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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ALECIA TRAPPS, Defendant-Appellant.	No. 21-10295 D.C. Nos. 1:18-cr-00076-DAD-BAM-1 1:18-cr-00076-DAD-BAM MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Argued and Submitted August 29, 2022
San Francisco, California

Before: W. FLETCHER, BYBEE, and VANDYKE, Circuit Judges.

Appellant-Defendant Alecia Trapps was indicted in April 2018 for conspiracy to distribute and possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), 846. In October 2019, at a change-of-plea colloquy, held pursuant to Fed. R. Crim. P. 11 (Rule 11), Trapps pleaded guilty to

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

this single-charge indictment. In September 2021, she was sentenced to 252 months in custody.

On appeal, Trapps argues that her plea colloquy was deficient on two grounds.[1] First, she alleges that the district court erred by not comprehensively inquiring about her history of substance abuse as well as her physical and mental health—factors that she claims increased her susceptibility to pleading guilty involuntarily—in violation of Fed. R. Crim. P. 11(b)(2). Second, she alleges that the district court erred by not properly advising her under Fed. R. Crim. P. 11(b)(1).

We have appellate jurisdiction under 28 U.S.C. § 1291. Because Trapps did not raise a Rule 11 objection in the district court, we review the plea colloquy for plain error. *United States v. Ferguson*, 8 F.4th 1143, 1145 (9th Cir. 2021) (citing

[1] Trapps also contends that the district court erred by using federal law (instead of California state law) to determine whether she is a career offender under United States Sentencing Guideline § 4B1.1(a) due to her prior controlled-substance convictions in California state court. However, as Trapps herself concedes, this argument is foreclosed by our precedent in *United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021) ("We have interpreted the term 'controlled substance' as used in the Guidelines to mean a substance listed in the Controlled Substances Act."). But even if she were to prevail on this point, her disposition would remain unchanged: her prior convictions were for the possession and sale of cocaine, a controlled substance under both California and federal law.

United States v. Fuentes-Galvez, 969 F.3d 912, 915 (9th Cir. 2020)). We find none and affirm the conviction.

1. The district court satisfied Rule 11(b)(2)'s requirement of adequately ensuring the voluntariness of Trapps's guilty plea. Trapps's reliance on *Fuentes-Galvez* is misguided. There, we explained that a Rule 11 plain error occurs if (1) the defendant is "especially vulnerable to entering an involuntary plea," *Fuentes-Galvez*, 969 F.3d at 917, *quoted by Ferguson*, 8 F.4th at 1146–47, and (2) this vulnerability resulted in a "reasonable probability that the district court's omissions could have affected [the defendant's] decision to continue in his guilty plea," *Fuentes-Galvez*, 969 F.3d at 916, *quoted by Ferguson*, 8 F.4th at 1147. In making this determination, we look at the "totality of the circumstances" as "informed by the entire record," *Fuentes-Galvez*, 969 F.3d at 916–17, and are not restricted "to the plea proceedings alone," *United States v. Monzon*, 429 F.3d 1268, 1271 (9th Cir. 2005).

Fuentes-Galvez's plea colloquy was "highly abbreviated" and combined with that of another, unrelated defendant. *Fuentes-Galvez*, 969 F.3d at 914. The judge did not make key inquiries regarding whether (1) the plea resulted from "force, threats, or promises," (2) his attorney thought the plea was knowing and voluntary, and (3) he "understood" or "felt fully satisfied" with his attorney. *Id.* at

915. Moreover, Fuentes-Galvez had "little schooling," dealt with mental-health challenges, had "a long history of substance abuse," and was "exclusively a Spanish speaker." *Id.* at 916–17.

In contrast, Trapps's plea colloquy (wherein she was the only defendant before the judge) reflects an informed willingness to plead guilty. She answered "No" when asked if her plea was the result of force, promises, threats, or "any particular pressure," and she told the judge that she was pleading guilty of her own "free will." Her attorney also explicitly denied there being "any reason . . . [the Court] should not now take the change of plea." Moreover, Trapps is a native English speaker who attended (some) college, and she has not reported any current or past mental-health issues. Therefore, the only parallel between Fuentes-Galvez and Trapps is their substance-abuse histories—a similarity that does not overcome how inapposite any analogy between their situations would otherwise be. *See also, e.g.*, *Ferguson*, 8 F.4th at 1146 ("*Fuentes-Galvez*'s finding of an impact on substantial rights was based on circumstances not present here."); *United States v. Montano*, No. 19-10220, 2022 WL 72353, at *2 (9th Cir. Jan. 7, 2022), *petition for cert. filed*, No. 21-8125 (U.S. June 13, 2022) ("[T]he inquiry into competence and intelligence required in *Fuentes-Galvez* was driven by the defendant's unique

susceptibility to coercion—special circumstances that are not present here." (internal quotation marks omitted)).

In light of this analysis, we do not find that Trapps presented any evidence of "special circumstances"—with respect to either her personal history or the manner in which the colloquy was conducted—that would amount to a reasonable probability that Trapps would have abandoned her guilty plea had the district court been more careful or thorough. Nothing in the record points to any factors that would have imposed a heightened duty on the district court to probe further into Trapps's history or current state in order to meet the requirements of Rule 11(b)(2).

Trapps also raises the possibility that her state of mind at the time of the colloquy was compromised due to her dependence on alcohol and drugs. But Trapps's plea colloquy took place in October 2019, almost a full year after she had been remanded into custody—and there is nothing in the record to indicate that she relapsed during that time. At the colloquy, neither Trapps nor her attorney gave any indications that Trapps was, at the time, under the influence of drugs or alcohol, or that she was suffering from any symptoms of withdrawal. Nor did the district court make any observations indicating that she might be. In fact, the colloquy's transcript reveals that Trapps expressed a sound understanding of her decision to plead guilty.

2. The district court properly advised Trapps of the rights she was giving up by pleading guilty as well as the consequences of doing so—in accordance with the requirements set out in Rule 11(b)(1). Trapps notes various ways in which the district judge deviated from the precise wording of Rule 11(b)(1), but this does not imply that the judge's advisal fell outside of the rule's strictures: "Questions need not be framed in the exact language of the rule so long as the judge uses rational means to determine the defendant's understanding of the charges against him and the consequences of his plea." *United States v. Youpee*, 419 F.2d 1340, 1344 (9th Cir. 1969). Here, the colloquy's transcript shows that Trapps understood the various advisements pronounced in Rule 11(b)(1) as articulated by the district judge; at no point did she indicate an intention to withdraw her guilty plea. And although Trapps claims that the district court did not properly advise her as to "how the federal sentencing process operates under the Guidelines" as required by Rule 11(b)(1)(M), Trapps was informed about the mandatory minimum of ten years, the statutory maximum of life, and a possible supervised-release term. Consequently, it is not clear from the record that any further elaboration by the judge would have affected the likelihood that Trapps would have chosen not to plead guilty.

AFFIRMED.