

No. 24-5427

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Dec 1, 2025
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 JOSHUA CALEB BARNES,)
)
 Defendant-Appellant.)
)
)
)

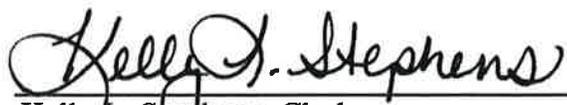
ORDER

BEFORE: BOGGS, NORRIS, and MURPHY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition for rehearing en banc, the request for appointment of counsel, and the motion to take judicial notice are denied.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 24-5427

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 30, 2025
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	ON APPEAL FROM THE UNITED
v.)	STATES DISTRICT COURT FOR
)	THE EASTERN DISTRICT OF
JOSHUA CALEB BARNES,)	TENNESSEE
)	
Defendant-Appellant.)	

ORDER

Before: BOGGS, NORRIS, and MURPHY, Circuit Judges.

Joshua Caleb Barnes appeals the district court’s judgment of conviction and sentence for conspiracy to distribute fentanyl. His counsel has filed a brief and a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). Barnes moves for the appointment of new counsel and for release pending this appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

A grand jury returned a superseding indictment charging Barnes with (1) conspiracy to distribute 400 grams or more of fentanyl, 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846; (2) distribution of fentanyl, 21 U.S.C. § 841(a)(1), (b)(1)(C); (3) possession with intent to distribute 40 grams or more of fentanyl, 21 U.S.C. § 841(a)(1), (b)(1)(B); (4) possession of a firearm in furtherance of a drug-trafficking offense, 18 U.S.C. § 924(c)(1)(A); and (5) possession of a firearm by a felon, 18 U.S.C. §§ 922(g)(1), 924(e)(1). The superseding indictment gave notice, pursuant to 21 U.S.C. § 851, that Barnes faced enhanced penalties due to his prior conviction for a serious drug felony, specifically, a 2013 conviction in Michigan for delivery of heroin. And count five charged that Barnes was subject to an enhanced sentence under the Armed Career Criminal Act (ACCA) for

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being a felon in possession after having sustained three convictions for a serious drug offense. Pursuant to a written plea agreement, Barnes pleaded guilty to the conspiracy count. In exchange, the government agreed to dismiss the remaining counts and withdraw the § 851 notice of enhancement. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties agreed that Barnes was accountable for at least 1.2 kilograms but less than 4 kilograms of fentanyl, that a two-level enhancement under USSG § 2D1.1(b)(1) for possession of a dangerous weapon applied, that a four-level enhancement for knowingly misrepresenting or marketing fentanyl as another substance did not apply, and that an enhancement under USSG § 3B1.1 for being a leader, organizer, manager, or supervisor in the offense did not apply. Barnes waived his right to appeal his conviction and sentence but reserved the right to appeal his sentence if it exceeded the greater of the guidelines range determined by the district court or any mandatory minimum sentence deemed applicable by the court. Barnes also waived his right to collaterally attack his conviction and sentence, except with respect to claims of prosecutorial misconduct and ineffective assistance of counsel. The district court conducted a change-of-plea hearing and accepted Barnes's guilty plea.

The probation office prepared a presentence report. Based on the drug quantity agreed to by the parties, the report set the base offense level at 32, pursuant to USSG § 2D1.1(a)(5). After a two-level enhancement for possession of a dangerous weapon under USSG § 2D1.1(b)(1) and a three-level reduction for acceptance of responsibility under USSG § 3E1.1, the total offense level was 31. That total offense level and Barnes's criminal history category of IV resulted in a guidelines imprisonment range of 151 to 188 months. Having received no objections from either party, the district court adopted the presentence report and imposed a within-guidelines sentence of 168 months' imprisonment and five years of supervised release.

