NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued January 25, 2023
Decided May 17, 2023

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 20-3025

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROY CROCKETT, JR.,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 19-CR-86

Lynn Adelman,
Judge.

O R D E R

Roy Crockett, Jr., pleaded guilty to two counts of possessing a firearm and ammunition as a felon, and he was sentenced under the Armed Career Criminal Act (ACCA). The ACCA enhanced his sentence if, as he conceded in the district court, he committed three prior qualifying felonies on "occasions different from one another[.]" 18 U.S.C. § 924(e)(1). Crockett's plea agreement included a waiver of his right to appeal. Here, Crockett seeks to invalidate his plea on the ground that *Wooden v. United States*,

142 S.Ct. 1063 (2022), altered this court's interpretation of different "occasions," so that his plea was not voluntary or knowing. Because Crockett's appeal waiver assumed the risk of this legal development, it blocks his appeal. Therefore, we dismiss the appeal.

I

From 1998 until 2016, Crockett was incarcerated for three felony convictions, including: carjacking in Norfolk, Virginia, and robbery and carjacking in Hampton, Virginia. In 2016, Crockett was released from Virginia state prison, with portions of his remaining sentences suspended.

In 2019, Crockett was arrested by federal authorities with guns, hundreds of rounds of ammunition and body armor. Following the arrest, Crockett was charged with two counts of possessing a firearm as a felon, 18 U.S.C. § 922(g)(1), and one count of possessing body armor as a violent felon, 18 U.S.C. § 931. Based on the three prior convictions, the Indictment also charged Crockett pursuant to 18 U.S.C. § 924(e)(1), the ACCA sentencing provision. Crockett pleaded guilty, pursuant to a plea agreement, which charged him by Information with two counts of being a felon in possession of a firearm. The Information alleged that he was subject to the ACCA sentencing enhancement and listed his prior convictions.

In his plea agreement, Crockett agreed that he was subject to a sentencing enhancement under the ACCA and agreed not to move "to withdraw the guilty plea solely as a result of a determination that he is an Armed Career Criminal." The ACCA requires that anyone who violates 18 U.S.C. § 922(g) and has three prior convictions for violent felonies that were "committed on occasions different from one another" be imprisoned for a minimum of 15 years. *See* 18 U.S.C. § 924(e)(1). Crockett stipulated that three of his prior convictions—namely, his one armed robbery and two carjacking convictions—"resulted from offenses that occurred on three different occasions." Regarding these convictions, the plea agreement[1] listed the charges, the date of conviction, the case number, and the court that convicted him. Crockett moves to supplement the record with the related charging documents and police reports to show that the two carjackings occurred on the same night and were, he says, part of a common scheme. We address this motion later.

[1] The plea agreement erroneously says that Crockett's prior offenses were two armed robbery charges and one carjacking charge. This is incorrect, however, neither party contends that this clerical error is material.

The plea agreement also contains an appellate waiver. It states that Crockett "knowingly and voluntarily waives his right to appeal his conviction or sentence," including to appeal based on a claim that the conduct he admitted to did "not fall within the scope of the statutes or Sentencing Guidelines." The waiver excludes, among other things, appeals based on "punishment in excess of the statutory maximum" and "a claim that the plea agreement was entered involuntarily."

In exchange for the plea and waiver, the government made several concessions. It recommended that the mandatory minimum sentence of 180 months imprisonment under the ACCA run concurrently on both counts. It also agreed to recommend, in total, a three-level decrease under the Sentencing Guidelines for acceptance of responsibility, and to dismiss the body armor count.

The district judge conducted a plea colloquy, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and accepted the plea agreement. The judge confirmed that Crockett had discussed the plea deal with his attorney, was pleading guilty voluntarily, and understood the rights he was waiving, including his "right to appeal or challenge" his conviction or sentence. Also, the judge asked whether the facts in the plea agreement were "substantially correct." Crockett stated that they were. Finally, the judge confirmed that Crockett understood that he was facing "a minimum of 15 years to life" on each count.

Next, a probation officer prepared a presentence investigation report. The PSR, noting that Crockett was subject to the ACCA, calculated Crockett's offense level as 30 and his criminal-history category as IV. And it stated that under the ACCA, the mandatory-minimum imprisonment term was 180 months. Crockett did not object to the PSR's sentencing calculation.

At the sentencing hearing, the district judge adopted the PSR and heard from counsel. Crockett's lawyer argued, in mitigation, that Crockett was "concerned for his faith community" and, admittedly wrongly, armed himself to protect his family and his mosque. In addition, the Government jointly recommended with Crockett that any federal sentence run concurrently with his two outstanding Virginia cases. The judge acknowledged "positive things" Crockett had done, including that he was "actively involved with his mosque," but stated that "[u]nfortunately, this [was] not like a sentence where the judge has any real power," except to apply the mandatory minimum. The judge imposed the mandatory minimum of 180 months on both counts

to run concurrent with each other and to any suspended state sentence, as the parties had jointly recommended.

II

Our analysis begins with the appeal waiver. Appeal waivers generally "must be enforced" if the "terms are express and unambiguous, and the record shows that the defendant knowingly and voluntarily entered into the [plea] agreement." *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020) (quoting *United States v. Haslam*, 833 F.3d 840, 844 (7th Cir. 2016) (alteration in original)). Crockett urges this court to set aside the appeal waiver for two reasons. First, he argues that *Wooden* revealed that this court's previous interpretation of the ACCA was incorrect and, therefore, his underlying plea was not knowing and voluntary. *See* FED. R. CRIM. P. 11(b)(1)(G). Second, he argues that the sentence exceeds the statutory maximum because the ACCA charge lacked an adequate factual basis. Neither argument is availing.

A. Knowing and Voluntary Plea

Crockett's core argument is that his plea is invalid because *Wooden* altered this court's interpretation of the word "occasions" in the ACCA. *Wooden* held that to determine whether predicate offenses occurred on different "occasions" under the ACCA, several factors are relevant including "[t]iming," "intervening events," "[p]roximity," and "the character and relationship of the offenses[.]" 142 S.Ct. at 1071. Before *Wooden*, this court had held that offenses occurred on different "occasions" as long as the defendant had an "opportunity to stop and proceed no further," and the offenses were not committed simultaneously. *United States v. Elliott*, 703 F.3d 378, 383 (7th Cir. 2012). *Wooden* altered that understanding. 142 S.Ct. at 1068-69 (abrogating *United States v. Morris*, 821 F.3d 877 (7th Cir. 2016)).

Because *Wooden* changed the meaning of different "occasions," Crockett argues, he was misinformed about a critical element of his offense, rendering his plea invalid. To prove that he was misinformed, he relies heavily on *Bousley v. United States*, 523 U.S. 614 (1998). There, a defendant argued that the Supreme Court's reinterpretation of the offense to which he had pleaded guilty meant that the district court had misinformed him about the elements. *Id.* at 617–18. Although it did not decide the case on that ground, *id.* at 624, the Court stated that if the defendant could prove that neither he, his

attorney, "nor the court correctly understood the essential elements of the crime with which he was charged," his guilty plea was "constitutionally invalid." *Id.* at 618-19.

The problem for Crockett in relying on *Bousley* is that the defendant in that case was not bound by an appeal waiver, and if Crockett's appeal waiver is valid, the waiver prevents this court from considering his argument about *Bousley*. Crockett, therefore, must explain why his appeal waiver is invalid. To do so, he repeats that *Wooden* revealed that no one at his plea hearing—neither Crockett, his attorney, nor the judge—knowingly or intelligently understood the "occasions" element of the ACCA; therefore, like in *Bousley,* his plea is invalid. And because "an appeal waiver stands or falls with the underlying agreement and plea," *Nulf*, 978 F.3d at 506, he concludes that his appeal waiver is invalid as well.

But we have previously rejected this logic: appeal waivers remain valid even when a defendant "argues that his waiver was not knowing and intelligent because he had no reason to anticipate" a subsequent legal development. *United States v. Bownes*, 405 F.3d 634, 636 (7th Cir. 2005); *accord United States v. Vela*, 740 F.3d 1150, 1152, 1154 (7th Cir. 2014). True, a defendant may contend that an appeal waiver is invalid because it was entered unknowingly or involuntarily, or without the district court taking the plea in compliance with Rule 11 of the Federal Rules of Criminal Procedure. *See United States v. Cole*, 569 F.3d 774, 776 (7th Cir. 2009). But "abundant case law" holds that appeal waivers do not become invalid just because "the law changes in favor of the defendant after sentencing." *Bownes*, 405 F.3d at 636.

This conclusion is consistent with the principle that guilty pleas must be made "voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences.'" *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). A plea is intelligently made when the defendant understands at the time of his plea "not only the nature of the charge … but also that his or her conduct actually falls within the charge." *United States v. Olson*, 880 F.3d 873, 877 (7th Cir. 2018) (quoting *United States v. Frye*, 738 F.2d 196, 199 (7th Cir. 1984) (alteration in original)). To meet this standard, the defendant is not required to have perfect information. *See, e.g.*, *United States v. Graf*, 827 F.3d 581, 585–86 (7th Cir. 2016). And this imperfect information can produce plea deals that, like any contract, will still be knowing and intelligent despite "the risk of future changes in circumstances" and an inability to foresee them. *Bownes*, 405 F.3d at 636.

Both parties may manage this risk of a future change in circumstances in negotiating the terms of the plea deal and appeal waiver, as occurred here. When Crockett pleaded guilty, this court had already acknowledged a circuit split on the meaning of "occasions." *See, e.g.*, *Morris*, 821 F.3d at 880, *abrogated by Wooden*, 142 S.Ct. at 1068–69. Rather than pursue on appeal the chance of a favorable legal change to the meaning of that word, Crockett bargained away his right to appeal in return for an immediate benefit: the government's offer to drop the body armor count and to recommend that he receive the minimum ACCA sentence. By receiving these benefits in return for his plea deal, Crockett gave up the right to mount a challenge to his conviction on appeal. *Davila v. United States*, 843 F.3d 729, 731–32 (7th Cir. 2016).

Crockett attempts to distinguish this precedent on appeal waivers in two ways, but neither is persuasive. First, he argues that *Wooden* did not "change" the law; it merely explained what the statute "had meant ever since [it] was enacted." *See Bousley*, 523 U.S. at 625 (Stevens, J., concurring in part and dissenting in part). Therefore, he concludes, his plea involved an invalidating "mutual mistake" about the law's meaning. Through his appeal waiver, however, Crockett bargained away the right to argue that such a mistake occurred. *See, e.g.*, *Oliver v. United States*, 951 F.3d 841, 844–45 (7th Cir. 2020).

Second, Crockett argues that some of this court's cases upholding appeal waivers in the face of legal developments are inapposite because they rely on *Brady v. United States*, 397 U.S. 742 (1970). *Brady* stated that a guilty plea "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." *Id.* at 757. *Bousley* distinguished *Brady* as concerning a defendant who had "misjudged the strength of the Government's case or the penalties to which" he was subject, 523 U.S. at 619, but who had known "the nature of the charge against him." *Id.* (quoting *Brady*, 397 U.S. at 756). Moreover, *Bownes* did not rely on *Brady*. The distinction in *Bousley*—a case, which, importantly, did not involve an appeal waiver—does not undercut the rationale of our case law regarding the negotiability and enforceability of such waivers.

For the same reasons, an argument that the change in law rendered his plea not voluntary (as opposed to unknowing) fails. *See Vela*, 740 F.3d at 1154. "A change in the law after a defendant pleads guilty does not change the voluntariness of the plea at the time it was entered and does not justify a defendant withdrawing his plea." *Grzegorczyk v. United States*, 997 F.3d 743, 748 (7th Cir. 2021), *cert. denied*, 142 S.Ct. 2580 (2022).

Finally, for completeness we note that Crockett does not appear to argue that, apart from the change-in-law, his plea was not knowing or voluntary. Federal Rule of Criminal Procedure 11 "ensures that the defendant's plea is knowing and voluntary." *United States v. Schaul*, 962 F.3d 917, 921 n.10 (7th Cir. 2020). Because Crockett did not move to withdraw his plea in the district court, any review of it would be for plain error. *See United States v. Goliday*, 41 F.4th 778, 782–83 (7th Cir. 2022). Although the judge did not discuss the elements or factual bases of the charges, he confirmed that Crockett had read the plea agreement, which elaborates on the factual bases for—and states the elements of—the 18 U.S.C. § 922(g) offenses. The agreement also states that Crockett is subject to the ACCA, stating that each of the six listed prior offenses was "a violent felony or serious drug offense" and that the government would be able to prove "beyond a reasonable doubt" that three of the prior offenses "occurred on three different occasions." Finally, Crockett, who has a high school equivalency degree, signed the agreement below a line affirming: "My attorney has reviewed every part of this agreement with me…." These circumstances show that the plea and the appellate waiver are valid. *See United States v. Polak*, 573 F.3d 428, 432 (7th Cir. 2009) (no plain error because "substitutes for a proper Rule 11 colloquy were in place," such as defendant's high school education and review of plea agreement with attorney); *United States v. Driver*, 242 F.3d 767, 771 (7th Cir. 2001).

B. Whether the Sentence Exceeds the Statutory Maximum

Crockett also attempts to avoid the appeal waiver by arguing that his 180-month sentence was illegal because it was greater than the maximum for each of his illegal-possession counts under 18 U.S.C. § 922(g). Crockett asserts that the plea did not include facts showing that he committed his prior felonies on different occasions and therefore it lacked a sufficient factual basis for the ACCA count. "The only support in the record for imposing the ACCA enhanced penalties," he insists, was his stipulation that the offenses occurred on separate occasions.[2] This stipulation, he concedes, might have shown "that his offenses were committed sequentially" and satisfied this court's pre-*Wooden* law. But after *Wooden,* he asserts, the stipulation is insufficient. He relatedly appears to argue that, after *Wooden*, the question whether prior offenses occurred on different occasions is one of law, and therefore he could not stipulate to it. *See Goliday*, 41 F.4th at 785–86 (internal quotations marks omitted and citations omitted) ("Criminal defendants…may not stipulate to legal conclusions in plea agreements.").

[2] The plea agreement also listed what the offenses were, when he was convicted, and in what cities.

Once again, the appeal waiver precludes these arguments. Although the appeal waiver contains an exception if a sentence exceeds the statutory maximum that applies to his convictions, it blocks challenges to the factual or legal basis for those convictions. In *United States v. Carson*, we held that arguments like the one Crockett makes are "entirely circular" and do not defeat an appeal waiver. 855 F.3d 828, 831 (7th Cir. 2017) (quoting *United States v. Worthen*, 842 F.3d 552, 555 (7th Cir. 2016)). It is not possible to rule that Crockett's punishment exceeds the statutory maximum for his non-ACCA convictions without first deciding that Crockett was not subject to an enhanced sentence under the ACCA. This analysis, however, would require the court to reach the merits of Crockett's appeal, in violation of the valid appeal waiver. We have held that we will not consider these arguments. *Worthen*, 842 F.3d at 555.

We conclude with two final matters. First, because the appeal waiver prevents us from considering the merits, we do not address Crockett's merits-based argument that this court should overrule *Elliott*, which held that a district judge may determine whether prior convictions have been committed on occasions different from one another. 703 F.3d at 381. Second, we deny Crockett's motion to supplement the record with the charging documents and police reports related to his prior felonies. These records would be pertinent only if the appeal waiver were invalid.

We therefore dismiss the appeal.