

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ADRIAN COLLINS,

Defendant.

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ORDER

13-cr-13-bbc

Defendant Adrian Collins has filed a second motion to withdraw the plea of guilty he entered on May 8, 2014 and seeks a continuance to develop his motion. No continuance is necessary because the motion will be denied.

A defendant may withdraw a guilty plea before sentencing if he raises a “fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). Defendant has not raised any fair and just reason for withdrawal.

Defendant entered into a plea agreement with the government in July 2013. Dkt. #43. A plea hearing was scheduled for August 16, 2013, but continued after defendant’s counsel told the court that defendant had fallen while he was recovering from recent neck surgery and had been taken to the hospital. Dkt. #44. The plea hearing was reset repeatedly either because defendant said he was not physically able to attend and could not arrange the necessary medical transportation or because defendant had not responded to

communications from his counsel. Dkts. ##46, 48, 49 and 52.

The plea hearing finally took place ten months later, on May 8, 2014. At that time, defendant appeared in a wheelchair with a purported nurse, Laveina Varese, later identified as his fiancée, Nalaine Varese, and neither a licensed nurse nor nurse's aide. Defendant entered a plea of guilty to count one of the indictment, charging him with knowingly and intentionally attempting to possess with intent to distribute cocaine. Sentencing was set for August 4, 2014.

On July 30, 2014, defendant's court appointed counsel moved for leave to withdraw from his representation of defendant, dkt. #64; the motion was granted and the sentencing was put off indefinitely, pending appointment of new counsel. Adam Walsh accepted appointment as new counsel and a new sentencing date of September 2, 2014 was set. On August 26, 2014, defendant filed a motion to withdraw his plea of guilty; this motion was denied on September 23, 2014, dkt. #80, and sentencing was reset again, this time for October 30, 2014.

On October 17, 2014, defendant moved for approval of government funding for a polygraph examination and a hair follicle test, dkt. #84, saying that he believed that these two tests would show that he was so impaired by the drugs he had consumed on May 8, the date of his plea hearing, that he was unable to enter a knowing and intelligent plea of guilty. The motion was denied. Dkt. #85.

Now defendant has filed a third motion aimed at challenging his plea of guilty. Dkt. #86. This time, he argues that he should be allowed to withdraw his plea for a number of

reasons. He starts by saying that his plea is invalid because when he made it he did not know that legal entrapment could be a defense to the charge against him. He does not explain why, now that he knows about legal entrapment, the defense would be available to him, other than to make the unsupported allegation that “he was forced into committing the controlled-buy in this case by the conspiracy of his Agent, the Federal Agents, and the Confidential Informant.” Id. at 1. In an unsworn affidavit accompanying his motion, defendant alleges that a confidential informant contacted him more than 100 times before defendant agreed to sell him cocaine, that he was supposed to report to a halfway house shortly before the buy, but his state parole agent canceled his reporting date specifically so that he would participate in the buy. Given defendant’s demonstrated lack of credibility, these unsworn allegations are not sufficient to require a postponement of the sentencing. Two days before a sentencing that has been rescheduled twice to accommodate him is too late for defendant to conjure up a whole new defense.

Defendant says also that on October 28, 2014, he told his present counsel that he had additional grounds on which he could withdraw his plea, one of which is his first counsel’s failure to discuss the concept of pretrial motions with him; had counsel done this, defendant says, he would have asked counsel to challenge the indictment on the ground that it was based entirely on statements that defendant made during a proffer. Defendant does not say that any statements he made during the proffer were made pursuant to an agreement with the government that the statements could not be used against him; in the absence of such an agreement, I know of no reason why the government could not use the statements as a

basis for the charges in the indictment.

Defendant contends that his first counsel failed to keep him apprised of the progress of the case and told him that he would spend his life in prison if he did not plead guilty. Counsel's failure to keep defendant apprised of the progress is a problem only if defendant could tie the failure to some error that undermines the plea. Defendant has not identified any problem resulting from his counsel's alleged failure to keep him up to date.

As for counsel's alleged statement that defendant might be facing life in prison if he did not plead guilty, even if I assume that counsel made the statement, it would not have been off base. Each of the two counts of the indictment relating to defendant carried potential penalties of 20 years in prison. Given defendant's precarious physical condition, a 20-year sentence might well be a life sentence.

Defendant contends that his first counsel never discussed the sentencing guidelines with him or how they affected his case and that counsel told him that the government had promised it would agree to home confinement as the sentence, despite the fact that such a sentence was prohibited by statute. These contentions are refuted by the transcript of the plea hearing, which shows that defendant told the court under oath that he had discussed the guidelines with his counsel. It also shows that he told the court, again, under oath, that no one had promised him any particular sentence. As a result he is barred from saying that the parties had agreed to a sentence of home confinement.

Finally, defendant says that he does not believe that the plea hearing met the standards set forth in the Federal Rules of Criminal Procedure, but he has not identified any

omission or misstatement, so I will not explore this issue further.

Defendant's counsel has asked for a 30-day extension of the sentencing to allow him time to investigate defendant's allegations. That request will be denied, as will defendant's motion to withdraw his guilty plea. With allegations as flimsy as those made by defendant, there is no justification for delaying the sentencing any further.

#### ORDER

IT IS ORDERED that defendant Adrian Collins's second motion to withdraw his plea, dkt. #86, is DENIED on the ground that defendant has not supported his motion with any allegations that would justify withdrawal of his plea. His motion for a continuance is DENIED as well, given the absence of any good reason for allowing him to withdraw his plea.

Entered this 29th day of October, 2014.

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