

NOV 08 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC JOHN MEISNER, a.k.a. Lewis
Guarnieri,

Defendant - Appellant.

No. 07-10008

D.C. No. CR-04-01073-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted November 8, 2011**

Before: O'SCANNLAIN, TASHIMA, and GRABER, Circuit Judges.

Eric John Meisner appeals from the 120-month sentence imposed following his guilty-plea conviction for possession with intent to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1291, and we affirm.

Meisner contends that the district court erred by denying his motion to withdraw his guilty plea. Specifically, Meisner claims that he did not understand the nature of the appellate and post-conviction rights he was giving up at the time he entered the guilty plea, due to head trauma suffered both as a child and while in pretrial detention. In light of the district court's factual finding that Meisner understood that he was giving up certain rights when he entered his guilty plea, we conclude that it did not abuse its discretion in determining that he failed to show a fair and just reason for withdrawing his plea. *See* Fed. R. Crim. P. 11(d)(2)(B); *United States v. McTiernan*, 546 F.3d 1160, 1167-68 (9th Cir. 2008).

Counsel's motion to withdraw is granted.

AFFIRMED.