

No. 10-5793

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT



UNITED STATES OF AMERICA, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. )  
 )  
 LEONARD AUGUSTA FOX, )  
 )  
 Defendant-Appellant. )

ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF  
TENNESSEE

ORDER

Before: KETHLEDGE and WHITE, Circuit Judges; ECONOMUS, District Judge.\*

Leonard Augusta Fox appeals the district court’s judgment of conviction and sentence. The parties have waived oral argument and this panel unanimously agrees that oral argument is not needed in this case. Fed. R. App. P. 34(a).

On February 23, 2009, Fox pleaded guilty to one count of recruiting, harboring, and transporting a minor for the purpose of engaging in a commercial sex act, in violation of 18 U.S.C. § 1591. In exchange for Fox’s plea, the government agreed to recommend that Fox be sentenced to the statutory minimum of 120 months in prison. However, the district court sentenced Fox to 300 months of imprisonment, after noting that the Sentencing Guidelines recommended a range of 360 months to life imprisonment.

On appeal, Fox argues that the district court abused its discretion by denying his motion to withdraw his guilty plea, the government violated the plea agreement by failing to make a sincere

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\*The Honorable Peter C. Economus, United States District Judge for the Northern District of Ohio, sitting by designation.

sentencing recommendation, and his sentence is substantively unreasonable because the trial judge gave an unreasonable amount of weight to the advisory sentencing range.

We review the district court's denial of Fox's motion to withdraw his plea for abuse of discretion. *United States v. Benton*, 639 F.3d 723, 726-27 (6th Cir. 2011). "A district court abuses its discretion when it relies on clearly erroneous findings of fact, or when it improperly applies the law or uses an erroneous legal standard." *Id.* (internal quotation marks omitted). "We review the question of whether the government's conduct, or lack thereof, violated its plea agreement with a defendant *de novo*." *United States v. Barnes*, 278 F.3d 644, 646 (6th Cir. 2002). However, when a defendant fails to raise this issue during the sentencing hearing, we review for plain error. *Puckett v. United States*, 129 S. Ct. 1423, 1428 (2009). We review "the question of whether a defendant waived his right to appeal his sentence in a valid plea agreement *de novo*." *United States v. Robinson*, 455 F.3d 602, 610 (6th Cir. 2006) (internal quotation marks omitted). Review is for plain error if, as here, the defendant did not raise this objection before the district court. *Id.*

Fox first argues that the district court should have allowed him to withdraw his guilty plea. Rule 11 of the Federal Rules of Criminal Procedure allows a defendant to withdraw a guilty plea if the defendant can demonstrate "a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d). Seven factors speak to whether the defendant has provided valid grounds for requesting the withdrawal:

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

*Benton*, 639 F.3d at 727 (quoting *United States v. Bashara*, 27 F.3d 1174, 1181 (6th Cir. 1994)).

All seven of these factors supported denying Fox's motion to withdraw. Fox moved to withdraw his plea nearly one year after entering it, and provided no real reason justifying the inordinate delay. *See id.* Fox notes that his original lawyer withdrew after he entered his plea, but

Fox filed the motion to withdraw himself, indicating that he did not need a lawyer's assistance to file his motion to withdraw his guilty plea. Fox does not maintain that he is innocent.

The circumstances underlying Fox's guilty plea also support the district court's decision. On February 17, Fox indicated that he was interested in pleading guilty, but that he needed more time to review the plea agreement. After having a week to study the plea agreement and discuss the matter with his attorney, Fox pleaded guilty. During this plea hearing, Fox testified that he was satisfied with his attorney, that he had not been subjected to outside pressure, and that he wished to plead guilty according to the plea agreement. There is nothing to indicate that this testimony should not be trusted. Indeed, Fox had some college education and he was familiar with the criminal justice system, having amassed a lengthy criminal record since the time he was eighteen. Finally, the government asserted that it was no longer in contact with the victims – witnesses critical to the prosecution of the case – and did not know where they could be found. The district did not abuse its discretion in denying Fox's motion to withdraw his guilty plea.

Fox next argues that the government breached the plea agreement when it failed to make a sincere recommendation and provide justification for a minimum sentence. Because Fox did not object to the nature of the government's recommendation or sentencing, our review is for clear error. A court looks to general contract principles when interpreting a plea agreement. *United States v. Moncivais*, 492 F.3d 652, 662 (6th Cir. 2007). Because plea agreements surrender important rights, they are to be enforced according to their terms . . . and prosecutors are [to be] held to meticulous standards of performance.” *Id.* (internal quotation marks omitted). Any ambiguities in a plea agreement are construed against the government. *Id.*

Under the terms of the plea agreement, the government agreed to “recommend that the court impose a term of 120 months imprisonment.” The government kept its word and recommended a 120-month sentence, even though that sentence was well below the advisory sentencing guidelines range. The government justified its recommendation by explaining the emotional toll that a jury trial would have had on the minor victims. The government's recommendation was not clearly insincere.

Fox further argues that the government breached the plea agreement by recommending a term of supervised release for life. However, there is nothing in the plea agreement that speaks to a supervised release term. The government did not, therefore, have any obligation to recommend a particular supervised release term. *See United States v. Danou*, 260 F. App'x 864, 868 (6th Cir. 2008). The government did not clearly breach the plea agreement.

Finally, Fox argues that his sentence was substantively unreasonable. This argument is foreclosed by the plea agreement. Under the plain language of the plea agreement, Fox agreed to waive “his right to appeal any sentence imposed by the Court and the manner in which the sentence is determined so long as the sentence is within the statutory maximum. . . .” Fox’s sentence was well within the statutory maximum and the government fulfilled its conditions under the plea agreement. In addition, Fox acknowledged during the change-of-plea hearing that he understood that he was waiving his right to appeal any sentence below the statutory maximum. Under the circumstances, Fox is bound by the terms of the plea agreement and may not argue that his sentence was substantively unreasonable. *See Robinson*, 455 F.3d at 609-11.

We affirm the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Clerk