Barnes now appeals, and his attorney has filed a brief and a motion to withdraw pursuant to *Anders*, stating that he has examined the record and found no non-frivolous grounds to raise on appeal. Nevertheless, counsel addresses the validity of Barnes's guilty plea and appellate waiver. In his pro se brief, Barnes raises several claims for appeal. First, he contends that his 2013 conviction did not qualify as a serious drug felony for purposes of an enhanced sentence under

§ 841(b)(1)(A) and that his guilty plea is therefore invalid because it was induced by an illusory promise to withdraw the § 851 notice. Second, Barnes argues that there was not a sufficient factual basis for his guilty plea and that the district court failed to ensure that he understood that “the government would have to prove a drug conspiracy beyond a buyer-seller relationship.” Third, Barnes argues that his right to a speedy trial was violated. In his fourth and fifth claims, Barnes asserts violations of the Fourth Amendment in connection with law enforcement’s surveillance of his cell phone communications and the traffic stop and warrantless search that preceded his arrest. Sixth, Barnes asserts that the district court erred in finding him competent to stand trial and failing to order a mental evaluation. Lastly, Barnes asserts that he is actually innocent of the felon-in-possession charge because his 2013 conviction in Michigan does not qualify as a predicate offense under the ACCA. Counsel has filed an adequate *Anders* brief and properly concludes that there are no issues present on the record that would support an appeal. *See Anders*, 386 U.S. at 744.

First, Barnes entered a valid guilty plea. A guilty plea is valid if it is entered knowingly, voluntarily, and intelligently. *Bousley v. United States*, 523 U.S. 614, 618 (1998); *United States v. Dixon*, 479 F.3d 431, 434 (6th Cir. 2007). In accordance with Federal Rule of Criminal Procedure 11, the district court “must verify that ‘the defendant’s plea is voluntary and that the defendant understands his or her applicable constitutional rights, the nature of the crime charged, the consequences of the guilty plea, and the factual basis for concluding that the defendant committed the crime charged.’” *Dixon*, 479 F.3d at 434 (quoting *United States v. Webb*, 403 F.3d 373, 378-79 (6th Cir. 2005)). Where a defendant does not object to a Rule 11 violation at the plea hearing, like Barnes, we review the plea for plain error. *See United States v. Vonn*, 535 U.S. 55, 59 (2002). To establish plain error, a defendant must demonstrate that (1) an error occurred; (2) the error was obvious or clear; (3) the error affected the defendant’s substantial rights; and (4) the error seriously affected the fairness, integrity or public reputation of the judicial proceedings. *United States v. McCreary-Redd*, 475 F.3d 718, 721 (6th Cir. 2007).

Our review of the record confirms that, at the plea hearing, the district court substantially complied with the Rule 11 requirements. After placing Barnes under oath and advising him that any false statements could result in a prosecution for perjury or making a false statement, the court

asked him a series of questions to determine that he was competent to enter a guilty plea, that he understood the elements of the charge in the indictment and the terms of the plea agreement, and that he had consulted with his attorney about the case and was satisfied with his representation. The court then reviewed Barnes's constitutional rights and confirmed that Barnes understood that he would be waiving those rights by pleading guilty. Barnes assured the court that no one had threatened him in any way or made promises to him in order to force his guilty plea. The court explained that it would decide whether to accept the parties' plea agreement after review of the presentence report and advised Barnes that, if it rejected the agreement, he could withdraw his guilty plea.

Next, the court confirmed that Barnes agreed with the stipulation of facts set forth in the plea agreement. Barnes also confirmed his understanding of the provision of the plea agreement that allowed the parties to present additional facts at sentencing. The court asked the prosecutor to set forth the applicable mandatory minimum and maximum penalties. The government noted that it had agreed to withdraw the § 851 notice of enhanced penalties. The court then asked the prosecutor to review the appeal-waiver provision of the plea agreement, and Barnes stated that he understood its terms. The court told Barnes that, in determining an appropriate sentence, it would consider the advisory sentencing guidelines, and Barnes confirmed that he and his attorney had discussed how the guidelines might be applied in his case. The court reviewed the Rule 11(c)(1)(C) sentencing agreement, and Barnes confirmed his agreement with the terms. Finally, the court advised Barnes that it would consider the statutory sentencing factors set forth in 18 U.S.C. § 3553(a) and the applicable sentencing guidelines but noted that it could depart from those guidelines under some circumstances. Finding that Barnes was competent and capable of entering an informed plea, the court accepted the guilty plea.

In his pro se brief, Barnes asserts that the district court erred by not ordering that he undergo a mental evaluation, noting that he could have presented an insanity defense at trial. A guilty plea is invalid when a district court fails to conduct a proper competence hearing upon substantial evidence of a defendant's incompetence. *See United States v. Abdulmutallab*, 739 F.3d 891, 899 (6th Cir. 2014). But Barnes points to nothing in the record that would have warranted such an

order. Instead, Barnes noted that the presentence report outlined his mental health history and that, at sentencing, the court ordered mental health treatment. Even assuming the court was aware of Barnes's mental health history at the time of his guilty plea, there is nothing in the record to show that the court had reason to believe that Barnes was unable to consult with his attorney or understand the proceedings against him. *See id.*

Barnes also contends that his guilty plea was not knowing and voluntary because it was induced by the government's promise to withdraw the notice of a § 851 enhancement. He argues that this promise was illusory because his prior conviction did not qualify as a serious drug felony under § 841(b)(1)(A) and thus he received no benefit from the government's plea offer. In a similar vein, Barnes also argues that he is "actually innocent" of the ACCA enhanced sentence charged in count five because two of his prior convictions for delivery of cocaine do not qualify as predicate offenses under the ACCA. Yet, even assuming that Barnes would not have been subject to an enhanced sentence under § 841(b) or the ACCA, the government's promises to withdraw the § 851 notice and to dismiss count five did not render the plea bargain illusory. An illusory plea bargain offers no real benefit to the defendant. *See United States v. Randolph*, 230 F.3d 243, 250-51 (6th Cir. 2000). And Barnes received other benefits in exchange for his guilty plea, including the dismissal of all remaining counts. Most notably, by agreeing to plead guilty, Barnes avoided the possibility of a conviction under § 924(c), which would have carried a mandatory consecutive five-year term of imprisonment. *See* 18 U.S.C. § 924(c)(1)(A)(i). In addition, the parties agreed that certain guidelines enhancements would not apply—an agreement that bound the court upon acceptance of the plea agreement under Rule 11(c)(1)(C). Because Barnes received real benefits as consideration for his guilty plea, there no basis for Barnes to argue that the plea bargain was illusory.

Barnes also challenges the factual basis for his guilty plea. He contends that the government offered proof of only a buyer-seller relationship and not a conspiracy. To be convicted of criminal conspiracy under 21 U.S.C. § 846, the government must show "(1) an agreement to violate drug laws, (2) knowledge and intent to join the conspiracy, and (3) participation in the conspiracy." *United States v. Pritchett*, 749 F.3d 417, 431 (6th Cir. 2014) (quoting *United States*

v. Gibbs, 182 F.3d 408, 420 (6th Cir. 1999)). Although a buyer-seller relationship is insufficient to establish participation in a conspiracy, participation can be inferred through evidence of repeat purchases or evidence of a large quantity of drugs. See *United States v. Caver*, 470 F.3d 220, 233 (6th Cir. 2006).

Here, in the plea agreement, Barnes agreed that, in December 2021, a co-conspirator was arrested and found to be in possession of over 50 grams of a substance containing fentanyl. The co-conspirator told the police that he had been selling heroin for approximately one year and that his source of supply for the last six months was Barnes. Text messages between the co-conspirator and Barnes showed that, from June to December of 2021, Barnes supplied the co-conspirator with approximately 100 grams of fentanyl per week. Law enforcement agents then arranged two controlled buys using a confidential informant. Barnes agreed that, during the first controlled buy, the confidential informant paid him \$2,100 for a substance that ultimately tested positive for fentanyl. He further agreed that, on his way to complete the second controlled buy, law enforcement conducted a traffic stop and, during a subsequent search, recovered 151 grams of a substance that tested positive for heroin and fentanyl. At the plea hearing, Barnes confirmed that he read the stipulation of facts set forth in the plea agreement, that he reviewed it with his attorney, and that he agreed that the factual summary was true. Barnes faults the district court for not reading the factual basis into the record at the plea hearing or asking him to state the facts in his own words, but the court was not required to do so. See *United States v. Short*, 128 F.4th 823, 826 (6th Cir. 2025) (explaining that the rule requiring the court to determine that there is a factual basis for a guilty plea “doesn’t require an on-the-record colloquy with the defendant”). The district court’s reliance on the stipulated factual basis in the plea agreement and Barnes’s statement under oath that the plea agreement correctly set for the conduct underlying the conspiracy count was sufficient for Rule 11.

Given the district court’s thorough Rule 11 colloquy, Barnes has no basis for challenging the voluntariness of his guilty plea. And, because he entered a valid and unconditional guilty plea, he has waived any non-jurisdictional claims that he may have regarding the pre-plea proceedings, including the speedy trial and Fourth Amendment issues raised by Barnes in his pro se brief. See

Tollett v. Henderson, 411 U.S. 258, 261-67 (1973); *United States v. Ferguson*, 669 F.3d 756, 763 (6th Cir. 2012) (Fourth Amendment); *United States v. Pickett*, 941 F.2d 411, 416-17 (6th Cir. 1991) (speedy trial).

Second, having determined that Barnes entered a valid guilty plea, the appeal-waiver provision in the plea agreement bars Barnes's appeal. We review the question of whether a defendant waived his right to appeal de novo. See *United States v. McGilverey*, 403 F.3d 361, 362 (6th Cir. 2005). A waiver provision in a valid plea agreement is binding so long as it is entered into knowingly and voluntarily. *United States v. Smith*, 344 F.3d 479, 483 (6th Cir. 2003); *Hunter v. United States*, 160 F.3d 1109, 1113 (6th Cir. 1998). "We look to the plea colloquy and the written agreement to determine if the waiver was knowing . . ." *United States v. Carter*, 814 F. App'x 1000, 1006 (6th Cir. 2020).

As noted, during the plea hearing, the district court reviewed the appeal-waiver provision of Barnes's plea agreement, and Barnes confirmed that he understood its terms. Barnes's sentence did not exceed the greater of the sentencing guidelines range or the applicable mandatory minimum sentence of 10 years. See 21 U.S.C. § 841(b)(1)(A). Thus, the exception that would allow Barnes to appeal has not been met. And nothing in the record suggests that Barnes's assent to the appeal-waiver provision was unknowing or involuntary. Barnes is therefore barred from appealing his conviction and sentence.

Finally, in his motion for the appointment of counsel and in his pro se brief, Barnes suggests that his trial counsel was ineffective for failing to challenge certain evidence. Claims of ineffective assistance of counsel are generally disfavored on direct appeal and are more appropriately brought by filing a 28 U.S.C. § 2255 motion to vacate, set aside, or correct the sentence. *Massaro v. United States*, 538 U.S. 500, 504-05 (2003); *United States v. Walden*, 625 F.3d 961, 967 (6th Cir. 2010). This is so because the record is usually inadequately developed and incomplete at the time of the direct appeal to permit review of an ineffective-assistance-of-counsel claim. *Massaro*, 538 U.S. at 504-05; *Walden*, 625 F.3d at 967. It appears that Barnes's potential claim of ineffective assistance concerns counsel's failure to challenge the lawfulness of the traffic stop that resulted in his arrest and the seizure of evidence. But the record does not include any evidence concerning

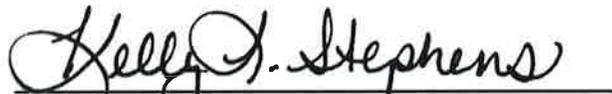
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the traffic stop. Because there is no error “apparent from the existing record,” the proposed ineffective-assistance-of-counsel claim is premature at this stage of the proceeding. *United States v. Wells*, 623 F.3d 332, 347-48 (6th Cir. 2010) (quoting *United States v. Lopez-Medina*, 461 F.3d 724, 737 (6th Cir. 2006)).

Our independent review of the record supports counsel’s conclusion that there are no non-frivolous issues for appeal. We therefore **GRANT** counsel’s motion to withdraw and **AFFIRM** the district court’s judgment. Barnes’s motions for the appointment of counsel and for release pending appeal are **DENIED**.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk