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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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UNITED STATES v. DOMINGUEZ BENITEZ**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 03–167. Argued April 21, 2004—Decided June 14, 2004

After respondent Dominguez Benitez (hereinafter Dominguez) confessed to selling drugs to an informant, he was indicted on drug possession and conspiracy counts. On the conspiracy count, he faced a 10-year mandatory minimum sentence. His plea agreement with the Government provided that Dominguez would plead guilty to conspiracy and the Government would dismiss the possession charge; that he would receive a safety-valve reduction of two levels, which would allow the court to authorize a sentence below the otherwise mandatory 10-year minimum; that the agreement did not bind the sentencing court; and that he could not withdraw his plea if the court rejected the Government's stipulations or recommendations. He pleaded guilty to the conspiracy charge, but, in the plea colloquy, the court failed to mention (though the written plea agreement did say) that Dominguez could not withdraw his plea if the court did not accept the Government's recommendations. See Fed. Rule Crim. Proc. 11(c)(3)(B). The Probation Office subsequently found that Dominguez had three prior convictions, making him ineligible for the safety valve, so the District Court sentenced him to the mandatory minimum. On appeal, Dominguez argued, for the first time, that the District Court's failure to warn him, as Rule 11(c)(3)(B) instructs, that he could not withdraw his plea if the court did not accept the Government's recommendations required reversal. The Ninth Circuit agreed, citing *United States v. Olano*, 507 U. S. 725, in applying Federal Rule of Criminal Procedure 52's plain-error standard.

Held: To obtain relief for an unpreserved Rule 11 failing, a defendant must show a reasonable probability that, but for the error, he would not have pleaded guilty. Pp. 5–11.

(a) When a defendant is dilatory in raising Rule 11 error, reversal

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is unwarranted unless the error is plain. *United States v. Vonn*, 535 U. S. 55, 63. Except for certain structural errors undermining the criminal proceeding's fairness as a whole, relief for error is tied to prejudicial effect, and the standard phrased as "error that affects substantial rights," as used in Rule 52, means error with a prejudicial effect on a judicial proceeding's outcome. See *Kotteakos v. United States*, 328 U. S. 750. *Kotteakos* held that to affect "substantial rights," an error must have "substantial and injurious effect or influence in determining the . . . verdict." *Id.*, at 776. Where the burden of demonstrating prejudice (or materiality) is on the defendant seeking relief, this Court has invoked a similar standard, which requires "a reasonable probability that, but for [the error claimed], the result of the proceeding would have been different" is required. *United States v. Bagley*, 473 U. S. 667, 682 (opinion of Blackmun, J.). For defendants such as Dominguez, the burden of establishing entitlement to plain-error relief should not be too easy: First, the standard should enforce the policies underpinning Rule 52(b) generally, to encourage timely objections and reduce wasteful reversals by demanding strenuous exertion to get relief for unpreserved error, see *Vonn*, *supra*, at 73; and second, it should respect the particular importance of the finality of guilty pleas, which usually rest on a defendant's profession of guilt in open court, and are indispensable in the modern criminal justice system's operation, see *United States v. Timmreck*, 441 U. S. 780, 784. Pp. 5–8.

(b) The Ninth Circuit's test in this case fell short. Its first element (whether the error was "minor or technical") requires no examination of the omitted warning's effect on a defendant's decision, a failing repeated to a significant extent by the test's second element (whether the defendant understood the rights at issue when he pleaded guilty). That court's standard does not allow consideration of evidence tending to show that a misunderstanding was inconsequential to a defendant's decision, or evidence indicating the relative significance of other facts that may have borne on his choice regardless of any Rule 11 error. Nor does it consider the overall strength of the Government's case. When, as here, the record shows both a controlled drug sale to an informant and a confession, one can fairly ask what a defendant seeking to withdraw his plea thought he could gain by going to trial. The point is not to second-guess the defendant's actual decision, but to enquire whether the omitted warning would have made the difference required by the standard of reasonable probability; it is hard to see here how the warning could have affected Dominguez's assessment of his strategic position. Also, the plea agreement, read to Dominguez in his native Spanish, specifically warned that he could not withdraw his plea if the court refused to accept the Government's recommendations; this fact, uncontested by Dominguez, tends to

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show that the Rule 11 error made no difference to the outcome here.
Pp. 9–11.

310 F. 3d 1221, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O’CONNOR, KENNEDY, THOMAS, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment.