IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 18-17-LPS
	:	~~FILED UNDER SEAL~~
TIMOTHY KEYES,	:	unsealed 8/6/18 cmv
	:	
Defendant.	:	

MEMORANDUM ORDER

Pending before the Court is Defendant Timothy Keyes' ("Defendant" or "Keyes") Motion to Withdraw Guilty Plea. (D.I. 29) Having reviewed the parties' submissions (D.I. 29, 31, 33, 35, 36), **IT IS HEREBY ORDERED** that, for the reasons set forth below, Defendant's motion (D.I. 29) is **DENIED**.

1. On April 4, 2018, Defendant pleaded guilty to possession of a firearm by a person prohibited, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) ("Count I"), and possession of heroin with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(c) ("Count II"). (*See* D.I. 18, 21, 23) His plea was entered pursuant to a plea agreement Keyes had signed on February 21, 2018. (*See* D.I. 18)

2. Defendant seeks to withdraw his guilty plea, contending he is innocent on both counts and that he did not make his plea knowingly, intelligently, and voluntarily. (*See* D.I. 29 at 2-3 of 16) Defendant claims that at the time of the plea hearing he "was addicted to oxycodone and heroin, did not understand the nature of the charges against him, had not fully read the plea agreement," and was "uncertain of himself and his surroundings." (*Id.*)

3. A defendant may withdraw a guilty plea if he can "show a fair and just reason for

requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). The defendant bears the burden of demonstrating a "fair and just" reason, and "that burden is substantial." *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003). The Court considers three factors when evaluating whether such a reason exists: "(1) whether the defendant asserts his innocence; (2) the strength of the defendant's reasons for withdrawing the plea; and (3) whether the government would be prejudiced by the withdrawal." *Id.* No one factor is mandatory "such that failure to establish one will necessarily dictate rejection of the motion." *United States v. Wilder*, 134 F. App'x 527, 528 (3d Cir. 2005). The analysis requires the Court to consider and balance all three factors. *See id.*

4. With respect to the first factor, a defendant "must make a credible showing of innocence, supported by a factual record." *United States v. Ho-Man Lee*, 664 F. App'x 126, 128 (3d Cir. 2016). "Bald assertions of innocence are insufficient," and instead must be "buttressed by facts in the record that support a claimed defense." *Jones*, 336 F.3d at 252 (internal quotation marks omitted). A defendant must also give the Court "sufficient reasons to explain why contradictory positions were taken." *Id.* at 253 (internal quotation marks omitted).

5. Here, Keyes fails to make a credible showing of his innocence on either count. As to Count I, Keyes asserts that he is innocent because he was unaware that the firearm was inside his home. (*See* D.I. 29 at 2-3 of 16) In support of that assertion, Defendant offers the affidavit of his fiancée, Tara Goree, in which Ms. Goree states she placed the firearm in their home without Defendant's knowledge and only told Defendant about the firearm as they were being pulled over by law enforcement. (*See* D.I. 29 Ex. 2 at 2; *see also id.* at 3-6 (Ms. Goree's response to DEA Seized Asset Claim and receipt indicating she purchased firearm))

6. This evidence is insufficient for Keyes to meet his burden. As an initial matter,

Keyes provided a post-*Miranda* statement to FBI agents the day of the traffic stop in which he admitted to having a firearm in his house and described its precise location in the house – information Ms. Goree does not claim to have told Keyes. (*See* D.I. 31 Ex. B at 5:50-7:45 (explaining to agents firearm was kept under Keyes' side of bed "for protection"); *see also* D.I. 29 Ex. 2 at 2) Keyes also admitted in the interview that he knew he was prohibited from having a firearm in his home, regardless of whether he owned it. (*See id.*) (responding "I know. Yeah" when asked by agents whether he knew he was prohibited from having firearm) Further, during his plea hearing, Keyes explained in his own words that he was guilty of Count I because "he knew about the [the firearm]. And it was for [his] personal use so [he] knew it was in the house." (D.I. 29 Ex. 1 ("Tr.") at 32) Nor did Keyes object to the government's recitation of the facts as to Count I. (*See* Tr. at 33-35) In short, at all times prior to and during his plea hearing, Defendant expressed familiarity with the firearm, directly contradicting his present claim that he knew nothing about it. Thus, even assuming Ms. Goree's affidavit is part of the factual record,[1] the inconsistencies between Keyes' current position and his ready acknowledgment of the firearm at all prior times are so striking that, in the Court's view, Keyes has failed to make a credible showing of his innocence as to Count I. *See Jones*, 336 F.3d at 253 (concluding defendant failed to meaningfully reassert innocence where, *inter alia*, he conceded accuracy of government's facts "but did not explain why his position had changed so markedly").

