

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**  
**For the Seventh Circuit**  
**Chicago, Illinois 60604**

Submitted November 7, 2024

Decided November 12, 2024

**Before**

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-1232

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

TUONG QUOC HO,  
*Defendant-Appellant.*

Appeal from the United States District  
Court for the Southern District of  
Indiana, Indianapolis Division.

No. 1:20-cr-00056-JRS-TAB

James R. Sweeney II,  
*Judge.*

**ORDER**

Tuong Quoc Ho pleaded guilty to crimes arising from a fraudulent scheme and was sentenced to 102 months in prison. Although his plea agreement contains an appeal waiver, Ho filed a notice of appeal. His appointed counsel contends that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the case and raises potential issues that an appeal like this would be expected to involve. Because counsel's brief appears thorough, we

limit our review to the subjects discussed in the brief and Ho's two responses under Circuit Rule 51(b).<sup>†</sup> See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

In September 2022, a federal grand jury returned a superseding indictment that charged Ho with 20 counts of aiding and abetting wire fraud, 18 U.S.C. §§ 1343, 2; two counts of aggravated identity theft, § 1028A(a)(1), (c)(5); one count of possession of unauthorized access devices, § 1029(a)(3), (c)(1)(A)(i); one count of unlawful transfer, possession, or use of a means of identification, § 1028(a)(7), (b)(2)(A), (c)(3)(A); and two counts of money laundering, § 1957. The charges arose from a complex international scheme in which Ho (a dual Vietnamese and American citizen) and others unlawfully obtained personal information from hundreds of people online and used it to create fraudulent PayPal and eBay accounts. They then listed expensive items (that they did not have) for sale on eBay, used stolen credit card information to procure those items, had them shipped directly to the purchasers, and collected the purchasers' payments in fraudulent PayPal accounts connected to Ho's personal bank accounts. Ho and his co-schemers went to great lengths to establish the bona fides of the PayPal accounts when suspicious activity was detected.

Ho entered a written plea agreement with the government under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure in which he admitted to a detailed description of his involvement in the scheme. He also waived his right to appeal directly his conviction and sentence, or to bring a collateral attack, on any ground other than ineffective assistance of counsel.

The district court held a change-of-plea hearing, at which it placed Ho under oath and engaged in a colloquy with him. A Vietnamese interpreter was on hand, but Ho said he wished to proceed without the interpreter's assistance. The court then described each charge and the terms of the plea agreement, and Ho confirmed that he understood and wished to plead guilty. The court also explained the appeal waiver, and Ho affirmed that he understood and agreed to it. After agreeing to the factual basis as outlined in the plea agreement—without having it read aloud—Ho entered a plea of guilty to all charges, which the court accepted.

---

<sup>†</sup> We received Ho's response to counsel's *Anders* brief on September 10, 2024, the day it was due. We then received a second, more detailed, response on September 16. We construe the second filing as a motion to supplement the Rule 51(b) response, grant it, and consider both responses.

Before sentencing, a probation officer prepared a presentence investigation report (PSR). Ho objected to portions of the PSR that described his offense conduct consistent with the factual basis for the plea agreement—prompting the probation officer and the government to question whether Ho accepted responsibility. Ho then moved to withdraw his guilty plea. The district court denied the motion.

At the sentencing hearing, the district court addressed and denied each of Ho’s objections to the PSR. With a total offense level of 28 (and no reduction for acceptance of responsibility) and a criminal history category of I, Ho’s sentencing range was 78 to 97 months’ imprisonment. The court imposed a term of 78 months (including a concurrent 60-month sentence for the unlawful possession of a means of identification) plus a consecutive 24-month sentence for aggravated identity theft (two 2-year terms concurrent to each other), for a total of 102 months. The court also imposed the restitution described in the plea agreement. Ho then initiated this appeal.

In discussing potential issues to raise on appeal, counsel first considers and properly rejects any challenge Ho could make to his guilty plea. *See United States v. Larry*, 104 F.4th 1020, 1022 (7th Cir. 2024). Because Ho moved to withdraw his guilty plea in the district court, we would review the denial of the motion for an abuse of discretion and any factual findings, including whether the plea was entered knowingly and voluntarily, for clear error. *United States v. Merrill*, 23 F.4th 766, 769 (7th Cir. 2022).

Here, a review of the hearing transcript reflects that the district court followed the requirements of Rule 11(b) of the Federal Rules of Criminal Procedure. Under oath, Ho confirmed that he understood the charges against him, the possible penalties, and the rights he was waiving; he also affirmed that his plea was voluntary and not the product of coercion. *See Larry*, 104 F.4th at 1022. Ho also confirmed multiple times that he did not need the services of the interpreter, who stood by throughout the hearing to assist as needed.

In his Rule 51(b) response, however, Ho disagrees that the district court informed him of “the nature of each charge to which the defendant is pleading” because of four specific omissions. FED. R. CRIM. P. 11(b)(1)(G). First, he proposes arguing that the court erred by not reading the indictment or explaining the nature of the charges against him during the change-of-plea hearing. *See United States v. Cusenza*, 749 F.2d 473, 475 (7th Cir. 1984). But unlike the district court in *Cusenza*, the district court here did more than just reference the charges by their count number; it described the elements of each

charge, which is sufficient to ensure Ho understood the nature of the charges against him, see *United States v. Goliday*, 41 F.4th 778, 783 (7th Cir. 2022).

Second, Ho proposes arguing that the district court failed to inform him that wire fraud requires “obtaining money or property by means of false or fraudulent pretenses, representations, or promises.” See 18 U.S.C. § 1343; *McNally v. United States* 483 U.S. 350, 360–61 (1987). But in *McNally*, the Supreme Court explained that the proscribed activities under § 1343 are disjunctive: they include either obtaining money or property *or* devising a scheme to defraud. 483 U.S. at 358; see also *Percoco v. United States*, 598 U.S. 319, 327 (2023). In Ho’s case, he was indicted for the fraudulent scheme of using people’s personal information to create fraudulent PayPal accounts, and the district court advised him of that appropriately.

Third, Ho wishes to argue that the district court should have, but did not, advise him that his charge of aggravated identity theft required him to know that the identity he assumed belonged to “a real person.” 18 U.S.C. § 1028A(a)(1). But Ho acknowledged in his plea agreement and during the change-of-plea hearing that he “knew the means of identification belonged to another person.” And using the term “another person” was sufficient to inform Ho that the identity belonged to a “real” or “actual” person. See *United States v. Arojoye*, 753 F.3d 729, 735–36 (7th Cir. 2014).

In his fourth proposed argument relating to Rule 11(b)(1)(G), Ho asserts that, when describing the charges of aggravated identity theft, the district court should have advised him of the meaning of “uses” and “in relation to” as recently defined in *Dubin v. United States*, 599 U.S. 110 (2023). Under *Dubin*, a defendant “‘uses’ another person’s means of identification ‘in relation to’ a predicate offense when this use is at the crux of what makes the conduct criminal.” 599 U.S. at 131. In *Dubin*, the defendant had committed healthcare fraud by overbilling patients, but the use of his patients’ personal information (such as their names) was not a key aspect of the fraud. *Id.* at 132. But here, creating fake PayPal accounts using unlawfully obtained personal identifying information was at the heart of the fraud scheme. The court’s description of the elements—which *Dubin* explained but did not add to—was accurate and required no discussion of *Dubin* to be complete.

Ho also proposes arguing that the district court did not sufficiently establish the factual basis for Ho’s guilty plea as required by Rule 11(b)(3). The purpose of the rule is to ensure that a defendant’s guilty plea is based on something he actually did. We look to the “total circumstances surrounding the plea” to determine whether Rule 11’s

requirements have been met. *United States v. Messino*, 55 F.3d 1241, 1254 (7th Cir. 1995) (quoting *United States v. Fountain*, 777 F.2d 351, 355 (7th Cir. 1985)). Although we have expressed a preference for establishing the factual basis for a guilty plea through a dialogue between the court and the defendant in which the defendant “describes the conduct that gave rise to the charge,” such a dialogue is not required. *United States v. Hernandez-Rivas*, 513 F.3d 753, 760 (7th Cir. 2008) (citing *Fountain*, 777 F.2d at 356). We have explained that “[a] district court may find the factual basis in anything that appears on the record,” including a plea agreement. *Id.*

Here, we are satisfied that the district court sufficiently determined that there was a factual basis for Ho’s guilty plea. During Ho’s colloquy, the court directed Ho to the section of Ho’s plea agreement laying out the factual basis for the plea. The court asked Ho if he was familiar with the facts set forth in that section. Ho said he was. The court then offered Ho time to review the facts, but Ho repeated that he was familiar with them. The court then asked Ho if the facts set forth in the plea agreement were true, and Ho responded that they were. The court later made a specific finding that Ho’s guilty plea was supported by an independent factual basis. Thus, because the district court looked both to the facts laid out in the guilty plea and to Ho’s confirmation that those facts were true, Rule 11(b)(3) was satisfied.

Therefore, we agree with counsel that there are no nonfrivolous arguments that Ho could raise on appeal to establish that the district court abused its discretion by denying his motion to withdraw his guilty plea.

As a result, we also agree that all other arguments, including each one that Ho raised about his sentence, are foreclosed by the appellate waiver in the plea agreement. Ho waived his “right to appeal the conviction and sentence imposed in this case on any ground.” This waiver “stands or falls with the underlying agreement and plea.” *United States v. Nulf*, 978 F.3d 504, 506 (7th Cir. 2020). Because Ho’s guilty plea is valid, we would enforce the waiver. And counsel properly rejects any argument that an exception to the waiver could apply. Ho’s sentence complies with all applicable statutory maximums. *See* 18 U.S.C. §§ 1343 (20 years), 1028A(a)(1) (2 years), 1029(c)(1)(A)(i) (10 years), 1028(b)(2) (5 years), 1957(b)(1) (10 years). And the court did not rely on a constitutionally impermissible factor at sentencing. *See Nulf*, 978 U.S. at 506.

Therefore, we GRANT counsel’s motion to withdraw and DISMISS the appeal.