

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADRIAN COLLINS,

Defendant.

OPINION AND ORDER

13-cr-13-bbc

Defendant Adrian Collins has moved to withdraw the plea of guilty he entered on May 8, 2014, saying that he was too impaired at the time by drugs, legal and prescription, to understand what was being said to him. The motion will be denied because defendant has adduced no evidence to support his motion except his own averments. These statements are in direct contradiction to the statements he made under oath at the plea hearing and do not suffice to require even an evidentiary hearing, let alone withdrawal of his plea.

Defendant was indicted on January 30, 2013, but he was not arraigned until March 13, 2013, a day after he had been arrested by the Marshals Service. The United States Magistrate Judge released him on conditions because he said he was scheduled for surgery. At a scheduling conference held on April 24, 2013, trial was set for August 26, 2013. Dkt. #27. On July 28, 2013, the government filed a plea agreement signed by defendant. A plea hearing was scheduled for August 16, 2013, but was continued because defendant was

purportedly scheduled for neck surgery; it was reset repeatedly because defendant said he was too ill to attend, could not arrange medical transportation to bring him to court or, in other instances, did not respond to communications from his counsel. It was finally held on May 8, 2014.

At the plea hearing, defendant appeared in a wheelchair, but showed no difficulty understanding or answering the questions put to him. He told the court under oath that he knew of no reason why he might not be able to understand what was being said to him, such as being ill, being on medication or being under the influence of any drugs or alcohol. He entered a plea of guilty; he told the court he had talked to his counsel about the consequences of a plea of guilty, about possible defenses he might have to the charge and about the sentencing guidelines and their effect on his sentence. He admitted having committed the crime.

Sentencing was rescheduled for September 2, 2014. On August 26, 2014, after defendant had had an opportunity to read the presentence report, his first court-appointed counsel had been granted leave to withdraw and new counsel had been appointed to represent him, defendant filed this motion to withdraw his plea of guilty, saying that he had been under the influence of drugs at the time he entered his plea and he did not have sufficient time to consult with his counsel. The parties have briefed the motion.

OPINION

In support of his motion to withdraw his plea, defendant filed an affidavit in which

he avers that he was under the influence of both prescribed and illegal narcotic drugs that made it impossible for him to understand the proceedings, he did not have sufficient time to discuss his plea or the potential charges with his counsel and he has not received all the discovery from the United States. Citing United States v. Teller, 762 F.2d 569, 574-75 (7th Cir. 1985) (defendant may withdraw guilty plea “if she can prove that her mental facilities were so impaired by drugs or alcohol that she was incapable of fully understanding the charges against her, comprehending her constitutional rights and realizing the consequences of her plea”) and United States v. Bryant, 557 F.3d 492, 493 (7th Cir. 2009) (granting defendant evidentiary hearing on his allegations that his trial counsel had pressured him into pleading guilty), he contends that he should have an opportunity to prove his claims at an evidentiary hearing.

The government opposes the request for an evidentiary hearing as well as the motion for withdrawal of the plea. It argues that defendant exhibited no signs of impairment at the plea proceeding, that he told the court under oath he had had sufficient time to talk with his lawyer about the charges against him and his possible defenses and admitted to the court that he had attempted to purchase controlled substances with another person and that he did so intentionally and not by mistake.

Defendant has submitted nothing but his own affidavit to support his claims of having been under the influence of legal and illegal drugs at the time of the plea hearing; the averments in the affidavit are directly contrary to his statements under oath at his plea hearing and are insufficient to support a grant of his motion. United States v. Stewart, 198

F.3d 984, 986 (7th Cir. 1999), (“[a] defendant’s protestation that statements freely made under oath when entering the plea were a pack of lies” is not fair and just reason required for withdrawing plea of guilty.) See also United States v. Schuh, 289 F.3d 968, 975 (7th Cir. 2002) (representations made by defendant at guilty plea proceeding are accorded “presumption of verity”). His motion will be denied.

ORDER

IT IS ORDERED that defendant Adrian Collins’s motion to withdraw his plea of guilty is DENIED. FURTHER, IT IS ORDERED that sentencing will take place at 1:00 p.m. on October 30, 2014.

Entered this 23d day of September, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge