a .22 caliber handgun, two assault rifles, ammunition, high-capacity magazines, 31.9 grams of crystal methamphetamine, 27.5 grams of heroin, digital scales, and a marijuana pipe. The guns were found in an area of the residence that the Aryan Kings used as a "clubhouse" or meeting place, while the drugs were found in the master bedroom. As no one was at home during the execution of the warrant, the officers left a copy of the inventory of seized items in the house, which indicated that the items had been seized pursuant to a search warrant.

A few weeks later, on June 12, 2019, a federal grand jury returned an indictment charging Milam with the possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Two months later, Milam pleaded guilty to that charge without a plea agreement, having rejected the plea agreement that the government had offered.

On November 18, 2019, the government filed additional charges against Milam for conspiracy to distribute 500 grams or more of a substance containing methamphetamine and 100 grams or more of heroin, in violation of 21 U.S.C. § 846, and possession with intent to distribute quantities of methamphetamine and heroin, in violation of 21 U.S.C. § 841(a)(1). Again, Milam pleaded guilty to these charges, but this time he did so pursuant to a plea agreement negotiated by his counsel, Assistant Federal Public Defender Rosemary Godwin.

During both guilty plea hearings, the district court conducted thorough guilty plea colloquies under Federal Rule of Criminal Procedure 11 during which Milam agreed to the facts underlying the charges against him and stated, of his free will, that he was guilty. And in both cases, the district court accepted his plea as knowing and voluntary.

While detained at the Pamlico County Jail awaiting sentencing, Milam began to receive drugs and other contraband mailed to him by a fellow member of the Aryan Kings. At Milam's direction, his associate labeled the packages "legal mail" and affixed a return address with the name and address of Milam's attorney. Milam then sold the drugs to other inmates, collecting payment through a mobile payment app. Eventually, a letter that Milam's associate had sent containing illegal drugs was returned to the Federal Public Defender's Office for insufficient postage, and Milam's attorney, Rosemary Godwin,

opened the envelope to discover the illegal substances. At that point, she filed a motion to withdraw as Milam's attorney, which the court granted, and Milam was thereafter provided with a new attorney.

Also while detained in jail, Milam assaulted multiple sheriff's deputies after one ordered him to move to another cell. Milam refused to move, stating, "[I]f you try and move me, I'm going to fuck you up." When another officer arrived to help, Milam punched one of them in the jaw, and he continued to fight until he was eventually restrained. As a result of these assaults, two officers were injured. A federal grand jury thereafter returned an indictment on April 26, 2022, charging Milam with forcibly assaulting and inflicting bodily injury upon persons assisting federal law enforcement officers in the performance of their official duties, in violation of 18 U.S.C. § 111(b).

During this same period, Milam's new attorney began reviewing discovery that the government had provided several years earlier — *i.e.*, shortly after Milam had been indicted in the firearms case — and noticed that the copy of the May 22, 2019 search warrant and supporting affidavit was incomplete, missing every other page. When the new attorney pointed this out to the government's attorney, the government's attorney promptly provided a full copy to Milam's attorney and noted that the government had made an inadvertent scanning error when originally producing the copy.

Milam nonetheless filed a motion in October 2022 to withdraw his guilty pleas in both the firearms case and the drug-distribution case, arguing that because he had pleaded guilty without the benefit of a complete and accurate copy of the search warrant and supporting affidavit, his guilty pleas had not been knowing and voluntary. He also argued

that his first attorney's apparent failure to notice the error showed that he lacked the close assistance of competent counsel when he pleaded guilty. These circumstances, he maintained, amounted to "a fair and just reason for requesting the withdrawal" of his guilty pleas, as authorized by Federal Rule of Criminal Procedure 11(d)(2)(B).

In response to the motion, the government argued that its mistake in producing a deficient copy of the search warrant and affidavit was not material in that there was no evidence from which to conclude that Milam would have filed a motion to suppress or gone to trial had it produced a complete copy of the search warrant and affidavit. The government also disputed Milam's claim that his attorney's apparent failure to notice the error indicated that Milam had lacked the close assistance of competent counsel when he pleaded guilty. To the contrary, it noted, Milam's former attorney had been able to negotiate a favorable plea agreement for Milam that was likely to result in a lower sentence.

The district court conducted an evidentiary hearing on Milam's motion, during which it received testimony from Rosemary Godwin, Milam's former attorney. Godwin testified that she had met with Milam at least five times before his first guilty plea and that they had discussed several strategic options, including the possibility "of contesting the search warrant." She testified that Milam, however, was not interested in those options and that he wanted to plead guilty as quickly as possible. Even though she admonished him to "slow it down," telling him that he "may have defenses" and that because there was a search warrant, he "may have a search warrant issue," Milam still insisted on pleading guilty with the hope of avoiding a term of life imprisonment.

After the hearing, the district court denied Milam's motion to withdraw his guilty pleas. The court concluded that "the undisclosed pages of the search warrant were not material" to Milam's decision to plead guilty and that he had accordingly failed to establish a reasonable probability that he would not have pleaded guilty had his counsel noticed the omission. The court also pointed out that any motion to suppress evidence recovered pursuant to the search warrant would have lacked merit.

After the court denied his motion to withdraw, Milam pleaded guilty without a plea agreement to the assault charge.

The court scheduled sentencing for Milam's three convictions to take place at a single sentencing hearing. In advance of sentencing, the probation officer prepared a presentence report in which he concluded that Milam's total offense level was 39, which included a three-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1, as agreed to in Milam's plea agreement. With an offense level of 39 and a Criminal History Category VI, the recommended sentencing range was 360 months' imprisonment to life.

At the sentencing hearing on July 11, 2023, the district court addressed all of Milam's arguments and requests. After the government argued that Milam should not be entitled to credit for acceptance of responsibility in light of his subsequent conduct while detained, the court declined to apply the three-level reduction. Then, after a lengthy exchange, the court ultimately accepted the recommendation of the parties that the proper offense level should be 38. That level, combined with a Criminal History Category VI, resulted in a recommended sentencing range of 360 months' imprisonment to life. Following an extended discussion of Milam's circumstances and conditions, as well as the

18 U.S.C. § 3553(a) sentencing factors, the court imposed a downward variant sentence of 300 months' imprisonment. It characterized that sentence as "a generous sentence" that "reflect[ed] the good and the bad" and took "into consideration the need to discourage this type of behavior, to promote respect for the law, to protect the people of the Eastern District of North Carolina and elsewhere," as well as Milam's "background and . . . history, and the exceedingly dangerous criminal conduct" that had brought him before the court.

From the district court's judgment dated July 26, 2023, Milam filed this appeal, challenging both the district court's denial of his motion to withdraw his guilty pleas and his sentence.

II

Milam contends first that the district court erred in denying his motion to withdraw his first two guilty pleas — a motion based on the government's production of an incomplete copy of the search warrant and affidavit, which included only every other page. The district court ruled that the incomplete copy was not material to whether Milam pleaded guilty. Milam argues nonetheless that the incomplete copy was indeed material and that if he had known the contents of the complete affidavit before pleading guilty, he might have filed a motion to suppress and argued that the affidavit did not support a finding of probable cause because it failed to tether the suspected criminal activity to his residence. He also argues that having a complete copy of the search warrant affidavit would have permitted him to consider whether to challenge the affidavit's veracity under *Franks v. Delaware*, 438 U.S. 154 (1978). He adds that because his counsel never demanded a

complete copy of the search warrant affidavit before he pleaded guilty, he lacked the close assistance of competent counsel. Based on these missed opportunities, he asserts that he would have insisted on going to trial had he known about the complete search warrant affidavit, thus giving him a "fair and just reason" for withdrawing his two guilty pleas under Rule 11.

