UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No.	CR 22-20 PA	Date	May 13, 2024

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE
Interpreter	N/A

Kamilla Sali-Suleyman	Not Reported	Kathy Yu, AUSA Joanna Curtis, AUSA Christopher Kendall, AUSA
Deputy Clerk	*Court Reporter*	*Assistant U.S. Attorney*

U.S.A. v. Defendant(s):	Present	Cust.	Bond	Attorneys for Defendants:	Present	App.	Ret.
1. Luis Alfredo De La Rosa Rios		X		1. David Menninger, DFPD		X	
				1. Cuauhtemoc Ortega, DFPD		X	
				1. Waseem Salahi, DFPD		X	
2. Ernesto Cisneros		X		2. Mark Kassabian, CJA		X	
3. Jesse Contreras		X		3. Michael Crain, CJA		X	
				3. Stephen Frye, CJA		X	

Proceedings: IN CHAMBERS — COURT ORDER

Defendants Ernesto Cisneros ("Cisneros") and Jesse Contreras ("Contreras") have filed Motions to Withdraw Guilty Plea (Docket Nos. 398 & 400).

I. Procedural and Factual Background

Contreras, Cisneros, and their co-defendants Luis Alfredo De La Rosa Rios ("De La Rosa Rios") and Hayley Marie Grisham ("Grisham"), were initially named in an Indictment dated January 27, 2022, with Violent Crime in Aid of Racketeering ("VICAR") murder pursuant to 18 U.S.C. § 1959(a)(1).[1/] Nearly 18 months after their indictment, and as their July 18, 2023 trial date approached, the Government extended a plea offer to De La Rosa Rios, Contreras, and Cisneros on July 13, 2023, in advance of a pretrial conference set for that date. Pursuant to the plea agreements, which the three co-defendants all signed, each agreed to enter a guilty plea to a RICO conspiracy in violation of 18 U.S.C. § 1962(d) as alleged in a First Superceding Information. As a result of the plea agreements, instead of

1/ Neither De La Rosa Rios nor Grisham seek to withdraw their guilty pleas.

Contreras and Cisneros facing a mandatory minimum sentence of life if they had been convicted of the VICAR murder as alleged in the Indictment, the Government agreed to a sentence of 35 years' imprisonment for Contreras and a sentencing range of 35-50 years' imprisonment for Cisneros and De La Rosa Rios.

In the plea agreements, Contreras and Cisneros affirmed that (1) they "discussed with defendant's attorney, and carefully considered, the possible advantages and disadvantages to defendant" of entering into the plea agreement as part of a package deal; (2) they entered into the plea agreement "as part of the package deal freely and voluntarily because defendant believes this Agreement and the package deal to be in defendant's best interests;" and (3) they did not enter into the plea agreement "as part of the package deal because of threats, coercion, or other undue influence by the USAO or by the other defendants who are part of the package deal, their counsel, or anyone acting on their behalf." (Plea Agreements at ¶ 2.) Moreover, each defendant certified that he understood the terms of the agreement, voluntarily agreed to those terms, was not "threatened or forced" into entering the plea agreement, and was pleading guilty because he was "guilty of the charge and wishe[ed] to take advantage of the promises set forth in this agreement, and not for any other reason." (Id. at 19.)

On July 13, 2023, the Court conducted lengthy change of plea hearings and plea colloquies separately for De La Rosa Rios, Contreras, and Cisneros, with the change of plea and plea colloquy for Cisneros occurring third. (See Docket No. 380.) During each plea colloquy, the Court asked, "A plea agreement has been filed in this case. Have you read that plea agreement and discussed all of its terms with your lawyer?" (Id. at 26.) Contreras replied, "Yes, I did." (Id.) The Court asked, "Do you understand the plea agreement and all of its terms?" (Id.) Defendant answered, "Yes, sir." (Id.) The Court asked, "Do you need any additional time to discuss any aspect of the plea agreement with your lawyer?" (Id.) Defendant said, "No, sir." (Id.)

After being advised of his right to appeal (id. at 27-29), Contreras was asked, "Has anyone made any threats or used any force against you, your family, or anyone near and dear to you to get you to plead guilty?" (Id. at 30-31.) Contreras answered, "No." The Court then asked, "Are you pleading guilty voluntarily and of your own free will?" (Id. at 31.) Contreras replied, "Yes." (Id.) The Court then inquired, "And are you entering into this plea agreement and the package deal voluntarily and of your own free will?" (Id.) Contreras answered, "Yes, sir." (Id.) The Court then asked, "This package deal benefits Mr. Rios, Mr. Cisneros, and possibly your family members and their family members. Did the package deal benefitting the other defendants coerce you into pleading guilty?" (Id.) Contreras said, "No," he was not coerced, and stated that it was in his "best interest." (Id. at 31-32.) Contreras then stated that he did not enter the plea agreement because of any threats, coercion, or undue influence by the other defendants, or their family members. (Id. at 32.) The government then read out loud the factual basis of the plea agreement, verbatim. (Id. at 33-37.) The factual basis includes, among other things, admissions that: (1) "Defendant conspired and agreed with Florencia 13 members and associates that a conspirator would commit at least two racketeering acts to include murder, robbery,

and drug trafficking, which acts had a relationship to one another in Florencia 13 and posed a threat of continued criminal activity;" (2) "At least two or more of the crimes that members engaged in, including murder, robbery, and drug trafficking, occurred after July 12, 2020, and before July 12, 2023;" (3) "Defendant became a member of this conspiracy and agreement knowing of its purpose, knowing it was illegal, and intending to help accomplish it;" and that, "[i]n furtherance of the conspiracy" defendant and his co-defendants robbed and murdered F.A. (Id.)

The Court asked, "Did you understand what [the prosecutor] said?" (Id. at 37.) Contreras replied, "Yes, I did." (Id.) The Court asked, "Is everything that she said about you and about your conduct and intent true and correct?" (Id.) Contreras said, "Yes." (Id.) The Court asked, "And did you do what the prosecutor said regarding your criminal involvement?" (Id.) Contreras answered, "Yes." (Id.) The Court asked, "And are you pleading guilty because you, in fact, did the acts charged in the First Superseding Information?" (Id.) Contreras affirmed, "Yes, sir." (Id.) Finally, the Court asked, "And are you pleading guilty because you are, in fact, guilty?" (Id.) Contreras replied, "Yes, sir." (Id.) Later, the Court asked defense counsel, "Do you believe the plea is being made freely and voluntarily with a full understanding of the charge and the consequences of the plea?" (Id. at 38-39.) Contreras' counsel said, "I do." (Id. at 39.) Contreras then told the Court that: (1) he was satisfied with his lawyer's representation; (2) his lawyer fully considered his defenses; (3) he was fully advised concerning the matter; (4) he had enough time to thoroughly discuss the matter with his lawyer; (5) he reviewed the discovery; (6) everything he told the Court was "true and correct;" (7) he understood everything that transpired during the change of plea hearing; (8) he understood the potential consequences of pleading guilty; and (9) he was competent to make the decision to plead guilty. (Id. at 40-41.) The Court then asked Contreras, "Do you know of any reason why the Court should not accept your guilty plea?" (Id. at 41.) Contreras answered, "No." (Id.)

The Court then asked Contreras, "Having in mind all we have discussed concerning your plea of guilty, the rights you will be giving up, the maximum punishment that you might receive, is it still your desire to enter a plea of guilty to the First Superseding Information?" (Id. at 42.) Contreras responded, "Yes, sir," and then pleaded guilty. (Id.) The Court then found that "the defendant has entered his plea freely and voluntarily with a full understanding of the charge against him and the consequences of the plea." (Id. at 43.)

The Court conducted a nearly identical plea colloquy with Cisneros and he and his counsel answered similarly. (Id. at 105-21.) On November 16, 2023, four months after entering his guilty plea, the Court received a pro se effort by Cisneros to withdraw his guilty plea. The Court then set a December 8, 2023 status conference, at which Cisneros, through counsel, reiterated his desire to withdraw his guilty plea and Contreras also indicated that he wanted to withdraw his guilty plea. The Court then appointed separate counsel for Cisneros and Contreras to discuss with them the grounds for such Motions and to file Motions if Cisneros and Contreras continued to seek to withdraw their guilty pleas.

II. Legal Standard

"'The decision whether to permit the withdrawal of a plea is 'solely within the discretion of the district court.'" United States v. Yamashiro, 788 F.3d 1231, 1236 (9th Cir. 2015) (quoting United States v. Showalter, 569 F.3d 1150, 1154 (9th Cir. 2009)). Federal Rule of Criminal Procedure 11(d)(2)(B) allows a defendant to withdraw a guilty plea before sentencing if "the defendant can show a fair and just reason for requesting the withdrawal." One of the purposes of Rule 11 is "ensuring some finality at the time pleas are accepted." United States v. Rios-Ortiz, 830 F.2d 1067, 1069 (9th Cir. 1987). "The guilty plea is not a placeholder that reserves [the defendant's] right to our criminal system's incentives for acceptance of responsibility unless or until a preferable alternative later arises. Rather, it is a 'grave and solemn act,' which is accepted only with care and discernment.' Once the plea is accepted, permitting withdrawal is, as it ought to be, the exception, not an automatic right." United States v. Ensminger, 567 F.3d 587, 593 (9th Cir. 2009) (quoting United States v. Hyde, 520 U.S. 670, 677, 117 S. Ct. 1630, 1634, 137 L. Ed. 2d 935 (1997)). "It is certainly not unforeseeable that defendants who have pled guilty might later change their minds . . . . The onus, however, must remain on the defendant and defense counsel to take adequate precautions and reserve the rights and arguments that might materially affect the risk-benefit analysis when deciding to enter a guilty plea." Id. at 594. "Statements made by a defendant during a guilty plea hearing carry a strong presumption of veracity in subsequent proceedings attacking the plea." United States v. Ross, 511 F.3d 1233, 1236 (9th Cir. 2008).

In construing Rule 11's "fair and just reasons" standard and the ability of a defendant to withdraw a guilty plea prior to sentencing, the Ninth Circuit has stated:

> Although the defendant has the burden of demonstrating a fair and just reason, the "fair and just" standard is applied liberally. "Fair and just" reasons for withdrawal include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening circumstances, or any other reason for withdrawing the plea that did not exist when the defendant entered his plea. Erroneous or inadequate legal advice may also constitute a fair and just reason for withdrawal of a plea.

Yamashiro, 788 F.3d at 1237 (citations omitted).

III. Analysis

Both Contreras and Cisneros contend that they did not have enough time to consider the plea agreements provided to them or understand them fully. Specifically, in support of his Motion to Withdraw Guilty Plea, Contreras asserts:

> In retrospect," I realize that I should not have agreed to the plea agreement as it was offered. I believe that I did not completely understand the elements of RICO conspiracy, and I disagree with some of the language as stated in the factual basis of the plea agreement. Given the severe time pressure and the poor conditions under which I met with my attorney, I did not have sufficient opportunity to understand the elements of RICO conspiracy or to fully understand the language of the factual basis in the proposed plea agreement.

(Contreras Decl. at ¶ 10.) Cisneros similarly states that he did not understand the meaning of some of the language in the plea agreement's factual basis. (Cisneros Decl. at ¶¶ 9-10.) Cisneros' Motion also argues that he should be allowed to withdraw his guilty plea because has been diagnosed with an intellectual disability and an IQ of 65, was rushed in making a decision, felt pressured to accept the plea agreement because it was a package deal and his co-defendants would not be able to benefit from the plea agreement if he did not enter a guilty plea, and that his attorney, who read him the plea agreement, "likely knew that I did not understand the plea agreement." (Id. at ¶ 13.)

Cisneros first made the Court aware of his desire to withdraw his guilty plea on November 16, 2023, four months after entering it on July 13, 2023. Contreras did not inform the Court of his desire to withdraw his guilty plea until almost a month later, on December 8, 2023. The Ninth Circuit has recognized that "[i]f the defendant has long delayed his withdrawal motion, and has had the full benefit of competent counsel at all times, the reasons given to support withdrawal must have considerably more force." United States v. Nostratis, 321 F.3d 1206, 1211 (9th Cir. 2003). Indeed, that a defendant "allowed more than three months to pass after he first entered a plea of guilty before moving to withdraw" indicated that his reasons were pretextual. United States v. Alber, 56 F.3d 1106, 1111 (9th Cir. 1995) (denying motion to withdraw plea).

To the limited extent Contreras and Cisneros contend that they felt pressure to enter their guilty pleas because the plea agreements were part of a package deal, or any other pressure, neither has satisfied their burden of establishing that their pleas were involuntary. "[A] plea of guilty entered by one fully aware of the direct consequences' of the plea is voluntary in a constitutional sense 'unless induced by threats . . . , misrepresentation . . . , or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business.'" Bousley v. United States, 523 U.S. 614, 619, 118 S. Ct. 1604, 1610, 140 L. Ed. 2d 828 (1998) (quoting Brady v. United States, 397 U.S. 742, 755, 90 S. Ct. 1463, 1470, 25 L. Ed. 2d 747 (1970)). The Declarations submitted by Contreras and Cisneros do not contain any evidence about any threats, misrepresentations, pressure, undue influences, or promises that induced them to enter his guilty plea. Their signing of the plea agreements and their statements during the Rule 11 colloquy also do not support withdrawal of their guilty pleas because they were involuntary. Both Contreras and Cisneros acknowledged that the plea agreement was a package deal and the Court made additional inquiries during the plea colloquy about the package nature

of the deal. See United States v. Caro, 997 F.2d 657, 659-60 (9th Cir. 1993) (requiring district courts to make a "'more careful examination' of voluntariness . . . when a plea bargain is conditioned on the cooperation of more than one defendant").

