NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. KARAPET DAMARYAN, Defendant-Appellant.	No. 17-10486 D.C. No. 2:13-cr-00274-GEB-1 MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Argued and Submitted February 8, 2019
San Francisco, California

Before: PAEZ and BERZON, Circuit Judges, and FEINERMAN,** District Judge.

Karapet Damaryan appeals the district court's denial of his motion to withdraw his guilty plea. We review the denial for abuse of discretion. *United States v. Yamashiro*, 788 F.3d 1231, 1236 (9th Cir. 2015). We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

Federal Rule of Criminal Procedure 11 "requires a court to address a defendant personally in open court and inform the defendant of, and determine the defendant understands, the numerous consequences of pleading guilty." *United States v. Toothman*, 137 F.3d 1393, 1399 (9th Cir. 1998). Specifically, the court must, *inter alia*, "inform the defendant of, and determine the defendant understands . . . any mandatory minimum penalty." Fed. R. Crim. P. 11(b)(1).

During the plea colloquy, the district court incorrectly informed Damaryan that as a result of pleading guilty to Count Two, which alleged a violation of 18 U.S.C. § 1028A, he "could be placed in prison up to two years." This advisement was incorrect as a violation of 18 U.S.C. § 1028A *requires* a two-year mandatory sentence. The district court attempted to clarify the mandatory minimum sentence, but the court's explanation was not entirely clear. This somewhat unclear advisement, however, does not require setting aside Damaryan's guilty plea, as he was clearly advised of the mandatory two-year sentence at two earlier arraignments. In light of the prior oral advisements, the error was harmless, and the district court did not abuse its discretion in denying Damaryan's motion to withdraw his guilty plea. *See United States v. Alber*, 56 F.3d 1106, 1109-1110 (9th Cir. 1995).

Damaryan's other arguments regarding his previous counsel, his lack of any criminal history, his limited English language abilities, the district court's limited

inquiry into whether he was taking medication, and his codefendant's sentence are not persuasive. We decline to consider his ineffective assistance of counsel claim on direct appeal as the record is not sufficiently developed to consider the claim. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000).

AFFIRMED.