FILED
United States Court of Appeals
Tenth Circuit

May 19, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTONIO LAMURAEL BOYKINS,

Defendant - Appellant.

No. 24-6159
(D.C. No. 5:23-CR-00306-SLP-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **MATHESON**, and **FEDERICO**, Circuit Judges.

After pleading guilty to one count of being a felon in possession of a firearm, Antonio Lamurael Boykins was sentenced to 144 months' incarceration and three years of supervised release. He now seeks to appeal his conviction and sentence, arguing the district court erred in denying his suppression motion and in calculating his sentence. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Background

On July 2, 2023, Oklahoma City police offers stopped Boykins for a traffic violation. After the officers detected a strong odor of marijuana coming from the car, Boykins produced a medical marijuana card and told the officers he had smoked marijuana at a car wash shortly before being pulled over. The officers then removed Boykins from the car and, over his objections, searched the vehicle. In addition to marijuana, the search yielded a .40 caliber Glock pistol. Boykins was subsequently arrested and charged in a one-count indictment with illegal possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). Boykins initially pled not guilty and filed a motion to suppress, arguing the officers lacked probable cause to search his vehicle because his possession of marijuana was legal under state law. After a hearing, the district court denied the motion, and Boykins subsequently pled guilty unconditionally under the circumstances described below.

On February 9, 2024, Boykins filed a Petition to Enter Plea of Guilty (Petition) in which he stated that "[o]n or about July 2, 2023, [he] knowingly possessed a firearm" and "[a]t the time, [he] was a felon and knew [he] was a felon." R. vol. 1 at 100. Boykins confirmed in the Petition that he did not have a plea agreement with the government and that he understood he was waiving his constitutional trial rights. At a change-of-plea hearing held that same day, the court advised Boykins that by pleading guilty, he would waive the constitutional trial rights set forth in Federal Rule of Criminal Procedure 11(b)(1). After explaining each of those rights, the court asked Boykins, "do you fully understand the nature of the charges, the possible

punishment that you face and the constitutional rights that you are entitled to and waiving today?" R. vol. 3 at 70-71. Boykins answered, "[y]es, Your Honor." *Id.* at 71. The court also confirmed that Boykins had carefully reviewed the Petition with his attorney before signing it. Finally, the court confirmed Boykins's understanding of the possible penalties for his crime and the court's sentencing obligations. The court specifically advised Boykins that if he ultimately disagreed with the court's sentencing guidelines calculation, "that [would] not necessarily mean that [he] would be allowed to withdraw [his] plea of guilty." *Id.* at 72. Boykins confirmed that he understood as much. The court asked Boykins, "[i]s your plea of guilty and the waivers of your rights made voluntarily and completely of your own free choice?" *Id.* at 73. Boykins responded, "[y]es, Your Honor." *Id.*

At sentencing, the district court accepted the presentence investigation report (PSR) prepared by the probation office, which calculated Boykins's criminal history score at 25 and placed him in criminal history category VI, resulting in a guidelines range of 77 to 96 months.[1] Boykins was sentenced to 144 months. The court explained this upward variance was based on Boykins's extensive criminal history, which it found "substantially outweigh[ed]" his positive factors. R. vol. 3 at 107.

[1] Boykins agreed the guidelines sentence was calculated correctly. R. vol. 3 at 89. He had objected to an earlier version of the PSR based on an armed career criminal enhancement that was subsequently removed to comply with intervening Supreme Court precedent. Boykins argued for a downward variance based on his troubled youth, but his only objection to the governing PSR concerned matters that did not affect his criminal history category and are not relevant on appeal.

Discussion

A. Effect of the Guilty Plea

Boykins seeks to appeal his conviction, arguing the district court erred in denying his motion to suppress. The government counters that Boykins waived his right to appeal the issue by pleading guilty. We agree with the government. Once a criminal defendant admits in open court that he is in fact guilty of the charged offense, "he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Since *Tollett*, we have recognized repeatedly that a voluntary plea of guilty forecloses a defendant's right to object to the circumstances of his arrest or "the manner in which the evidence may have been obtained against him." *United States v. Nooner*, 565 F.2d 633, 634 (10th Cir. 1977); *see also United States v. Davis*, 900 F.2d 1524, 1526 (10th Cir. 1990) (denial of suppression motion made unreviewable by unconditional guilty plea); *United States v. Salazar*, 323 F.3d 852, 856 (10th Cir. 2003) (same holding on collateral review).

Boykins did not enter a conditional plea under Rule 11(a)(2), preserving his right to appeal the district court's suppression ruling. *See United States v. Spaeth*, 69 F.4th 1190, 1202 n.16 (10th Cir. 2023) ("Conditional guilty pleas provide defendants with a way to preserve pre-plea rulings on motions to suppress for appellate review."), *cert. denied*, 144 S. Ct. 1355 (2024). Instead, he pled guilty unconditionally without the benefit of a plea agreement. The effect of that plea was to waive all nonjurisdictional defenses. *Davis*, 900 F.2d at 1526. Accordingly,

"we need not and do not review the trial court's denial of [Boykins's] suppression motion[]."[2] *Id.*

Seeking to avoid this result, Boykins claims his guilty plea could not have been knowing and voluntary because the trial court failed to inform him of the appellate consequences of his plea. Because Boykins did not raise this objection below or otherwise move to withdraw his plea, we review the district court's acceptance of his plea for plain error. *United States v. Weeks*, 653 F.3d 1188, 1198 (10th Cir. 2011). To meet this standard, Boykins must show "(1) an error; (2) that is plain, and (3) which affects his substantial rights." *United States v. Trujillo*, 960 F.3d 1196, 1201 (10th Cir. 2020). "We apply plain error less rigidly when reviewing a potential constitutional error." *Id.* (internal quotation marks omitted). "An error is plain if it is clear or obvious at the time of the appeal." *United States v. Koch*, 978 F.3d 719, 726 (10th Cir. 2020) (internal quotation marks omitted). "To be obvious, an error must be contrary to well-settled law." *Id.* (internal quotation marks omitted).

There was no plain error here. Federal Rule of Criminal Procedure 11(b)(1) sets forth the district court's obligations when accepting a plea of guilty, which include informing the defendant that a guilty plea constitutes a waiver of certain

[2] In a footnote in his opening brief, Boykins suggests he was misinformed by trial counsel about the appeal waiver consequences of his guilty plea, which raises the specter of an ineffective assistance claim. But Boykins has not developed such an argument, and as the government points out, generally such claims must be brought in collateral proceedings. *United States v. Trestyn*, 646 F.3d 732, 740 (10th Cir. 2011).

enumerated constitutional rights. In the case of a plea agreement containing a waiver of appellate rights, subsection (b)(1)(N) further requires the court to ensure that the defendant understands the waiver provision. *United States v. Avila*, 733 F.3d 1258, 1263 (10th Cir. 2013). But as this court and others have observed, the rules do not impose an analogous requirement when the defendant pleads guilty without a plea agreement. *Id.* ("[T]he Rules do not explicitly require that the court inform a defendant that an unconditional guilty plea may limit the defendant's ability to appeal."); *see also United States v. Adams*, 746 F.3d 734, 746 (7th Cir. 2014) ("[I]n the case of a blind plea, Rule 11(b)(1) does not similarly require the district court to inform the defendant that he is waiving the right to appeal pretrial rulings.").

Boykins reminds us that we have previously found this discrepancy in the rules "troubling," *Avila*, 733 F.3d at 1263, as have others, *see, e.g.*, *Adams*, 746 F.3d at 746 (stating in the context of a blind plea that "it would be better for the district court to explicitly inform defendants that they are waiving the right to appeal pretrial rulings to eliminate further controversy"). But even so, we cannot accept his invitation to rewrite Rule 11. The district court's plea colloquy complied with the

rules as written, and we are aware of no precedent requiring the advisement to which Boykins claims he was entitled.[3] Boykins has thus failed to show plain error.[4]

B. The District Court's Sentencing Calculation

The PSR prepared in Boykins's case, and adopted by the district court, included three criminal history points based on an assault and battery that he committed in 2007 at the age of 17 and for which he received a 10-year prison sentence. Boykins asserts error, arguing this "juvenile conviction" does not qualify for inclusion under § 4A1.2(d) of the sentencing guidelines. Aplt. Opening Br. at 13. Because Boykins did not raise this objection in the district court, we review once again only for plain error. *United States v. Vannortwick*, 74 F.4th 1278, 1280-81 (10th Cir. 2023).

Cross-referencing § 4A1.1(a) (the guideline's general criminal history category provision), § 4A1.2(d) prescribes specifically when criminal history points may be added for juvenile offenses. In this case, the PSR relied on subsection (d)(1), which calls for the addition of three points for conduct occurring before age 18, "[i]f

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[3] In *Avila* we held the unconditional guilty plea was not knowing and voluntary because the district court "materially misinform[ed]" the defendant regarding the appellate consequences of his plea. 733 F.3d at 1264. In this case, Boykins concedes that the issue of his appeal rights never came up in connection with his guilty plea: "neither his *Petition to Enter Plea of Guilty* nor the district court's Rule 11 advisement said anything on the subject." Aplt. Opening Br. at 7. *Avila* is therefore inapposite.

[4] Boykins should not conclude that, but for this waiver, his conviction would be overturned. Although we need not, and do not, pass upon the lawfulness of the search of Boykins's car, it would appear the district court's findings of probable cause are supported by the record.

the defendant was *convicted as an adult* and received a sentence of imprisonment exceeding one year and one month." U.S.S.G. § 4A1.2(d)(1) (emphasis added).

Boykins claims that "[s]ubsection (d)(1) does not apply because there is nothing in the PSR to suggest that [he] was 'convicted as an adult.' Rather, the PSR specifically notes that he was charged as a 'youthful offender.'" Aplt. Opening Br. at 13. This is not entirely accurate. While the PSR does indicate that Boykins and his co-defendant were *charged* as youthful offenders, it plainly categorizes this 2007 offense among Boykins's *adult* criminal convictions rather than his *juvenile* adjudications. This is consistent with the state court public record, which reveals that on September 18, 2008, in the criminal case of *Oklahoma v. Antonio Boykins*, et al., No. CF-2007-5811, Boykins was certified as an adult.[5] Accordingly, the court did not err in crediting the PSR's assessment of three criminal history points for this conviction under U.S.S.G. §§ 4A1.2(d) and 4A1.1(a).

Furthermore, as the government points out, even if the court had erred in adding these points, Boykins cannot show his substantial rights were affected, as he must on plain error review. "An error seriously affects the defendant's substantial rights when the defendant demonstrates that there is a reasonable probability that, but for the error claimed, the result of the proceeding would have been different." *Vannortwick*, 74 F.4th at 1281 (internal quotation marks and ellipsis omitted). There

[5] The court is permitted to take judicial notice of "facts which are a matter of public record." *United States v. Moore*, 96 F.4th 1290, 1296 n.4 (10th Cir. 2024) (internal quotation marks omitted).

is no reasonable probability Boykins's sentence would have been different with three fewer criminal history points. "Criminal-history points are used to put defendants in categories." *Id.* Defendants with 13 or more criminal history points are placed in Category VI. U.S.S.G. Ch. 5, Pt. A. Boykins was assessed a total of 25 criminal history points, so he would be in Category VI with or without the three points at issue.[6] Boykins argues that having a criminal history score of 22 rather than 25 might have been advantageous in terms of custody placement, but this argument is mere speculation and such conjecture is not sufficient to establish prejudice. *See Vannortwick*, 74 F.4th at 1283-84 (rejecting as speculative defendant's argument that court would have varied downward had he been assessed one less criminal history point).

Conclusion

Because Boykins waived his right to appeal the district court's suppression ruling and has failed to show plain error in connection with his sentencing, we affirm.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

[6] The district court said as much at sentencing: "[Boykins's] criminal history being in the numbers of 20s, he far exceeds the 13 points needed to be a criminal history category VI." R. vol. 3 at 105.