UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 16-CR-64

RONALD H VAN DEN HEUVEL,

Defendant.

ORDER DENYING MOTIONS TO VACATE PLEA, ADJOURN SENTENCING, AND FOR WITHDRAWAL OF COUNSEL

On October 10, 2017, Defendant Ronald H. Van Den Heuvel entered a plea of guilty to a single count of Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. § 371, in return for the government's promise to dismiss the remaining 18 counts in the superseding indictment against him and all charges against his co-defendant wife Kelly. The sentencing was scheduled for January 5, 2018. On December 27, 2017, Van Den Heuvel filed a motion to adjourn the sentencing, which the court denied the following day on the ground that both the reason for and the length of the adjournment requested were too indefinite. On January 2, 2018, Van Den Heuvel filed a motion to withdraw his plea of guilty on the ground that it was not knowingly and voluntarily made. On January 3, 2018, Van Den Heuvel renewed his motion to adjourn the sentencing, this time stating he needed to go through approximately 38 bankers boxes and 6 CDs and/or thumb drives that he obtained within the last three or four weeks from various lawyers who previously represented him in civil litigation matters so as to determine how they may impact on a potential defense to the charge to which he has pled guilty. Finally, on the eve of sentencing, Van Den Heuvel's attorney filed a

motion to withdraw as counsel on the ground that there had been a breakdown in communication with his client.

The first two motions were denied by text order on the morning of January 4, with a notation that a written order would follow. The court took up counsel's motion to withdraw at the beginning of the sentencing hearing the next day. Citing concerns over attorney-client privilege and ethical obligations, counsel declined to explain what he meant by a breakdown in communication on the record and requested the matter be addressed *ex parte*. With the government's consent, the court had an *ex parte* conference on the issue with Van Den Heuvel and his attorney in chambers. Counsel agreed to supplement the record with a memo filed under seal setting forth a summary of the discussion held in chambers. Based on the information conveyed in chambers, the court concluded that a communication breakdown had not occurred and that counsel could continue to represent Van Den Heuvel at sentencing. The hearing resumed, and the court denied all three motions and proceeded with the sentencing hearing after which it imposed a guideline sentence of 36 months. This decision will address the motions that were denied on the record prior to sentencing in more detail.

BACKGROUND

This case began on April 19, 2016, when the Grand Jury returned an Indictment charging Ronald Van Den Heuvel, Paul Piikkila, and Van Den Heuvel's wife, Kelly Yessman Van Den Heuvel, with conspiracy to defraud Horicon Bank by obtaining a series of loans through "straw borrowers". The thirteen-count Indictment, in addition to the overall conspiracy charge, detailed seven separate loans that Van Den Heuvel had obtained from Horicon Bank with loan officer Paul Piikkila's assistance after Van Den Heuvel's application for a $7.1 million loan package had been

denied and the bank's loan committee had instructed Piikkila not to approve any more loans to Van Den Heuvel. Van Den Heuvel and Piikkila managed to circumvent the loan committee's instructions by having Piikkila authorize loans under the $250,000 limit Piikkila was authorized to approve without committee approval to individuals who, at Van Den Heuvel's urging, signed the loan application documents, even though the proceeds of the loan were to be paid to, or at the direction of, Van Den Heuvel and not for the purposes represented on the loan applications submitted to the bank. The individuals who signed the loan documents, the "straw borrowers, regarded the debt incurred by the loan as Van Den Heuvel's and felt no obligation to repay the loans. The collateral pledged as security for the loans actually belonged to Van Den Heuvel but was not sufficient to allow the bank to recover the principal or interest on the loans. The total of the face amount of the seven loans was just under $775,000. Because some of the proceeds of later loans were used to make payments on earlier loans, the total restitution amount agreed upon by the parties is just under $316,500. In addition to the loans themselves, charged as separate counts of bank fraud in violation of 18 U.S.C. § 1344, charges of making a false statement in connection with a credit application in violation of 18 U.S.C. § 1014 were set forth as to all but two of the loans.

A later Superceding Indictment added additional counts relating to loans Van Den Heuvel allegedly had a person identified by his initials as P.H. apply for at various credit unions around the Green Bay area to obtain funds that Van Den Heuvel could then use for his own purposes. To help P.H. qualify for the loans, the superceding indictment alleges that Van Den Heuvel caused the 2010 and 2013 Cadillac Escalades that were driven by Van Den Heuvel and his wife and titled in the name of one of his many business entities to be transferred to P.H., even though P.H. was not given custody or control of the vehicles. Van Den Heuvel also was alleged to have caused false and

fraudulent pay stubs to be created for P.H. so that it appeared he had an annual salary substantially higher than his actual salary. The applications were denied, and thus these additional counts were charged as attempts to commit bank fraud.

Paul Piikkila, the loan officer at Horicon Bank who allegedly conspired with Van Den Heuvel, entered a guilty plea on July 22, 2016, admitting his part in the conspiracy involving the Horicon Bank loans. Because the government was intending to call Piikkila as a witness at Van Den Heuvel's trial, his sentencing has been put off until Van Den Heuvel's case is resolved.

Despite the massive amount of discovery materials the government produced, mostly documents seized from Van Den Heuvel's home and businesses in a separate investigation, this case does not appear particularly complex, at least from the defendant's standpoint. The key question from the beginning was whether Van Den Heuvel and Piikkila concocted a scheme with others to lie to the bank in order to get it to loan him money. Nevertheless, at the urging of the parties, trial was not scheduled to commence until October 23, 2017, more than a year and a half after the indictment was filed. By the time Van Den Heuvel entered his plea on October 10, 2017, he had more than sufficient time to review all of the discovery and documents concerning the seven separate loans that gave rise to the charges in the Indictment. Moreover, since he was personally involved in each of the transactions, he had direct knowledge of the events upon which the Indictment was based. On October 10, 2017, after a thorough plea colloquy under oath, Van Den Heuvel entered his plea of guilty to the conspiracy charge in the indictment, and the case was scheduled for sentencing. It is with this history that the court must view Van Den Heuvel's last minute motions to withdraw his plea and adjourn his sentencing.

ANALYSIS

A. Motion to Vacate Plea

In his motion to vacate his plea, Van Den Heuvel contends that his plea was not knowingly and voluntarily made, that he is both legally and factually innocent, that there has not been an unreasonable amount of time between the guilty plea and his motion to withdraw his plea would not prejudice the government. He argues that he has a fair and just reason to withdraw his plea and, since he filed his motion before sentencing, it must be granted.

"A plea of guilty is a formal and solemn step, where the defendant admits his guilt under oath after assuring the court, also under oath, that he is ready, willing, and able to make that decision after consulting sufficiently with his lawyer and being informed about all matters that he needs to know about to make the decision." *United States v. Graf*, 827 F.3d 581, 584 (7th Cir. 2016). That occurred in this case. Van Den Heuvel was placed under oath and unequivocally testified that, after fully consulting with his attorney, he understood the elements of the offense, the potential punishment, the application of the sentencing guidelines and the rights he was giving up by entering a plea of guilty.

Van Den Heuvel testified that his attorney had been very good with giving him enough time to discuss the case and that he had met with him for a full Saturday. ECF No. 175-1 at 10:18–21. In response to the court's question whether he was satisfied with the representation that his attorney had provided up to that point, Van Den Heuvel responded, "I couldn't have paid better." *Id.* at 11:9–12. After confirming that Van Den Heuvel did not have a mental illness and was not under the influence of anything, such as alcohol, drugs or medication, that could affect his ability to understand the proceedings and make a decision, the court proceeded to explain to him the elements of the

offense to which he was pleading guilty and invited him to read along in the written plea agreement he acknowledged he had signed and discussed fully with his attorney. *Id.* at 11:17–13:10. The court explained that the crime of conspiracy as charged in the indictment required to government to prove: (1) that the conspiracy alleged in the indictment actually existed; (2) that Van Den Heuvel knowingly became a member of the conspiracy with the intent to advance the conspiracy; and (3) that at least one of the conspirators committed an overt act in an effort to advance the goals of the conspiracy. *Id.* at 12:8–24. The court explicitly explained that a conspiracy was an agreement between two or more people to commit a crime and described the conspiracy alleged in the indictment as the agreement to commit the crime of bank fraud. *Id.* at 12:12–17.

When asked if he understood the elements, Van Den Heuvel responded, "I do. I also understand that there was no intent." *Id.* at 13:9–12. At that point, counsel asked to have a word with his client and the court agreed, noting that intent to enter into an agreement to commit a crime was an element and warning Van Den Heuvel "we're not going to play games here." *Id.* at 13:16–21. The court continued:

> And bank fraud means there was an intent to defraud a bank by making false statements and having the bank – a federally insured bank provide money based on false statements. A conspiracy to commit that crime would involve the intent to enter into an agreement to accomplish that goal. You understand that?

Id. at 14:3–8. Van Den Heuvel responded, "I do."

The court continued to advise Van Den Heuvel of the maximum penalties, how the United States Sentencing Guidelines worked, the fact that relevant conduct would be considered and the rights he was giving up be entering a plea of guilty, including the right to have each element of the offense proven beyond a reasonable doubt. Van Den Heuvel acknowledged he fully understood all

that the court told him. *Id.* at 14–20. He denied that anyone had made any promises to him other than those set forth in the plea agreement or any threats against him or anyone else to get him to waive his rights and enter a plea of guilty, and admitted that he was pleading guilty to the offense because he was guilty of the offense. *Id.* at 20:25–21:22. He was asked if he had any questions about anything in the plea agreement or anything the court had said before he would enter his plea, and responded, "No, sir." *Id.* at 21:23–22:1. Counsel for both parties were then asked if there was anything else they thought the court should inquire into before it asked Van Den Heuvel for his plea. Both declined. Id. at 22:2–7. The court then asked Van Den Heuvel to state out loud for the record his plea to the charge of conspiracy as alleged in the indictment. Van Den Heuvel responded, "guilty." *Id.* at 22:8–17. It was only then that the court accepted the plea upon its findings that Van Den Heuvel had knowingly and voluntarily waived his rights, entered his plea and a factual basis was set forth on the record that supported it.

The Seventh Circuit has repeatedly made clear that "[a] defendant's motion to withdraw is unlikely to have merit if it seeks to dispute his sworn assurances to the court." *Graf*, 827 F.3d at 584; *see also United States v. Collins*, 796 F.3d 829, 834 (7th Cir. 2015) (district court may presume truth of defendant's prior sworn statements in plea colloquy); *United States v. Mays*, 593 F.3d 603, 607 (7th Cir. 2010) (answers to proper Rule 11 colloquy are presumed true, imposing heavy burden on defendant and leaving the "fair and just" escape hatch "narrow"). A hearing on a motion to withdraw a plea should be granted if the movant offers "substantial evidence that impugns the validity of the plea." *United States v. Jones*, 381 F.3d 615, 618 (7th Cir. 2004). "[I]f no such evidence is offered, or if the allegations advanced in support of the motion are mere conclusions or

are inherently unreliable, the motion may be denied without a hearing." *Id.* (quoting *United States v. Redig*, 27 F.3d 277, 280 (7th Cir. 1994)).

Here, Van Den Heuvel offers no grounds for an evidentiary hearing. In the face of the thorough record made at his change of plea hearing, he offers no evidence that he did not fully understand the elements of the offense. Indeed, in his Memorandum In Support Of Motion To Vacate Plea, Van Den Heuvel did not even claim he did not understand the elements of the offense. Instead, he argued that his plea was not voluntary because it was "forced and precipitated, in large measure, in order to exculpate and free his wife and co-defendant." ECF No. 172 at 2. In addition, he now argues that he has since his plea discovered evidence among the thousands of pages of discovery in the case that exonerates him and shows that the loans were fully collateralized and that others at Horicon Bank were aware of and implicitly authorized the loans. *Id.* at 2–3. He offers no evidence in support of either reason that would warrant an evidentiary hearing.

It is true that in return for Van Den Heuvel's plea, the government agreed to dismiss the charges against his wife and co-defendant Kelly Van Den Heuvel. This part of the agreement was placed on the record and made clear at the time Van Den Heuvel entered his plea. ECF No. 175-1 at 3:5–21, 21:4–10. The fact that the charges against his wife were dismissed as part of his plea agreement, however, does not make his guilty plea involuntary. "'Package' plea agreements in which dismissal of charges against a spouse or other family member of the principal malefactor is part of the deal are common. They are not improper or forbidden." *United States v. Spilmon*, 454 F.3d 657, 658 (7th Cir. 2006) (citing *Politte v. United States*, 852 F.2d 924, 929–30 (7th Cir. 1988); *United States v. Marquez*, 909 F.2d 738, 741–43 (2d Cir. 1990); *United States v. Mescual–Cruz*, 387 F.3d 1, 7–8 (1st Cir. 2004); *United States v. Hodge*, 412 F.3d 479, 490–91 (3d Cir. 2005)).

Spilmon explains why:

> It would be in no one's interest if a defendant could not negotiate for leniency for another person. From the defendant's standpoint the purpose of pleading guilty is precisely to obtain a more lenient outcome than he could expect if he went to trial. It is a detail whether the leniency he seeks is purely selfish or encompasses additional persons, provided that his plea is not coerced.

454 F.3d at 658.

In other words, obtaining leniency for his wife was clearly one of the reasons for Van Den Heuvel's guilty plea, perhaps even the primary one. But a reason is not the same as a cause. People do things for reasons, sometimes very good reasons, without losing their freedom. Indeed, acting for a reason, i.e., rationally, is the very hallmark of human freedom. Nevertheless, a "package deal" can be improper and unfairly coercive if the government believes the spouse is wholly innocent of the crime charged and used a phony charge to coerce the defendant to plead guilty. *Id.* at 658–59. Here, there is no suggestion that the government did not believe Kelly Van Den Heuvel was guilty of the crimes with which she was charged, and the information contained in the presentence report supports the government's belief. ECF No. 167 at ¶¶ 30, 45, 47. The fact that dismissal of charges against her was a condition of the plea agreement does not render Van Den Heuvel's plea involuntary.

Van Den Heuvel's claim of newly discovered evidence fares no better. Van Den Heuvel contends that he has now conducted further review of the available discovery and has concluded that evidence from the search warrants executed on his businesses and home by the Brown County Sheriff's Department in July 2015 was used by investigators to conduct follow-up interviews, and thereby obtain evidence which would be used at trial. ECF No. 172 at 2. Van Den Heuvel notes that the documents seized by the Brown County Sheriff's Department were the subject of a

suppression motion. Indeed, the validity of the warrants and the search and seizure of evidence under them was the subject of motion practice before the court in July and August of 2017. ECF Nos. 114, 126, 127. The parties resolved the issue by a signed stipulation that in return for the government agreeing that it would not use any of the evidence seized in the July 2, 2015 searches in its case in chief, the defendants would withdraw all motions challenging those searches. ECF No. 134 ¶¶ 1, 2. Van Den Heuvel also agreed that he "cannot assert a challenge to the issuance of the search warrants used to search on July 2, 2015 or their execution at any later time in case 16-CR-64." *Id.* ¶ 4.

In addition to claiming that some of the documents were used in follow up interviews and investigation, Van Den Heuvel now also claims that some of the documents support his claim of factual and legal innocence. He claims that he recently obtained evidence that Steve Peters, one of the "straw borrowers," had a monetary interest in ST Papers businesses which adversely impacted his credibility and impartiality; that the loans taken out by Peters and his wife Kelly were repaid; that there were additional individuals at Horicon Bank who were aware of the loan to William Bain, another of the "straw borrowers"; that the Bain loan was fully collateralized with a loan assignment; that the alleged straw borrowers were authorized as LLC owners to borrow on behalf of the corporation; and that some of the proceeds of the loans were implicitly authorized by bank officials. Based on these assertions, Van Den Heuvel now claims there were no violations of the law and both a factual and legal defense exists. Further, he contends that had he known of this newly discovered evidence, he would not have entered his plea. ECF No. 172 at 3.

Other than the general description of the evidence he says he discovered, however, Van Den Heuvel offered nothing by way of affidavit or the actual documents he claims to have discovered to

support his motion to vacate his plea. This is not evidence. *See United States v. Galbraith*, 313 F.3d 1001, 1009 (7th Cir. 2002) ("Galbraith presents no affidavit from himself or his trial counsel supporting his version of his attorney's conduct, nor any other available, probative evidence that would effectively support Galbraith's claim. Without any such evidence, there is no clear error in the district court's denial.").

He also fails to explain how the "newly discovered evidence" regarding the government's alleged use of the seized documents renders him innocent. He does not identify what evidence was used for follow up interviews with witnesses, nor explain why that would be problematic even if true. The stipulation did not limit the government's use of the materials for investigative purposes; it only prohibited the government from using the evidence in its case in chief. Regardless, his guilty plea waives any Fourth Amendment violation. *United States v. Combs*, 657 F.3d 565, 568 (7th Cir. 2011) ("When a defendant enters an unconditional guilty plea, he waives all nonjurisdictional defects arising before his plea, including Fourth Amendment claims.").

Van Den Heuvel also fails to explain how the other "newly discovered evidence" renders him innocent. His claim that Steve Peters' monetary interest in another company adversely affected his credibility and impartiality might be relevant if the case went to trial, but Van Den Heuvel waived his right to trial and to cross examine witnesses. Whether some of the loans were paid off was known long ago and is irrelevant to whether they were obtained by fraud. What other unnamed Horicon Bank employees knew or should have known is also beside the point. A bank's negligence or lack of diligence in uncovering fraud is not a defense to a crime of bank fraud. *United States v. Peterson*, 823 F.3d 1113, 1123 (7th Cir. 2016). He offers no evidentiary support for his claim that the loan to Bain was fully collateralized, which directly contradicts the factual basis he agreed to for

his plea. ECF No. 151 ¶ 5. He also fails to explain how the fact that LLC owners may have had legal authority to borrow funds relates to the claim that he conspired to obtain the loan proceeds by fraud.

On a more fundamental level, Van Den Heuvel's claim of innocence runs directly counter to his plea of guilty made under oath less than three months earlier. As explained above, "Judges need not let litigants contradict themselves so readily; a motion that can succeed only if the defendant committed perjury at the plea proceedings may be rejected out of hand unless the defendant has a compelling explanation for the contradiction." *United States v. Peterson*, 414 F.3d 825, 827 (7th Cir. 2005). And the fact that he was not fully aware of the evidence at the time his plea was entered does not render it involuntary. "[A] defendant can offer a knowing and voluntary plea without having received full discovery from the government." *Graf*, 827 F.3d at 584 (citing *United States v. Underwood*, 174 F.3d 850, 853–54 (7th Cir. 1999)).

Finally, although a showing of prejudice is not required to deny a motion to withdraw a guilty plea when no fair and just reason for withdrawal has been shown, *United States v. Thompson*, 680 F.2d 1145, 1152 (7th Cir. 1982), the government notes that the lead prosecutor in the case was scheduled to retire after the case was tried as scheduled in October and has since retired. As a result, he is no longer available, and if Van Den Heuvel's motion was granted, a new government attorney would be required to expend substantial time and resources learning the case and preparing for trial. In this connection, it should also be noted that Van Den Heuvel's CJA appointed attorney has already been paid a substantial amount of taxpayers' funds in attorneys fees and expenses needed to provide Van Den Heuvel effective representation. Allowing Van Den Heuvel to withdraw his plea at this point will significantly increase the costs to the taxpayers. While the costs of an indigent

defendant's defense is not a reason to deny a motion to withdraw a plea when there is a fair and just reason to allow withdrawal, it is not unreasonable to consider the additional time and expense that would be required to resolve the case upon withdrawal of a plea when no such reason is shown. Because no fair and just reason has been shown here, Van Den Heuvel's motion to vacate his plea of guilty is denied.

B. Motion to Adjourn

Two days before sentencing, Van Den Heuvel renewed his motion to adjourn the sentencing. Van Den Heuvel states in his motion that "within the last three to four weeks, he has made inquiries of various lawyers who represented him in civil litigation matters, which in part relate to Horicon Bank activities and his involvement with that institution and its loans" and "has secured from the lawyers, approximately 38 bankers boxes and six CD and/or thumb drives which contain materials generated during their representation." ECF No. 176 at 1–2. Van Den Heuvel states that "a preliminary review of the documents has revealed evidence that a civil litigant (Tak) assigned a multimillion dollar note to Horicon Bank and that such assignment fully collateralized all of the Horicon Bank loans which are the subject of the indictment." *Id.* at 2. "Furthermore," Van Den Heuvel maintains, "the documents support the position that bank officials were aware of this collateralization and approved of same." *Id.* He also contends that uncovered corporate records of his multiple corporations and business entities may support his assertions. He believes that documents were created which "it is believed would demonstrate that he did not cause others to act as a 'straw borrower' and that the loans were made with the full approbation of banking officials, and not just co-defendant Paul Piikkila." *Id.* Van Den Heuvel stated that the review of materials is a laborious process and requires them to be manually sorted. He estimated he could complete the

review in four months and thus asked that his sentencing be postponed for such a period. *Id.* at 2–3.

It is clear from his motion that Van Den Heuvel was not seeking additional time to prepare for sentencing. Indeed, his attorney had already filed an extensive sentencing memorandum, with several published articles attached addressing collateral consequences Van Den Heuvel's family would suffer if a prison term was imposed, and noting his philanthropic activities. ECF No. 172. Instead, Van Den Heuvel was seeking additional time to find support for his motion to withdraw his plea on the ground that he was innocent. He wanted to avoid sentencing altogether. As with his motion to vacate his plea, however, he provided no affidavit or other evidence in support of his motion; only conclusory assertions about unidentified documents. Given the denial of his motion to vacate his plea, his request for an adjournment to allow additional time to find support for his motion was likewise denied.

It should also be noted that Van Den Heuvel's claim that he only just discovered this information is not credible in light of the nature of the charges and the history of the case. As already noted, the case is almost two years old. The very document Van Den Heuvel now claims collateralized the loans, the Tak note, was part of the discovery that, the government observes, was produced to the defense back in April of 2016. ECF No. 177 at 2–3. If it was key to his defense, Van Den Heuvel had more than sufficient time to explain how and why before entering his plea of guilty. Even aside from the fact that Van Den Heuvel had the Bank's loan files since the case was commenced, by his own account he was directly involved in each of the transactions. Of all people involved in the case, he alone has the most direct knowledge of what information was provided to the Bank and what his state of mind was at the time he, along with Piikkila and the other coconspirators, submitted the applications for the various loans described in the indictment. Given

his intimate involvement with the facts of the case, the claim that he had just discovered a defense is not credible. Under these circumstances, the court concluded the motion to adjourn was simply a delaying tactic and denied it accordingly.

C. Motion to Withdraw as Counsel

On the afternoon prior to sentencing, counsel for Van Den Heuvel filed a motion to withdraw on the ground that "a breakdown in communications has occurred to the extent that further competent representation cannot be provided." ECF No. 180. As noted above, when counsel declined to answer the court's request that he explain what he meant by a breakdown in communications on the record in open court, the court, counsel and Van Den Heuvel had an *ex parte* conference in chambers where a further explanation was given. Based on that explanation, the court concluded that there was no breakdown in communication but that Van Den Heuvel was convinced that despite his plea of guilty, there was evidence in the documents he received in discovery and the documents he had recently acquired that would establish his innocence. His explanation was vague and confusing, however, reflecting the assertions made in his motions to vacate his plea and adjourn sentencing. Neither Van Den Heuvel, nor counsel, gave the court any reason to believe that the same problem would not arise even if counsel's motion was granted and a new attorney appointed. The court noted that at the plea hearing, Van Den Heuvel had not only expressed satisfaction with the representation his attorney had provided, but noted "I couldn't have paid better." ECF No. 175-1 at 11:9–12. Under these circumstances and given the status of the case, the length of time counsel had represented Van Den Heuvel, and the fact that he had already filed a sentencing memorandum on his behalf, the court denied the motion to withdraw and proceeded with the sentencing hearing. In so ruling, the court noted that there was no reason to believe that counsel could not advance a

strong sentencing argument and bring to the court's attention any pertinent legal issue or mitigating factors that would bear on sentencing.

At that hearing, counsel noted Van Den Heuvel's objection to some of the facts set forth in the presentence report. Counsel had raised the objections earlier, the government responded, and the presentence author had included the objections and response in the report. When asked if he wanted to offer evidence in support of his objections, Van Den Heuvel indicated he would and was invited to take the stand. Citing concerns for professional responsibility and the good of his client, counsel declined to ask his client questions and Van Den Heuvel was permitted to testify in narrative fashion concerning his objections. Counsel did, however, make a strong sentencing argument on his client's behalf and Van Den Heuvel expressed appreciation for his efforts.

In deciding whether to grant a motion by court-appointed counsel to withdraw, the court considers a number of factors including "the timeliness of the motion, the adequacy of the court's inquiry into the motion, and whether the conflict was so great that it resulted in a total lack of communication preventing an adequate defense." *United States v. Harris*, 394 F.3d 543, 552 (7th Cir. 2005). Notwithstanding counsel's refusal to examine Van Den Heuvel regarding his objections to the facts set forth in the presentence report, the court concludes that its denial of counsel's motion was proper. While Van Den Heuvel may have regretted pleading guilty by the time of sentencing and was upset that his attorney may not have believed it was in his interest to seek to withdraw his plea, there had been no conflict before that time. All that remained was sentencing, and counsel had already filed a sentencing memorandum and was prepared to make a sentencing argument. Neither counsel, nor Van Den Heuvel pointed to any problem that prevented them from communicating effectively to each other.

Finally, the fact that counsel elected not to ask Van Den Heuvel questions about his objections to the facts in the presentence does not undermine this conclusion. Whether counsel's refusal to question his client was due to ethical concerns that he would perjure himself, *see Nix v. Whiteside*, 475 U.S. 157, 175–76 (1986), or merely a disagreement over what strategy was in his client's best interest, Van Den Heuvel was able to say what he wanted on his disputes with the factual statements in the presentence report, and the brief testimony offered at sentencing and not before a jury resulted in no prejudice. The court was already aware of the disagreement that had arisen between Van Den Heuvel and his attorney, and the manner in which Van Den Heuvel was allowed to testify did not influence the sentencing determination. The court remains convinced that given the force of Van Den Heuvel's personality, there is no reason to believe the same problems would not have arisen even if the motion to withdraw had been granted and a new attorney appointed. It would have only resulted in greater delay and expense.

CONCLUSION

For the reasons set forth above and on the record at the sentencing hearing on January 5, 2018, Van Den Heuvel's motion to vacate his plea (ECF No. 171) and to adjourn sentencing (ECF No. 176), and counsel's motion to withdraw (ECF No. 180) are **DENIED**. Once Van Den Heuvel receives a reporting date from the Bureau of Prisons, counsel may renew his motion to stay sentence pending resolution of Case No. 17-CR-160. Conditions of pretrial release will continue.

SO ORDERD at Green Bay, Wisconsin this 8th day of January, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court