In arguing that they did not have enough time to consider the plea agreement or to understand the RICO conspiracy to which they pleaded guilty, Contreras and Cisneros contend that their pleas were not knowing and intelligent. Cisneros additionally asserts that his intellectual deficits exacerbated these issues. The Supreme Court has long held "that a plea does not qualify as intelligent unless a criminal defendant first receives 'real notice of the true nature of the charge against him.'" Bousley, 523 U.S. at 618, 118 S. Ct. at 1609 (quoting Smith v. O'Grady, 312 U.S. 329, 334, 61 S. Ct. 572, 574, 85 L. Ed. 859 (1941)). In Brady, the Supreme Court held:

> 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. Considerations like these frequently present imponderable questions for which there are no certain answers; judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time. The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action. More particularly, absent misrepresentation or other impermissible conduct by state agents, a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise. A plea of guilty triggered by the expectations of a competently counseled defendant that the State will have a strong case against him is not subject to later attack because the defendant's lawyer correctly advised him with respect to the then existing law as to possible penalties but later pronouncements of the courts, as in this case, hold that the maximum penalty for the crime in question was less than was reasonably assumed at the time the plea was entered.

Brady, 397 U.S. at 756-57, 90 S. Ct. at 1473 (citation omitted).

As an initial matter, the arguments of Cisneros and Contreras are contradicted by their attestations in both their plea agreements and during their Rule 11 plea colloquies. See Ross, 511 F.3d

at 1236 ("Statements made by a defendant during a guilty plea hearing carry a strong presumption of veracity in subsequent proceedings attacking the plea."). The Court offered the defendants more time to discuss the plea agreements with their attorneys but they declined. Both Contreras and Cisneros stated during the plea colloquies that they understood the plea agreement and agreed to the factual basis. Cisneros' attorney read the plea agreement to him, repeated portions when he asked her to, explained the RICO conspiracy, and answered his questions. Although Cisneros now claims that he only answered the Court's questions in the way he thought his lawyer wanted him to, and that his intellectual deficits otherwise prevented him from understanding the plea agreement, the fact that he could apparently discern the answer his attorney wanted him to provide reflects an understanding of the circumstances and proceedings that undermines his claimed lack of knowledge. Indeed, after observing him during the plea colloquy, the Court found that Cisneros appeared to have sufficient understanding to knowingly and intelligently enter his plea.

The Court additionally notes that although the plea agreements and First Superceding Information involved a "new" charge related to a RICO conspiracy, that charge shares many similarities with the Indictment's VICAR charge that Cisneros and Contreras faced for the 18 months before they entered their guilty pleas. Both the VICAR charge and the RICO conspiracy involved allegations that the defendants committed crimes and participated in a conspiracy in furtherance of the interests of the Florencia 13 ("F13") gang. Cisneros and Contreras now claim that they dispute portions of the factual basis contained in their plea agreements that their actions were in furtherance of F13's racketeering activities. This is among the defense arguments that defendants intended to pursue if they had gone to trial on the VICAR charge. Their familiarity with the VICAR charge would have assisted them in understanding the RICO conspiracy to which they entered their guilty pleas, and as both Contreras and Cisneros admit, they were focused on the potential sentences they faced, which would have been a mandatory minimum life sentence had they been convicted of the VICAR charge, rather than the 35 years in the plea agreement for Contreras and 35-50 years for Cisneros. That the RICO charge to which they pleaded guilty was "new" and complex, when it was similar to the VICAR claim, undercuts the arguments by both Cisneros and Contreras that they did not have a sufficient understanding of the charge and factual basis to which they entered their guilty pleas.

Cisneros' Declaration states: "I think that at time I signed the plea agreement and had my change-of-plea hearing [my attorney] likely knew that I did not understand the plea agreement." (Cisneros Decl. at ¶ 13.) To the extent Cisneros is alleging that he should be allowed to withdraw his guilty plea as a result of ineffective assistance of counsel, he has established neither that his attorney's actions were outside the range of competent assistance nor that he has suffered prejudice. See Strickland v. Washington, 466 U.S. 668, 687-90, 104 S. Ct. 2052, 2064-66, 80 L. Ed. 2d 674 (1984) (holding that to prevail on a claim of ineffective assistance of counsel, a party must demonstrate both (1) that counsel's actions fell outside the range of professionally competent assistance, and (2) that petitioner suffered prejudice as a result). Cisneros' claims in support of his effort to withdraw his

guilty plea are contrary to his attestations in his plea agreement and during his plea colloquy. They are also contradicted by his attorney.

Conclusion

For all of the foregoing reasons, the Court concludes that the guilty pleas of both Cisneros and Contreras were voluntarily and intelligently entered. Cisneros and Contreras have not met their burden to establish a fair and just reason to allow either of them to withdraw their guilty pleas. The Court therefore denies the Motions to Withdraw Guilty Plea filed by both Cisneros and Contreras.

IT IS SO ORDERED.