We begin by noting that a defendant's guilty plea is a "grave and solemn act," *Brady v. United States*, 397 U.S. 742, 748 (1970), and therefore that when a defendant enters a guilty plea pursuant to a plea hearing that complies with Federal Rule of Criminal Procedure 11, he is left with "a very limited basis upon which to have his plea withdrawn," *United States v. Bowman*, 348 F.3d 408, 414 (4th Cir. 2003). In other words, a properly conducted Rule 11 guilty plea colloquy creates a "strong presumption that the plea is final and binding." *United States v. Lambey*, 974 F.2d 1389, 1394 (4th Cir. 1992) (en banc). Reflecting this, Rule 11(d)(2)(B) provides specifically that a defendant in Milam's circumstances must show "a fair and just reason for requesting the withdrawal." And a "fair and just reason" is "one that essentially challenges the fairness of the Rule 11 proceeding." *United States v. Puckett*, 61 F.3d 1092, 1099 (4th Cir. 1995) (cleaned up).

To determine whether a defendant has advanced a fair and just reason to withdraw his guilty plea, we have identified a nonexclusive list of factors to be considered by the district court:

> (1) whether the defendant has offered credible evidence that his plea was not knowing or not voluntary, (2) whether the defendant has credibly asserted his legal innocence, (3) whether there has been a delay between the entering of the plea and the filing of the motion, (4) whether [the] defendant has had close assistance of competent counsel, (5) whether withdrawal will cause

> prejudice to the government, and (6) whether it will inconvenience the court and waste judicial resources.

United States v. Moore, 931 F.2d 245, 248 (4th Cir. 1991). Milam essentially relies on the first factor, whether his plea was not knowing or not voluntary, and the fourth factor, whether he had the close assistance of competent counsel. To satisfy the first factor, in particular, Milam would have to offer credible evidence that his plea was not a "voluntary expression of his own choice," or that it was not a "knowing, intelligent act[] done with sufficient awareness of the relevant circumstances and likely consequences." *Brady*, 397 U.S. at 748. But *Brady* does not mandate clairvoyance; a plea is not rendered unknowing or involuntary because a defendant "did not correctly assess every relevant factor entering into his decision" or "misapprehended the quality of the State's case." *Id.* at 757. Moreover, even where a defendant was aware of the direct consequences of his guilty plea, he can still have his plea set aside if he shows that he was improperly "influenced" to plead guilty, *i.e.*, that egregious governmental misconduct was *material* to his decision to plead guilty. *United States v. Garrett*, 141 F.4th 96, 103 (4th Cir. 2025).

At the outset, we note that Milam's Rule 11 colloquies during both guilty pleas were routine but thorough, and Milam has not challenged them. He confirmed that he understood the charges against him, that he had discussed them with his attorney, and that he was satisfied with his attorney's performance. He also confirmed that he understood that he would not necessarily be able to withdraw his plea once it was accepted. After thorough questioning by the district court in each case, Milam pleaded guilty, and the court accepted his plea as knowing and voluntary. Milam was thus aware of the consequences

of his guilty pleas. Indeed, he has not alleged otherwise. Nonetheless, he asserts that the government's failure to produce a complete copy of the warrant and affidavit influenced him to plead guilty and that its error was thus material.

The district court found otherwise, and we agree.

The record shows that the incomplete warrant affidavit that Milam originally received recounted one instance in which the officers had stopped a vehicle leaving Milam's residence with drug paraphernalia inside, as well as large amounts of cash, marijuana, and packaging materials. The complete warrant affidavit, by contrast, recounted two instances in which officers had stopped vehicles leaving Milam's residence with drugs or drug paraphernalia. The complete warrant affidavit thus contained *only stronger evidence* of probable cause. Stated otherwise, the government's deficient disclosure *understated* the evidence of probable cause, thus suggesting that the receipt of the complete warrant affidavit would have made it more likely that Milam would decide to plead guilty.

When weighing materiality, we also cannot overlook the benefits that Milam hoped to and did receive from pleading guilty in each case. *See Ferrara v. United States*, 456 F.3d 278, 294–97 (1st Cir. 2006). In the firearms case, the record strongly indicates that Milam possessed an unflinching desire to plead guilty immediately to the § 922(g)(1) count, hoping that the government would not prosecute or investigate him further. Milam's attorney testified that Milam stated unequivocally that he wanted to plead guilty as quickly as possible to the firearms charge. She stated that "of all the clients" she had represented over 30 years, Milam was the most "adamant that he wanted to get into court on that first

arraignment day and plead guilty to being a felon in possession of a firearm once he learned that that carried a ten-year possible statutory maximum." She added that she had repeatedly encouraged him to "slow it down," telling him that he "may have defenses" and that because there was a search warrant, he "may have a search warrant issue." But, according to counsel, Milam "consistently and very passionately" expressed that "he was very worried about things surfacing in or around his case that could put him in prison for life" and that "he wanted to go ahead and take responsibility and plead guilty to that gun case in the hopes that the government might not move forward" with the drug case or conduct further investigations. Additionally, Milam received substantial benefits from pleading guilty in the drug case. Milam's counsel testified that she helped Milam negotiate a plea agreement that limited his drug-weight exposure and obviated a § 924(c) count, the latter of which would have entailed a mandatory consecutive sentence.

In short, we conclude that Milam has not shown that the government's scanning error was material to his decision to plead guilty.

And for this same reason, we conclude also that Milam fails to show that he lacked the close assistance of competent counsel. *United States v. Mayberry*, 125 F.4th 132, 141 (4th Cir. 2025) (noting that a defendant seeking to withdraw a guilty plea on the ground that he lacked the close assistance of counsel "must show that his counsel's error made a material difference in his decision to plead guilty"). Milam has, again, provided no reason to think that he would have filed a motion to suppress, as opposed to pleading guilty, when faced with *stronger* evidence of probable cause. Fortifying that conclusion, Milam's attorney, having reviewed both the incomplete copy of the search warrant affidavit and the

full copy, testified that her advice to Milam would not have been any different had they received the complete warrant and affidavit. And she further testified that she had informed Milam that they could file a motion to suppress instead of immediately pleading guilty, but that Milam had no interest in this option.

Milam now suggests that he could also have filed a motion under *Franks* to challenge the search warrant as containing false or misleading statements. But that suggestion is most speculative. He points to a description in the affidavit of the items recovered in the search of his vehicle — a description that was included in the incomplete copy of the affidavit he received — to argue that the affidavit was deliberately false. Specifically, he notes that the affidavit stated that officers recovered "[a] black bag with a large amount of cash marijuana and packaging materials." Yet, he does not dispute that the evidence showed that $14,612 in cash, two grams of marijuana, and packaging materials were indeed recovered and that he had advised the officers that the cash and marijuana belonged to him. While the phrase "a large amount" in the description could arguably be read to modify "marijuana" and "packaging materials," it could also be read to modify only the amount of cash, which was indeed a large amount. But in either case, how he would have converted this dispute over ambiguous language into a winnable *Franks* motion is hardly conceivable. Moreover, Milam provided no evidentiary support that he would have been interested in challenging the search warrant affidavit under *Franks*.

Based on this record, we agree with the district court that a full disclosure of the search warrant affidavit would not have changed the direction that Milam chose — to plead guilty in both cases.

III

Milam next contends that the district court erred in entertaining and agreeing with the government's argument that the district court deny him credit for acceptance of responsibility when the government had earlier agreed in the plea agreement to such a reduction and failed to object when the presentence report reflected that agreement. While the government was required to object to the presentence report within 14 days, it did not do so. *See* Fed. R. Crim. P. 32(f)(1). At sentencing, however, Milam likewise did not object to the government's making its argument that he was not entitled to credit for acceptance of responsibility under U.S.S.G. § 3E1.1. Absent a defendant's objection, a district court's "decision to hear the government's objection may be treated as an implicit finding of the existence of good cause" to extend the government's time for objecting. *United States v. Aidoo*, 670 F.3d 600, 612 (4th Cir. 2012). In any event, there was no unfair surprise in this case, as the record reflects that Milam was on notice that the government would likely contest any reduction for acceptance of responsibility. Indeed, the government had, in its plea agreement with Milam, reserved the right to challenge acceptance of responsibility if Milam's conduct prior to sentencing so justified. Moreover, when Milam's counsel proposed his guideline calculation to the district court at sentencing, he indicated that he understood that Milam might not receive credit for acceptance of responsibility.

Regardless, the district court had an independent obligation to determine whether Milam was entitled to a reduction for acceptance of responsibility. *See United States v. White*, 875 F.2d 427, 431 (4th Cir. 1989). And it clearly acted with this recognition when it observed during sentencing that there was "no way" that someone who "starts dealing drugs in the jail" while awaiting sentencing should be entitled to acceptance of responsibility under the Guidelines. This conduct after Milam's plea but before his sentencing provided the court good reason to deny him credit for acceptance of responsibility. Indeed, we have specifically concluded that a district court did not commit reversible error in denying a defendant credit for acceptance of responsibility when he, like Milam, continued to distribute drugs after he was indicted and entered a plea agreement. *See United States v. Kidd*, 12 F.3d 30, 34 (4th Cir. 1993). We find likewise here that the district court did not commit reversible error.

IV

Finally, Milam contends that his 300-month sentence was substantively unreasonable. He acknowledges that we may presume that his below-Guidelines sentence is reasonable, that "the nature and circumstances of the offenses of conviction were serious," and that his "criminal history score" is high. But he maintains nonetheless that his 300-month sentence was greater than necessary to achieve the purposes of sentencing, noting that he "has an excellent work history in the commercial fishing industry," that he is "close to his family," and that his early struggles with drug addiction "provide[] some explanation for his repeated problems with the law."

A defendant's sentence is substantively unreasonable when "it is longer than necessary to serve the purposes of sentencing." *United States v. Swain*, 49 F.4th 398, 402 (4th Cir. 2022) (quoting *United States v. Fowler*, 948 F.3d 663, 668 (4th Cir. 2020)). Congress has specified that those purposes are "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2). Moreover, any sentence must account for "(1) the nature of the offense and the defendant's history and characteristics; (2) the kinds of sentences legally available; (3) the advisory sentencing range provided by the Sentencing Guidelines; (4) any relevant policy statement issued by the Sentencing Commission; (5) the need to avoid unwarranted sentence disparities; and (6) the need for restitution." *United States v. Zuk*, 874 F.3d 398, 409 (4th Cir. 2017) (citing 18 U.S.C. § 3553(a)).

When a defendant challenges his sentence as substantively unreasonable, we "independently examine the totality of the circumstances" to assess whether the district court abused its discretion in determining that its chosen sentence adequately promoted § 3553(a)'s basic aims. *United States v. Fitzpatrick*, 126 F.4th 348, 353 (4th Cir. 2025) (cleaned up). And, of course, we do so against the presumption that a sentence is reasonable if it falls within the advisory Guidelines range. *See United States v. Perry*, 92 F.4th 500, 518 (4th Cir. 2024).

In this case, we conclude that Milam's 300-month sentence, which was 60 months below the bottom of the Guidelines range, was not longer than necessary to effectuate the purposes of sentencing. Milam was the leader of the Aryan Kings, a violent White supremacist gang, and in that role, he involved himself in significant drug distribution. He was accountable for at least 3,000 kilograms of converted drug weight according to his plea agreement, and he likely could have been held accountable for a much greater amount were it not for that agreement. The district court was well within its discretion to punish him for the seriousness of these offenses. Moreover, Milam possessed a long criminal history, stretching back to the time he was 17 years old.

As important, Milam's postconviction conduct added a serious aggravating factor. While in prison and awaiting sentencing, Milam did not hesitate to return to his drug-distributing ways. And he also violently assaulted two sheriff's deputies. Finally, he sent a letter to a member of another White supremacist group bragging about his work on behalf of the Aryan Kings and asking if the Aryan Kings could merge with that group. In light of this ongoing criminal activity, the court reasonably concluded that Milam's prior run-ins with law enforcement had failed to promote respect for the law or produce any meaningful deterrent effect. *See United States v. Oliver*, 133 F.4th 329, 341 (4th Cir. 2025).

Although it is true, as Milam contends, that some considerations weighed in favor of leniency, such as his close relationship with his family, the district court acknowledged those factors, noting that its sentence reflected the good as well as the bad. And it was not an abuse of discretion for the court to have concluded that the good supported a sentence

60 months below the bottom of his advisory Guidelines range but that no further reduction was warranted.

* * *

Milam made calculated strategic decisions to plead guilty to three different substantial crimes, and the district court found that his decisions were knowing and voluntary in light of all the facts. While awaiting sentencing, however, Milam assaulted two sheriff's deputies and distributed drugs to fellow inmates. Once caught, he pivoted to an after-the-fact effort to withdraw his first two pleas based on an immaterial scanning error during discovery, apparently hoping for a better outcome. On these facts, the district court denied Milam's request to withdraw his guilty pleas, declined to give him credit for acceptance of responsibility, and sentenced him to a term of 300 months' imprisonment — a sentence 60 months below the recommended Guidelines range. We find no reversible error or abuse of discretion and accordingly affirm the judgment of the district court.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:19-CR-102-FL
No. 7:19-CR-176-FL

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	ORDER
DAVID CRAIG MILAM,	)	
	)	
Defendant.	)	

These related cases come before the court on defendant's motions to withdraw his guilty pleas. (No. 7:19-CR-102-FL DE 55; No. 7:19-CR-176-FL DE 40). Pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Criminal Procedure 59(b), United States Magistrate Judge Robert B. Jones, Jr., entered memorandum and recommendation ("M&R"), wherein it is recommended that defendant's motions be denied. (No. 7:19-CR-102-FL DE 69; No. 7:19-CR-176-FL DE 55). Defendant timely objected to the M&R. In this posture, the issues raised are ripe for ruling. For the following reasons, the court adopts the M&R and denies defendant's motions.

STATEMENT OF THE CASE

In case No. 7:19-CR-102-FL, defendant pleaded guilty August 13, 2019, without a plea agreement, to an indictment charging possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Thereafter, in case No. 7:19-CR-176-FL, defendant pleaded guilty, pursuant to a written plea agreement, to two counts of a criminal information charging conspiracy to manufacture, distribute and possess with intent to distribute 50 grams or more of methamphetamine and 100 grams or more of heroin, in violation of 21 U.S.C. §§ 841 and 846

(count one); and possession with intent to distribute a quantity of methamphetamine and heroin, in violation of 21 U.S.C. § 841 (count two).

The United States Probation Office prepared a final presentence investigation report March 18, 2020, applicable to both related cases, which calculates a total offense level 39, and criminal history category VI, producing an advisory guidelines range of 360 months to life imprisonment. The court continued sentencing four times related to COVID-19, to June 7, 2021. Then, the court continued sentencing five more times upon defendant's motions, followed by a final setting at the court's direction for the December 13, 2022, term of court.

In the meantime, the court allowed defendant's original counsel, Rosemary Godwin ("Godwin"), to withdraw in both related cases due to a conflict of interest, and defendant's current counsel Marshall Ellis ("Ellis") entered an appearance on September 12, 2021.[1] Defendant also was indicted in a third, unrelated, case on April 26, 2022, No. 4:22-CR-25-FL, for assault upon a federal officer at the Pamlico County jail, in violation of 18 U.S.C. § 111(b).[2]

Defendant filed the instant motions, which are identical in both related cases, on October 20, 2022, relying upon correspondence between counsel, a search warrant originally disclosed by the government, and a corrected copy of the search warrant. The court then continued the December 13, 2022, sentencing to be reset upon disposition of the instant motion, if warranted. The government responded in opposition, also relying upon the corrected search warrant, and defendant replied.

[1] Prior to entry of appearance by Ellis, another attorney, Raymond Tarlton, briefly appeared for defendant but then was allowed to withdraw due to a conflict of interest.

[2] Arraignment is set for the June 13, 2023 term of court.

The magistrate judge held an evidentiary hearing on February 8, 2023, at which the government presented testimony of Godwin, and the court heard argument of the parties, after which the magistrate judge entered the instant M&R. Defendant filed objections March 30, 2023.

COURT'S DISCUSSION

A. Standard of Review

The district court reviews de novo those portions of a magistrate judge's M&R to which specific objections are filed. 28 U.S.C. § 636(b). The court does not perform a de novo review where a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Absent a specific and timely filed objection, the court reviews only for "clear error," and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). Upon careful review of the record, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

B. Analysis

Defendant argues that he should be allowed to withdraw his guilty pleas because they were not knowing and voluntary, due to 1) the government's failure to disclose a complete and accurate copy of the search warrant and accompanying affidavit that led to his arrest and seizure of the evidence against him, and 2) prior counsel's failure to identify and correct the government's insufficient disclosure and failure to adequately discuss and consider filing a motion to suppress. The magistrate judge cogently addressed defendant's arguments and correctly determined that withdrawal of his guilty pleas is not warranted under the applicable factors. See United States v.

Moore, 931 F.2d 245, 248 (4th Cir. 1991). Upon de novo review of the instant motions and the record in this case, the court adopts the analysis in the M&R as its own. The court writes separately below to address issues raised in defendant's objections and to augment the analysis of the M&R.

Defendant contends the undisclosed pages of the search warrant need not be "material" for purposes of Brady v. Maryland, 373 U.S. 83 (1963), for this court to conclude that his pleas were not entered "knowingly." (Def's Obj. (DE 70) at 3). He cites, for example, United States v. Fisher, 711 F.3d 460 (4th Cir. 2013), where the court determined government misconduct rendered a plea involuntary, without addressing whether the government violated its Brady v. Maryland disclosure obligations. Fisher, however, is unhelpful to defendant for two reasons. First, materiality is, in fact, a requirement for setting aside a plea under Fisher: The defendant must show "the misconduct influenced his decision to plead guilty or, put another way, that it was material to that choice." 711 F.3d at 465 (emphasis added).[3] Here, for the reasons set forth in the M&R, the undisclosed pages of the search warrant were not material to defendant's choice to plead guilty; instead, they only further bolstered the basis for the warrant.

Second, Fisher sets a high bar for setting aside a guilty plea based upon government misconduct, under which a defendant must show "some egregiously impermissible conduct (say threats, blatant misrepresentations, or untoward blandishments by government agents) antedated the entry of his plea." Id. (emphasis in original). In Fisher, the court vacated a guilty plea in the "highly uncommon circumstances in which gross police misconduct goes to the heart of the prosecution's case," and the case agent "falsely testified in his sworn search affidavit," and himself pled guilty to fraud and theft offenses based thereon. Id. at 466. Defendant does not meet this standard here, where he "recognize[s] that the government's discovery violation may have been

[3] In case citations in this order, internal quotations and citations are omitted unless otherwise specified.

the result of negligence, as opposed to bad faith," (Def's Mot., (Case No. 7:19-CR-102 DE 55 at 11 n. 5), and nothing in the record supports a finding of bad faith, much less "egregiously impermissible conduct" as required under Fisher. 711 F.3d at 465. Accordingly, defendant has failed to demonstrate that his guilty plea was not knowing or voluntary due to the government's failure to disclose missing pages of the search warrant application.

Defendant also suggests that defendant could not "have pled guilty with the 'close assistance of competent counsel' when his attorney never read the search warrant." (Obj. at 5). This argument, however, does not take into account the prejudice prong of the assistance of counsel factor. A "defendant seeking to establish that he is entitled to withdraw his plea because he did not receive close assistance of counsel must demonstrate that counsel performed deficiently and that, but for counsel's errors, the defendant would not have pled guilty and would instead have insisted on proceeding to trial." United States v. Faris, 388 F.3d 452, 459 (4th Cir. 2004). Defendant has not established a "reasonable probability" of such a different outcome if his counsel had read the search warrant. United States v. Runyon, 994 F.3d 192, 210 (4th Cir. 2021).

Defendant's arguments challenging the validity of the search warrant do not compel a contrary conclusion. For example, defendant urges comparison to United States v. Brown, 828 F.3d 375 (6th Cir. 2016), in arguing that there was insufficient nexus between the information in the search warrant and defendant's residence. Brown, however, is instructively distinguishable. In Brown the court determined that a warrant did not supply enough evidence to link drug trafficking to the defendant's residence. For instance, while evidence supported search of a vehicle, there was no evidence the defendant had "used the car to transport heroin from his home . . . on the day in question." Id. at 383. In the instant case, by contrast, officers observed two vehicles leave defendant's residence on the day in question, and officers located drugs in both,

along with defendant in one of them. (DE 55-4 at 10-11). This was combined with law enforcement surveillance of the Arian Kings, of which defendant was "the leader," "known for their involvement in the distribution of illegal narcotics and the use of violence," as well as complaints about them "brought to the attention of the Drug Enforcement Unit" in Sneads Ferry, the town where defendant's residence was located. (Id.). Finally, the search warrant application noted common patterns of drug and currency storage in residences based upon the officer's training and experience. (Id. at 9-11). These facts amply tie drug trafficking activities to defendant's residence.

Defendant also points to discrepancies between the search warrant and other information provided in discovery. He notes, for example, that discovery provided by the government showed that packaging material was found in the center console of the vehicle, rather than the black bag claimed by defendant, and that the amount of marijuana in the black bag was equivalent to only two Splenda packets. These facts, however, are beside the point that the totality of the circumstances support a determination of probable cause based upon the information in the affidavit. "[P]robable cause can be inferred from the circumstances, and a warrant is not invalid for failure to produce direct evidence that the items to be seized will be found at a particular location." United States v. Lalor, 996 F.2d 1578, 1583 (4th Cir. 1993). The affidavit in this instance provides sufficient evidence from which probable cause can be inferred from the circumstances, regardless of the small amount of drugs found with defendant and the location of the drug packaging materials in the console of the vehicle defendant was driving.

Defendant argues that he has "a viable Fourth Amendment claim that was at least worth discussing with his prior attorney." (Obj. at 10) (emphasis in original). But, this is not the standard for determining prejudice from the alleged deficiencies of his prior attorney. Defendant has not

established that in light of all the circumstances, "but for counsel's errors, [he] would not have pled guilty and would instead have insisted on proceeding to trial." Faris, 388 F.3d at 459. Defendant's Fourth Amendment arguments do not warrant suppression of evidence seized from his residence. Moreover, the plea agreement in this instance significantly reduced defendant's advisory guidelines sentence from life imprisonment to a range of 360 months to life. (See Presentence Report (No. 7:19-CR-176-FL DE 16 at 19). Likewise, the plea agreement provided other benefits to defendant and opportunities for further reduction in sentence. (See Plea Agreement (No. 7:19-CR176-FL DE 9 at 7).

Finally, the weight of the evidence against defendant was substantial, and the government had charged multiple co-conspirators. (See, e.g., United States v. Brian Pearce, 7:19-CR-139-5-FL DE 414 ¶16 (presentence report of one of nine defendants in a drug conspiracy case, noting that Brian Pearce was defendant Milam's "right hand man" in "their gang," who "pick[ed] up drugs for Milam" and who "cooked meth . . . for Milam"; sentenced to a term of imprisonment of 176 months on April 23, 2021); cf. Search Warrant Affidavit (No. 7:19-CR-102-FL DE 55-4 at (stating that Brian Pearce went into Milam's residence, left, and was stopped by officers who located a "bag of suspected Crystal Methamphetamine" in a cigarette pack on the ground in front of Brian Pearce)).

In sum, defendant has not established that but for either complete government disclosures by the government or sufficient counsel performance, he would not have pleaded guilty and insisted on proceeding to trial. Therefore, the first and fourth Moore factors do not favor withdrawal of guilty plea. Combined with the remaining factors as determined by the magistrate judge, in light of the totality of the circumstances, withdrawal of defendant's guilty plea is not warranted.

CONCLUSION

Based on the foregoing, the court overrules defendant's objections, adopts the M&R and DENIES defendant's motions to withdraw his guilty pleas. (No. 7:19-CR-102-FL DE 55; No. 7:19-CR-176-FL DE 40). The clerk is DIRECTED to schedule these cases for sentencing during the court's July 2023 term of court. The United States Probation Office is DIRECTED to prepare and file a modification to the presentence report (No. 7:19-CR-176 DE 16), in both of the instant cases, within 21 days of the date of this order, which provides updates to the information contained therein, including but not limited to changes to pending charges and offender characteristics during over three years since the original report was filed.

SO ORDERED, this the 16th day of May, 2023.

LOUISE W. FLANAGAN
United States District Judge