

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 15 2026

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRETT A. BARBER,

Defendant - Appellant.

No. 24-7474

D.C. No.

8:21-cr-00196-ODW-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Argued and Submitted September 14, 2026
Pasadena, California

Before: R. NELSON and DESAI, Circuit Judges, and SCHREIER, District
Judge.**

Brett Barber appeals the denial of his motion to withdraw his guilty plea and his sentence for two counts of wire fraud and one count of criminal contempt. At his plea colloquy, Barber confirmed that his plea was voluntary.

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

** The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

Although he initially discredited the government's allegations, Barber accepted the government's allegations after an off-record conversation with his attorney. The district court accepted his plea. Barber later moved to withdraw the plea, claiming it was involuntary due to "inadequate and erroneous legal advice." The district court denied Barber's motion to withdraw, sentenced him to 181 months in prison, and imposed a fine at the bottom of the guideline range.

In addition to appealing the district court's denial of his motion to withdraw his plea, Barber challenges the reasonableness of his sentence, the district court's refusal to record findings for each U.S.S.G. § 5E1.2(d) factor before imposing a fine, and the district court's refusal to orally recite each supervised release condition. We have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. We dismiss Barber's appeal of the motion to withdraw his plea and affirm his sentence.

1. Barber claims his plea was involuntary, thereby invalidating his appeal waiver. We review a defendant's waiver of the right to appeal de novo. *United States v. Bibler*, 495 F.3d 621, 623 (9th Cir. 2007). An appeal waiver bars a claim when the text encompasses the right to appeal and the waiver was knowing and voluntary. *United States v. Watson*, 582 F.3d 974, 986 (9th Cir. 2009).

Barber's plea explicitly bars all appeals of his convictions, which includes "even an appeal from the denial of a motion to withdraw [his] guilty plea." *See United States v. Rahman*, 642 F.3d 1257, 1259 (9th Cir. 2011). Barber seeks to

circumvent this bar by claiming his plea was involuntary, but his allegations amount to nothing more than a claim for ineffective assistance of counsel, which cannot be raised on direct appeal unless the record is sufficiently developed or the representation was obviously inadequate. *Id.* at 1259–60. Neither exists here, and thus Barber’s claim is barred.

First, Barber’s claim is based on an off-record discussion. Neither Barber nor his attorney testified about the full exchange, and only Barber provided a declaration summarizing it. Without more, the record shows only that Barber affirmed under oath that he was satisfied with his attorney’s representation and that his plea was voluntary.

Second, the attorney’s alleged statements—that Barber was “risking life in prison” by going to trial or that he “could always proceed with a motion to withdraw” the plea—do not “obviously” constitute ineffective assistance. *United States v. McGowan*, 668 F.3d 601, 605 (9th Cir. 2012) (citation modified). It was true that Barber risked getting a more serious sentence if he did not accept the plea deal, and it was true that he could seek to withdraw his plea. Because Barber cannot raise his ineffective assistance of counsel claim on direct appeal, his challenge to his plea agreement is waived.

2. Barber also claims that his sentence is unreasonable because his co-conspirator received a probationary term. Barber may appeal his sentence because

he received an upward variance. We review the substantive reasonableness of a district court's sentence for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 51, 56 (2007). Barber and his co-conspirator are not similarly situated. *See United States v. Monroe*, 943 F.2d 1007, 1017 (9th Cir. 1991). The co-conspirator served as a cooperating witness, while Barber fled after his pre-trial release was revoked and received an additional criminal contempt charge. Barber's sentence is not substantively unreasonable under the circumstances. *See id.*

3. Barber next claims that the district court failed to address all eight U.S.S.G. § 5E1.2(d) factors when imposing his fine. We review Barber's claim for plain error because he did not object in the trial court. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 & n.3 (9th Cir. 2010). The guidelines outline the factors that must be considered by the district court when imposing a fine, but the court need not make enumerated findings on the record for each one. *See United States v. Sager*, 227 F.3d 1138, 1148 (9th Cir. 2000). Taking the entire record, it is not clear or obvious that the district court erred by failing to consider Barber's individualized circumstances before imposing the fine.

4. Finally, Barber argues that the district court erred by failing to recite each supervised release condition. We review this claim de novo. *United States v. Montoya*, 82 F.4th 640, 646 (9th Cir. 2023) (en banc). A district court may incorporate "a document proposing conditions" like a "courtwide or judge-specific

standing order[] that list[s] conditions” by reference during the sentencing hearing to satisfy the oral pronouncement requirement. *Id.* at 651–52 (citation modified). As Barber acknowledged in his reply brief, the district court did exactly that.

DISMISSED in part and AFFIRMED in part.