7. As to Count II, Defendant contends he is innocent because he is a heroin addict,

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[1]The government does not contest the authenticity of the evidence Defendant submitted in support of his motion. (*See* July 5, 2018 teleconference transcript at 11) Nor did either party express the view that the Court must conduct a hearing before resolving the instant motion. (*See id.* at 10)

and the heroin found in his residence was for personal use, not distribution. (*See* D.I. 29 at 3-4 of 16) But Defendant has produced no evidence to support his assertion. *See United States v. Brown*, 250 F.3d 811, 818 (3d Cir. 2001) ("Assertions of innocence must be buttressed by facts in the record that support a claimed defense.") (internal quotation marks omitted). Defendant's statements to the FBI are also at odds with his current claims, as Keyes told agents he obtained the heroin for distribution and had been sampling it to potential buyers. (*See* D.I. 31 Ex. B at 7:55-10:00) At no point did Keyes tell agents he was a heroin user or that the heroin was for his own use. Additionally, Defendant was on federal supervised release at the time of his offense and was subject to periodic drug tests, but the record does not contain any positive drug tests (and the government is not aware of any such tests). (*See* D.I. 31 at 2 n.2) Finally, during the plea hearing, Keyes explained why he was guilty of Count II, did not raise the issue of personal use, and did not object to the government's recitation of the facts. (*See* Tr. at 32-35) In the Court's view, then, Defendant has not met his burden to make a credible showing of innocence. *See Brown*, 250 F.3d at 818; *United States v. Smith*, 2006 WL 2645153, at *4 (M.D. Pa. Sept. 14, 2006), *aff'd*, 262 F. App'x 435 (3d Cir. 2008) (rejecting defendant's argument that heroin was for personal use where defendant failed to offer "credible evidence to support his assertion").

8. Turning to the second factor, the strength of the defendant's reasons for withdrawing the plea, Keyes is required to provide "strong reasons" to justify the withdrawal of a "solemn admission" of guilt. *Lee*, 664 F. App'x at 128 (internal quotation marks omitted). A "shift in defense tactics, a change of mind, or the fear of punishment are not adequate reasons to withdraw a guilty plea." *Id.* (internal quotation marks omitted).

9. Defendant fails to present strong reasons for withdrawing his guilty plea. Instead,

Defendant offers inconsistent theories for why his plea was not made knowingly, intelligently, and voluntarily. Keyes first argues he was under the influence of Oxycodone when he entered his plea and therefore did not understand the proceedings. (*See* D.I. 29 at 3 of 16) ("Keyes asserts . . . his guilty plea was not knowingly, voluntarily and intelligently made because he was under the influence of oxycodone.") Yet Keyes also maintains that he was ***not*** under the influence of Oxycodone at the plea hearing, as he had not taken any drugs within 48 hours of the hearing, and, instead, was suffering from withdrawal. (*See* D.I. 29 at 13 of 16) (arguing Keyes' "decision to stop taking the oxycodone 48 hours before the hearing . . . very well may have triggered the onset of withdrawal symptoms and contributed to Keyes' confusion and uncertainty in court") Keyes does not adequately establish either of his conflicting claims. While Defendant submitted medical records indicating he was twice prescribed Oxycodone (once from over a year before the plea hearing), he presented no evidence that he filled those prescriptions. Nor is there evidence he was addicted to Oxycodone, was still taking and/or had recently stopped taking Oxycodone at the time of his plea hearing, or that he was so under- or over-medicated during the hearing that he was unable to understand his plea. *See United States v. Tann*, 643 F. App'x 86, 88 (3d Cir. 2016) (rejecting defendant's argument that plea was infirm because he had not taken his bipolar medication for two days before hearing, at which court "confirmed that [defendant] generally understood . . . what's going on today") (internal quotation marks omitted). Nor did Defendant raise these issues at his plea hearing. *See United States v. Fuller*, 311 F. App'x 550 (3d Cir. 2009) (rejecting argument that plea was involuntary where defendant claimed to have "taken fives times the prescribed amount" of prescription on morning of plea hearing where those claims were contradicted by [defendant's] statements at plea hearing). Defendant's

unsubstantiated contentions do not meet his burden to show a strong reason to justify withdrawal of a solemn admission of guilt.

10. Defendant finds support for his contention that his plea was involuntary in the transcript of the change of plea hearing. (*See* D.I. 29 at 7-8 of 16) Although the Court recognizes that the colloquy with Keyes was unusual – in its length and in Keyes' expressed doubts at times as to whether he wished to enter a guilty plea – it was the Court's finding at the plea hearing that Defendant's ultimate decision to plead guilty was knowingly, intelligently, and voluntarily made. Review of the transcript, in light of Keyes' new contentions and evidence, leads the Court to the same conclusion.

11. Defendant points out that the Court noted he "look[ed] a little unsure" about what was going on at the plea hearing and that his attorney feared "the record is going to appear that Mr. Keyes is being forced into this plea." (D.I. 29 at 8-9 of 16) (quoting Tr. at 6, 19) Yet, when asked by the Court if he understood what was taking place, Defendant responded that he did. (*See* Tr. at 6) Defendant's attorney stated he had no reason to doubt his client's competence to proceed and reaffirmed that belief after conferring with Keyes "to make sure [Keyes] had not taken any medication in the last 48 hours" and learning "he has not." (Tr. at 6) When at a certain point Defendant expressed uncertainty about proceeding, the Court stopped the hearing to allow Defendant time to consult with his attorney, as the transcript reflects:

> Court: Okay. Well, we need to make sure that you have, to your satisfaction, had whatever consultation with your attorney you wish to have. Have you had that or do you need some more time with him?

Keyes: Honestly, I do need more time.

Court: Okay. I mean we can give you some more time with him. How much time do you think you need?

Keyes: If I could have 30 minutes or so?

Court: Sure. . . .

(Tr. at 7)

After a substantial break, the proceedings continued as follows:

Court: Have you now had adequate time to confer with [counsel]?

Keyes: Yes, Your Honor.

Court: Okay. And is it still your intent to go forward and possibly enter a guilty plea?

Keyes: Yes, Your Honor.

(Tr. at 10)

Later in the proceedings, when Keyes said he had an "issue" with Count I, the Court again stopped the proceedings to allow him to consult his attorney and make sure he still wanted to plead guilty. (*See* Tr. at 18-21) When proceedings reconvened, Keyes affirmed his desire to enter a guilty plea:

Counsel: I believe we are ready to continue with the guilty plea agreement.

Court: Alright. Mr. Keyes, is that correct?

Keyes: Yes, Your Honor. I do apologize.

(Tr. at 22)

The Court then walked Defendant through the plea agreement, asking at each step whether Defendant understood what was occurring. (*See* Tr. at 23-31) Defendant responded each time that he did, in fact, understand. (*See id.*) The Court informed Defendant of the various rights he was waiving, including his right to plead not guilty – a right Defendant stated he understood and voluntarily chose to waive because he was in fact guilty. (*See* Tr. at 24-32) Defendant explained to the Court in his own words what he did that made him guilty and agreed with the government's recitation of the factual record. (*See* Tr. 33-35) (Court: "And, Mr. Keyes did you hear anything from the prosecutor that you strongly disagree with?" Defendant: "No, Your Honor.")

12. These on-the-record statements satisfy the Court that Keyes' plea of guilty was made knowingly, voluntarily, and intelligently. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity."); *United States v. Yurgin*, 2011 WL 447931, at *6 (D. Del. Feb. 3, 2011) (concluding defendant's plea was "well-informed" and "driven by his own concerns and wishes," noting defendant's repeated affirmations of understanding). While Defendant contends he did not understand the nature of the charges against him, the record of the plea hearing undermines that assertion. Defendant was represented by, and able to consult with, experienced counsel and entered his plea only after the Court confirmed that he understood what was occurring. *See United States v. Johnson*, 491 F. App'x 326, 329 (3d Cir. 2012) (affirming denial of motion to withdraw guilty plea where defendant had "an experienced lawyer" and court was satisfied "after consulting with his lawyer, . . . he has voluntarily and intelligently entered into his plea"); *United States v. Rollins*, 2011 WL 672460, at *4 (D. Del. Feb. 17, 2011) ("Instead, after discussing his concerns with the court and

being afforded a break to confer with counsel, defendant agreed to accept his attorney's advice and to enter a plea of guilty."). Thus, a review of the complete transcript of the plea colloquy confirms that Defendant made a knowing, intelligent, and voluntary plea.

13. Defendant further argues that the Court did not fully advise him of the consequences of his plea. (*See* D.I. 29 at 12-13 of 16; D.I. 36) Defendant contends that the Court should have informed Keyes that his guilty plea constituted a violation of his supervised release, potentially resulting in a further period of incarceration. (*See* D.I. 29 at 13 of 16) (citing *McCarthy v. United States*, 394 U.S. 459, 464 (1969)) Defendant relies on *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010), arguing *Padilla* "blurred the distinction between direct and collateral consequences of a guilty plea given the 'harsh consequences' of deportation," adding that a further period of incarceration for violation of supervised release is a similarly "harsh consequence" of pleading guilty. (D.I. 36 at 2) (quoting *Padilla*, 559 U.S. at 360)

14. Defendant fails to acknowledge that the Supreme Court's holding in *Padilla* was premised on the Court's view that a person's right to remain in the United States is "more important to the client than any potential jail sentence." *Padilla*, 559 U.S. at 368 (internal quotation marks omitted). Additionally, here the Court advised Defendant that, as to Counts I and II, he would be subject to up to a total of 30 years of imprisonment and up to a lifetime of supervised release, in addition to fines and special assessments. (*See* Tr. at 16-17) Defendant stated that he understood. (*See id.* at 17) Also, before the guilty plea hearing, Keyes had been advised of the potential penalties he faced for violating the terms of his supervised release at his

initial appearance on the supervised release violation. (*See* D.I. 35 at 2)[2] Defendant has not cited any authority providing or even suggesting that a Court taking a guilty plea to a new offense is required to advise a defendant that such a plea may also be evidence (perhaps dispositive evidence) of a violation of supervised release imposed for an earlier conviction. *See generally United States v. Vonsander*, 2006 WL 208575, at *3 (D. Del. Jan. 24, 2006), *aff'd*, 227 F. App'x 192 (3d Cir. 2007) (refusing to allow defendant to withdraw guilty plea when "[a]t the Rule 11 hearing, Defendant, who was under oath, was asked by the Court if he understood the charges against him, the terms of the plea agreement, and his various rights, including his right to continue with his not guilty plea. Defendant replied yes to each of these inquiries").[3] Thus, the Court is not persuaded that it failed to sufficiently alert Defendant to the consequences of his guilty plea or that Keyes' contentions constitute a strong reason to justify withdrawal of his solemn admission of guilt.

15. Finally, turning to the third factor, the government "need not show" it would be prejudiced "when a defendant has failed to demonstrate that the other factors support a withdrawal of the plea." *Jones*, 336 F.3d at 255. Because Keyes has failed to make a credible showing of innocence or offer strong reasons in support of his withdrawal, the Court need not consider the third factor.

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[2]During any proceedings on the petition to revoke supervised release, Defendant will be advised of his right to contest the alleged violation and of the potential consequences should he decide to admit to the alleged violation.

[3]Additionally, the Court asked defense counsel if there was anything further the Court should ask Keyes before he entered his plea. (*See* Tr. at 35) Defense counsel indicated no further questions were necessary. (*See id.*)

16. Accordingly, the Court concludes that Defendant has failed to meet his substantial burden of demonstrating a fair and just reason justifying withdrawal of his guilty plea. Therefore, his motion to withdraw his guilty plea is **DENIED**.

IT IS FURTHER ORDERED that the parties shall meet and confer and the government, on behalf of both parties, shall file a joint status report, indicating the parties' position(s) as to how this case should now proceed, no later than August 3, 2018.

IT IS FURTHER ORDERED that because this Memorandum Order has been issued under seal, the parties shall meet and confer and advise the Court, no later than July 30, 2018, whether they propose any redactions to what the Court will issue as the public version.

July 27, 2018
Wilmington, Delaware

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT COURT