

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4666

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD HENRY NICKELL,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Lynchburg. Norman K. Moon, District Judge. (6:08-cr-00026-nkm-1)

Submitted: May 17, 2010

Decided: June 8, 2010

Before NIEMEYER, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael Morchower, Richmond, Virginia, for Appellant. Timothy J. Heaphy, United States Attorney, Nancy S. Healey, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard Henry Nickell pled guilty, without a plea agreement, to possession of a firearm by a user of controlled substances, in violation of 18 U.S.C. § 922(g)(3) (2006), and possession of marijuana, in violation of 21 U.S.C. § 844 (2006). The district court sentenced Nickell to two months of imprisonment on each count, to run concurrently, three years of supervised release, a \$1000 fine, and a \$125 special assessment. Nickell timely appealed. On appeal, Nickell argues that the district court erred in denying his motion to withdraw his guilty plea. He asserts that he demonstrated that his plea was not knowing and voluntary and that he did not have the close assistance of counsel. We affirm.

A district court's denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion. United States v. Ubakanma, 215 F.3d 421, 424 (4th Cir. 2000). The defendant has the burden of demonstrating "a fair and just reason" for withdrawal. Fed. R. Crim. P. 11(d)(2)(B); Ubakanma, 215 F.3d at 424. A "fair and just reason" is one that challenges the fairness of the guilty plea colloquy conducted pursuant to Rule 11 of the Federal Rules of Criminal Procedure. United States v. Puckett, 61 F.3d 1092, 1099 (4th Cir. 1995).

In determining whether the trial court abused its discretion in denying a motion to withdraw a guilty plea, six

factors are considered. United States v. Moore, 931 F.2d 245, 248 (4th Cir. 1991). The district court specifically considered and discussed the Moore factors in its order denying Nickell's motion to withdraw his plea. Our review of the record leads us to conclude that the court did not abuse its discretion in concluding that Nickell failed to establish a fair and just reason to allow withdrawal of his plea.

Accordingly, we affirm Nickell's convictions and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED