

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4050

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC HUGHES,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Terry L. Wooten, Senior District Judge. (3:17-cr-00775-TLW-1)

Submitted: May 31, 2022

Decided: June 21, 2022

Before NIEMEYER, AGEE, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: David B. Betts, Columbia, South Carolina, for Appellant. Christopher
Braden Schoen, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South
Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Hughes pled guilty, pursuant to a written plea agreement, to conspiracy to distribute and possess with intent to distribute a mixture or substance containing U-47700, a synthetic opioid analogous in form and effect to morphine, and Alprazolam, a Schedule IV controlled substance, in violation of 21 U.S.C. § 846; he also pled guilty to conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). The district court imposed a 168-month sentence. Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal but questioning the validity of Hughes' guilty plea and whether the district court erred by denying Hughes' motion to withdraw his plea. Hughes filed a pro se supplemental brief arguing that the Government breached his proffer agreement and should not have been permitted to use his statements pertaining to drug weight against him. For the reasons that follow, we affirm.

With respect to the validity of Hughes' plea, a guilty plea is valid if the defendant voluntarily, knowingly, and intelligently pleads guilty "with sufficient awareness of the relevant circumstances and likely consequences." *United States v. Fisher*, 711 F.3d 460, 464 (4th Cir. 2013) (internal quotation marks omitted). "In evaluating the constitutional validity of a guilty plea, courts look to the totality of the circumstances surrounding it, granting the defendant's solemn declaration of guilt a presumption of truthfulness." *United States v. Moussaoui*, 591 F.3d 263, 278 (4th Cir. 2010) (cleaned up). Before accepting a guilty plea, the district court must conduct a plea colloquy in which it informs the defendant of, and determines he understands, the rights he is relinquishing by pleading guilty, the

charges to which he is pleading, and the maximum and mandatory minimum penalties he faces. Fed. R. Crim. P. 11(b)(1). The district court also must ensure that the plea was voluntary and not the result of threats, force, or promises not contained in the plea agreement, Fed. R. Crim. P. 11(b)(2), and “that there is a factual basis for the plea,” Fed. R. Crim. P. 11(b)(3). However, any variance from the requirements of Rule 11 “is harmless error if it does not affect substantial rights.” Fed. R. Crim. P. 11(h). After reviewing the record, we conclude that any omissions by the district court were harmless and that Hughes’ plea was knowing, voluntary, and supported by a sufficient factual basis.

Regarding Hughes’ motion to withdraw his guilty plea, we review a district court’s denial of such a motion for abuse of discretion. *United States v. Nicholson*, 676 F.3d 376, 383 (4th Cir. 2012). A defendant does not have an absolute right to withdraw a guilty plea. *See id.* at 383-84. Rather, the defendant bears the burden of demonstrating that a “fair and just reason” supports his request to withdraw his plea. *Id.* at 384 (listing factors courts consider in making such determination). An appropriately conducted guilty plea proceeding “raises a strong presumption that the plea is final and binding.” *Id.* (cleaned up). We have thoroughly reviewed the record and the relevant legal authorities and conclude that the district court did not abuse its discretion in denying Hughes’ motion to withdraw his guilty plea.

Finally, we turn to Hughes’ argument that the Government breached the proffer agreement by using his proffered statements of drug weight against him at his detention hearing. Whether a party breached a proffer agreement presents “a question of law that we review de novo.” *United States v. Lopez*, 219 F.3d 343, 346 (4th Cir. 2000). We review

the district court's factual findings for clear error. *See United States v. Lewis*, 633 F.3d 262, 267 (4th Cir. 2011) (reviewing factual findings on breach-of-plea-agreement claim for clear error). “[A] proffer agreement operates like a contract; accordingly, we examine its express terms to determine whether [a party] is in breach.” *United States v. Gillion*, 704 F.3d 284, 292 (4th Cir. 2012).

While the district court declined to determine whether information obtained from Hughes' proffer was used against him at the detention hearing, we conclude that the record supports a finding that the Government did not do so and therefore did not breach the proffer agreement. *See United States v. Riley*, 856 F.3d 326, 328 (4th Cir. 2017) (stating that this court “may affirm on any grounds apparent from the record” (internal quotation marks omitted)). Because Hughes later breached the proffer agreement by refusing to take a polygraph test, the Government was justified in using Hughes' drug-weight statement against him at sentencing.

In accordance with *Anders*, we have reviewed the entire record and have found no meritorious grounds for appeal. Therefore, we affirm the criminal judgment. This court requires that counsel inform Hughes, in writing, of the right to petition the Supreme Court of the United States for further review. If Hughes requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Hughes.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED