

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 21 2015

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARY ANN MCCULLEY,

Defendant - Appellant.

No. 14-30099

D.C. No. 2:13-cr-00007-SEH-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted April 6, 2015**
Seattle, Washington

Before: HAWKINS, RAWLINSON, and CALLAHAN, Circuit Judges.

Appellant Mary Ann McCulley (McCulley) appeals her conviction and sentence following her guilty plea to one count of false impersonation of a federal officer or employee in violation of 18 U.S.C. § 912. McCulley contends that the

* 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).

district court failed to adequately consider her oral motion to withdraw her guilty plea due to newly discovered evidence; the superseding information failed to sufficiently allege that McCulley violated 18 U.S.C. § 912; her conviction violated her rights under the First and Fourteenth Amendments; and reversal of her conviction and sentence is warranted due to ineffective assistance of counsel. McCulley also challenges the district court's above guidelines sentence. We dismiss McCulley's appeal.

1. McCulley's contention that the district court failed to adequately consider her motion to withdraw her guilty plea is without factual basis because no oral or written motion was clearly made prior to sentencing. *See United States v. Dewey*, 599 F.3d 1010, 1017 (9th Cir. 2010).

2. McCulley waived any challenge to the sufficiency of the superseding information and the constitutionality of her conviction by entering an unconditional guilty plea. *See United States v. Brizan*, 709 F.3d 864, 866-67 (9th Cir. 2013) ("An unconditional guilty plea waives all non-jurisdictional defenses and cures all antecedent constitutional defects, allowing only an attack on the voluntary and intelligent character of the plea. . . .") (citations omitted).

3. We dismiss McCulley’s challenge to her sentence because McCulley validly waived any appeal of her sentence pursuant to her plea agreement. *See United States v. Mendez-Gonzalez*, 697 F.3d 1101, 1103-04 (9th Cir. 2012).

4. We decline to review McCulley’s ineffective assistance of counsel claim because “[s]uch claims are generally inappropriate on direct appeal” when the record is undeveloped and the ineffectiveness of counsel is not apparent. *United States v. Steele*, 733 F.3d 894, 897 (9th Cir. 2013) (citation and internal quotation marks omitted).

DISMISSED.