

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

FILED IN OPEN COURT
ON 3/15/04
US District Court Clerk
Eastern District of NC

[REDACTED]

UNITED STATES OF AMERICA

v.

MEMORANDUM OF PLEA AGREEMENT

[REDACTED]

The United States of America ("Government"), by and through the United States Attorney for the Eastern District of North Carolina ("USA-EDNC"), and the Defendant, with the concurrence of the Defendant's Attorney, Thomas McNamara, have agreed that the above-captioned case should be concluded in accordance with this Memorandum of Plea Agreement as follows:

1. This Memorandum constitutes the full and complete record of the Plea Agreement. There are no other agreements between the parties in addition to or different from the terms herein.

2. The Defendant agrees:

a. To plead guilty to Count One of the Indictment herein.

b. To make restitution to any victim, including any victim with respect to a Count dismissed as part of the agreement, in whatever amount the Court may order, pursuant to 18 U.S.C. §§ 3663 and 3663A. Said restitution shall be due and payable immediately.

- c. To waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal whatever sentence is imposed, including any issues that relate to the establishment of the Guideline range, reserving only the right to appeal from an upward departure from the Guideline range that is established at sentencing, and further to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to 28 U.S.C. § 2255, excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant at the time of the Defendant's guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the Government of any of its rights to appeal provided by law.
- d. To waive all rights, whether asserted directly or through a representative, to request or receive from the United States any records pertaining to the investigation or prosecution of this matter, except as provided in the Federal Rules of Criminal Procedure. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.
- e. To assist the Government in the recovery and

forfeiture of any assets which facilitated and/or were acquired directly or indirectly through unlawful activities, including all such assets in which the Defendant has any interest or control. Specifically, the defendant agrees to voluntarily forfeit and relinquish to the government the property specified in the indictment. The defendant further agrees to sign any documents necessary to effectuate the forfeiture and waives any further notice. In addition, the defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the indictment. The Court has jurisdiction over the disposition of such items and may order the investigative agency to dispose of the items in such manner as provided by the agency's regulations. Forfeited firearms may be ordered destroyed.

- f. To pay a special assessment of \$100.00, for each count, pursuant to the provisions of 18 U.S.C. § 3013. The assessment shall be paid by the Defendant prior to the return of the signed Plea Agreement to the United States Attorney's Office. The Defendant or Defendant's counsel shall mail a check in payment of the said assessment directly to the U.S. Courts Fine Center. Counsel shall provide a copy of the

check or money order with the signed Plea Agreement to the United States Attorney certifying compliance with this provision.

- g. To complete and submit, if requested, a financial statement under oath to the Office of the USA-EDNC no later than two weeks after the entry of the guilty plea.
- h. To abide by any conditions of release pending sentencing and report timely for service of sentence.
- i. To testify, whenever called upon to do so by the Government, fully and truthfully in any proceeding, and to disclose fully and truthfully in interviews with Government agents, information concerning all conduct related to the Indictment and any other crimes of which the Defendant has knowledge. These obligations are continuing ones. The Defendant agrees that all of these statements can be used against the Defendant at trial if the Defendant is allowed to withdraw the guilty plea.
- j. If the Defendant provides false, incomplete, or misleading information or testimony, this would constitute a breach of this Agreement by the Defendant, and the Defendant shall be subject to prosecution for any federal criminal violation. Any

information provided by the Defendant may be used against the Defendant in such a prosecution.

- k. To submit to a polygraph examination whenever requested by the Office of the USA-EDNC. The results of these examinations will be admissible only at the Defendant's sentencing, and at any hearing as to whether there has been a breach of this agreement. The Government may rely on these results in determining whether the Defendant has fulfilled any obligation under this Agreement.

3. The Defendant understands:

- a. That as to each Count of the Indictment to which the Defendant is pleading guilty, the charge, code section, elements, and applicable penalties are as follows:

Count One

(1) Conspiracy to violate Title 18, United States Code, Section 922(a)(6) and 2 (False Statements in Connection with a Firearm Purchase).

(2) Code section violated: 18 U.S.C. § 371.

(3) Elements:

First: The Defendant conspired with one or more persons to commit the offense in Count One of the Indictment;

Second: that a member of the conspiracy committed at least one overt act in furtherance of the conspiracy; and

Third: that the Defendant became a member of the conspiracy knowingly and willfully.

- (4) Maximum term of imprisonment: 5 years.
- (5) Minimum term of imprisonment: N/A
- (6) Maximum term of supervised release: 3 years.
- (7) Maximum term of imprisonment upon revocation of supervised release: 2 years.
- (8) Maximum fine: \$250,000.00.
- (9) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2(b) above.
- (10) Special assessment: \$100.
- (11) Other penalties: None

b. That sentencing will be in accordance with the United States Sentencing Guidelines, that any sentence imposed will be without parole, and that the Court may depart from those guidelines under some circumstances.

c. That the Court is not bound by any sentence recommendation or agreement as to Guideline application, that the sentence has not yet been determined by the Court, that any estimate of the

sentence received from any source is not a promise, and that even if a sentence up to the statutory maximum is imposed, the Defendant may not withdraw the plea of guilty.

d. That, unless Defendant is found unable to pay, the Court will impose a fine, and failure to pay it will subject Defendant to additional criminal and civil penalties pursuant to 18 U.S.C. §§ 3611-14.

4. The Government agrees:

a. At sentencing, it will dismiss Counts Two and Three of the Indictment, as to this Defendant only.

b. That it reserves the right to make a sentence recommendation.

c. That it reserves the right at sentencing to present any evidence and information pursuant to 18 U.S.C. § 3661, to offer argument or rebuttal, to recommend imposition of restitution, and to respond to any motions filed by the Defendant.

d. That the USA-EDNC will not further prosecute the Defendant for conduct constituting the basis for the Indictment; however, this obligation is limited solely to the USA-EDNC and does not bind any other state or federal prosecuting entities.

e. That it will make known to the Court at sentencing the full extent of the Defendant's cooperation, but

the Government is not promising to move for departure pursuant to U.S.S.G. §5K1.1, 18 U.S.C. § 3553(e), or Fed. R. Crim. P. 35.

- f. Pursuant to U.S.S.G. §1B1.8, that self-incriminating information provided by the Defendant pursuant to this Agreement shall not be used against the Defendant in determining the applicable Guideline range, except as provided by §1B1.8 and except as stated in this Agreement. The Government will not, however, withhold from the United States Probation Office any evidence concerning relevant conduct.
- g. That the USA-EDNC agrees not to use any information provided by the Defendant pursuant to this agreement to prosecute him for additional crimes, except for crimes of violence, and not to share any information provided by the Defendant pursuant to this Agreement with other state or federal prosecuting entities except upon their agreement to be bound by the terms of this Agreement.


5. The parties agree to the following positions as to sentencing factors, which are not binding on the Court; provided that if Defendant's conduct prior to sentencing changes the

circumstances with respect to any such factors, the Government is no longer bound to its positions as to those factors:

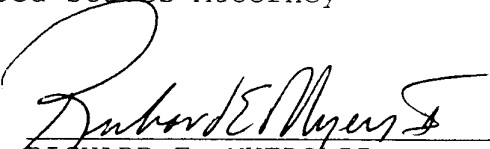
g. A downward adjustment of for acceptance of responsibility is warranted under U.S.S.G. §3E1.1.

This the 8th day of March, 2004.

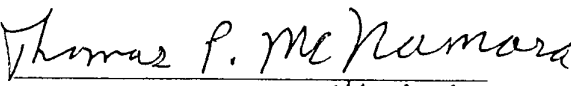
FRANK D. WHITNEY
United States Attorney


Defendant

BY:



RICHARD E. MYERS II


Assistant United States Attorney
Criminal Division


THOMAS MCGUIRE McNAMARA

Attorney for the Defendant

APPROVED, this 15th day of Mar, 2004.


UNITED STATES DISTRICT JUDGE


I certify the foregoing to be a true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
Linda B. [Signature]
Deputy Clerk
MICHAEL D. BROOKS, Acting Clerk