

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4296

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRI MOORE,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. J. Michelle Childs, District Judge. (3:18-cr-00628-JMC-3)

Submitted: April 30, 2020

Decided: May 19, 2020

Before MOTZ, AGEE, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James T. McBratney, Jr., MCBRATNEY LAW FIRM, P.A., Florence, South Carolina, for
Appellant. Kathleen Michelle Stoughton, Assistant United States Attorney, OFFICE OF
THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Terri Moore appeals the district court's judgment after pleading guilty to possession with intent to distribute 50 grams or more of methamphetamine and possession of firearms in furtherance of drug trafficking. After sustaining Moore's objection to an enhancement, the district court denied her motion for a variance but sentenced her at the bottom of her Guidelines range to 210 months on the drug count and a 60-month consecutive sentence on the firearm count, totaling 270 months. On appeal, Moore's attorney has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), asserting there are no meritorious grounds for appeal but questioning whether the district court complied with Fed. R. Crim. P. 11 in accepting her guilty plea, and whether it properly denied her motion for a variance. Moore was notified of her right to file a pro se supplemental brief but has not done so. We affirm.

In federal cases, Rule 11 of the Federal Rules of Criminal Procedure "governs the duty of the trial judge before accepting a guilty plea." *Boykin v. Alabama*, 395 U.S. 238, 243 n.5 (1969). "Rule 11 sets out the information a court is to convey to ensure that a defendant who pleads guilty understands the consequences of the plea." *United States v. Nicholson*, 676 F.3d 376, 381 (4th Cir. 2012). "The court also must determine that the plea is voluntary and that there is a factual basis for the plea." *United States v. Williams*, 811 F.3d 621, 622 (4th Cir. 2016). "Generally we review the acceptance of a guilty plea under the harmless error standard." *Id.* (citation omitted). "But when, as here, a defendant fails to move in the district court to withdraw his or her guilty plea, any error in the Rule 11 hearing is reviewed only for plain error." *Id.* (citation omitted).

Because Moore did not assert any Rule 11 error or attempt to withdraw her guilty plea in the district court, we review her Rule 11 issue for plain error. *See United States v. Lockhart*, 947 F.3d 187, 191 (4th Cir. 2020). “To succeed under plain error review, a defendant must show that: (1) an error occurred; (2) the error was plain; and (3) the error affected his substantial rights.” *Id.* (citation omitted). “We retain the discretion to correct such an error but will do so ‘only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.’” *Id.* (citations omitted).

We have reviewed the record and conclude that Moore fails to show any plain error affecting her substantial rights. The district court omitted the advice required under Rule 11(b)(1)(O) that a defendant who is not a United States citizen may be deported as a result of her guilty plea, but Moore is a United States citizen who cannot be deported. The court also omitted the advice under Rule 11(b)(1)(M) that in determining her sentence, the court was obligated to calculate and consider the Guidelines range, possible departures, and other sentencing factors under 18 U.S.C. § 3553(a); but the court confirmed that Moore had discussed the Guidelines with her counsel; and a guilty plea may be knowing and intelligent based on information received before the plea hearing. *See Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005); *United States v. DeFusco*, 949 F.2d 114, 117 (4th Cir. 1991).

“We review the reasonableness of a sentence under 18 U.S.C. § 3553(a) using an abuse-of-discretion standard, regardless of ‘whether [the sentence is] inside, just outside, or significantly outside the Guidelines range.’” *United States v. Nance*, __ F.3d __, 2020 WL 1918705, at *5 (4th Cir. Apr. 21, 2020) (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)). In evaluating the procedural reasonableness of a sentence, we “determin[e]

whether the district court committed any procedural error, such as improperly calculating the Guidelines range, failing to consider the § 3553(a) factors, or failing to adequately explain the chosen sentence.” *Id.* (citing *Gall*, 552 U.S. at 51).

“As is well understood, to meet the procedural reasonableness standard, a district court must conduct an individualized assessment of the facts and arguments presented and impose an appropriate sentence, and it must explain the chosen sentence.” *Id.* (internal quotation marks and citations omitted). “Specifically, a district court’s explanation should provide some indication [] that the court considered the § 3553(a) factors and applied them to the particular defendant, and also that it considered a defendant’s nonfrivolous arguments for a lower sentence.” *Id.* (internal quotation marks and citations omitted). “Importantly, it is also well established that our review of a district court’s sentencing explanation is not limited to the court’s statements at the moment it imposes sentence.” *Nance*, 2020 WL 1918705, at *5. “Where a sentencing court hears a defendant’s arguments and engages with them at a hearing, we may infer from that discussion that specific attention has been given to those arguments.” *Id.* (citation omitted).

“If the sentence ‘is procedurally sound, [we] should then consider the substantive reasonableness of the sentence,’ taking into account the totality of the circumstances.” *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019) (quoting *Gall*, 552 U.S. at 51). A sentence within the Guidelines range is presumptively reasonable. *United States v. Smith*, 919 F.3d 825, 841 n.12 (4th Cir. 2019) (citation omitted). A defendant can only rebut the presumption by showing the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors. *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

We have reviewed the record and conclude that the district court did not commit any procedural error in sentencing Moore, and she fails to rebut the presumption that her sentence is substantively reasonable. The court properly calculated the Guidelines range; gave the parties an opportunity to argue for an appropriate sentence; considered the § 3553(a) factors and Moore's nonfrivolous arguments for a lower sentence; and adequately explained the chosen sentence. The court agreed with the Government that a Guidelines range sentence was appropriate based on the nature and seriousness of the offense, involving multi-kilogram quantities of methamphetamine while in possession of firearms; but the court imposed a sentence at the bottom of the range upon consideration of her cooperation, substance abuse addiction, mental health history, criminal history, and all of the other characteristics and arguments asserted by Moore and her attorney.

In accordance with *Anders*, we have reviewed the entire record and have found no meritorious issues for appeal. We therefore affirm the district court's judgment. This court requires that counsel inform his or her client, in writing, of his or her right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED