

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

UNITED STATES OF AMERICA) DOCKET NO. [REDACTED]
v.) PLEA AGREEMENT
[REDACTED]

NOW COMES the United States of America, by and through ROBERT J. CONRAD, JR., United States Attorney for the Western District of North Carolina, and the defendant, [REDACTED] in person and through counsel, [REDACTED] and respectfully inform the Court that they have reached the following agreement:

I. Plea

- 1. The defendant agrees to enter a voluntary plea of guilty to Counts One and Two as set forth in the Bill of Indictment, and admits to being in fact guilty as charged in those Counts.
2. If the Court finds the defendant's plea to be voluntarily and knowingly made, and accepts the plea, then the United States will move at the appropriate time to dismiss any remaining counts in the Bill of Indictment that pertain to her. The defendant agrees that the Court may consider any such dismissed count and all pertinent information as relevant conduct, United States Sentencing Guidelines § 1B1.3. The Court also may consider any dismissed count as a "conviction" for purposes of 28 U.S.C. §§ 1918 & 1920.

II. Sentence

- 3. The defendant is aware that the statutory maximum sentence is as follows:
Count One: a \$ 250,000 fine and not more than 10 years imprisonment, or both and not more than three years supervised release.
Count Two: a \$250,000 fine and not more than 5 years imprisonment, or both and not more than three years supervised release.

The defendant understands that if the court imposes a term of supervised release, the United States Probation Office will supervise her during that term and will require that she make regular reports and visits to its office. Supervised release is a term of supervision that runs consecutive to any sentence of incarceration. The defendant understands that a violation of the conditions of supervised release may subject her to an additional period of incarceration up to the maximum term of years imposed as supervised release.

The defendant is aware that any sentence imposed will be in conformity with the United States Sentencing Guidelines ["U.S.S.G."], and that a sentence imposed under the Guidelines is without parole. The defendant is further aware that the Court has not yet determined the sentence, that any estimate from any source, including defense counsel, of the likely sentence is a prediction rather than a promise, and that the Court has the final discretion to impose any sentence up to the statutory maximum. The defendant further understands that no recommendations or agreements by the United States are binding upon the Court.

4. In regard to the Sentencing Guidelines, the defendant and the United States agree to recommend to the Court as follows:

a. The amount of loss that was reasonably foreseeable to the defendant was over \$100,000,000.00.

b. The offense level for the subject offenses is as follows

Base Offense Level- U.S.S.G. § 2B1.1(a): 6

Specific Offense Characteristics:

U.S.S.G. § 2B1.1(b)(1)(N) + 26

U.S.S.G. § 2B1.1(b)(2)(B) + 4

U.S.S.G. § 3B1.1(a) + 4

Adjusted Offense Level: 40

c. Provided that the defendant acknowledges to the government, the Probation Office, and the Court the nature and extent of all relevant criminal conduct, the United States agrees to recommend a two-level reduction in offense level pursuant to U.S.S.G. § 3E1.1.

Provided that the defendant has timely provided information to the government concerning his involvement in the offense(s) charged, or has timely notified authorities of an intention to plead guilty, the United States agrees to recommend that the defendant receive an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b)(2), if applicable.

However, the defendant understands that any reduction in offense level is ultimately for the Court's determination.

- d. The Probation Office will compute the defendant's Criminal History Category to determine the appropriate range under the Sentencing Guidelines.
- e. Notwithstanding any recommendations in this Agreement as to the offense level, if the Probation Office determines from the defendant's criminal history that U.S.S.G. § 4B1.1 (Career Offender) or § 4B1.4 (Armed Career Criminal) or a statutory minimum sentence applies, then that provision will be used in determining the sentence.
- f. The defendant is aware that if the Probation Office determines that a different offense level or a Guideline not addressed in this agreement applies, and the Court finds that the Probation Office is correct, then the Court will use that offense level or Guideline in determining the sentence. Nothing in this Plea Agreement will prevent either the United States or the defendant from arguing, before the sentence is imposed, for the offense level as agreed upon herein and a sentence within the corresponding U.S.S.G. range.
- g. No other Chapter 2, 3, 4, or 5 enhancements or reductions apply.

5. The United States and the defendant agree, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), that the defendant's sentence, including any fine, will be within the applicable Sentencing Guidelines range, and that the Court in its discretion will determine the exact point within that range. Nothing in this Agreement precludes the defendant from arguing for or otherwise seeking to obtain either a specific form or term of sentence as permitted within such range or, if applicable, a sentence authorized by U.S.S.G. § 5B1.1 or 5C1.1. Nor does this Agreement require or prohibit that the United States take a position before the Court concerning the specific form or term of the sentence within the applicable range or U.S.S.G. § 5B1.1 or § 5C1.1.

6. Subject to the Court's discretion and determination that the defendant is financially able, the defendant agrees to pay full restitution, which will be included in the Court's Order of judgment. The defendant agrees that such restitution will include all victims directly or indirectly harmed by the defendant's relevant conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes an "offense" under 18 U.S.C. § 3663.

In the event that the United States has agreed hereunder to dismiss one or more counts, the defendant agrees to pay restitution for all losses resulting from the activities underlying and relevant to the dismissed counts, regardless of whether any such charge is an "offense" for purposes of 18 U.S.C. § 3663 or any other applicable statute.

The parties further agree that the Court may accept the information in the Pre-sentence Investigation Report, except any facts to which the defendant files written objections, as establishing sufficient factual findings regarding the amount of loss sustained by the victim, the financial resources of the defendant, earning ability of the defendant, and any other factors contained in said report [18 U.S.C. §3664(a) & (b)].

7. The defendant hereby agrees to pay the total amount required for assessment (\$100.00 per count) to the Clerk, United States District Court, before 5:00 p.m. on the date of pleading guilty.

8. The defendant agrees to reimburse the United States for the cost of Court-appointed counsel and that such reimbursement will be included in the Court's Order of Judgment.

III. Procedure

9. The defendant agrees that a duly-qualified federal Magistrate Judge may conduct the hearing required by Federal Rule of Criminal Procedure 11.

10. In regard to the factual basis as required by Federal Rule of Criminal Procedure 11(f):

- a. With the Court's permission, the factual basis will be deferred until the time of sentencing.
- b. The parties stipulate that the Court may use the offense conduct set out in the Pre-Sentence Report, except any facts to which the defendant has objected, to establish a factual basis for the defendant's plea.
- c. The defendant stipulates that there is a factual basis for the plea of guilty, and relieves the United States of any further obligation to present evidence. The United States may provide the factual basis for this case by presenting witnesses, relying upon the Presentence Report, or reciting for the Court a summary of the investigation.
- d. The United States may present pertinent background information and evidence obtained during the investigation of the matters described in the Bill of Indictment. The United States will correct misleading or inaccurate statements or information, if any, that the defendant or other persons may present to the Court.
- e. The defendant may clarify the factual basis as she desires.

IV. Waivers

11. The defendant understands and agrees that if she should fail to specifically perform or to fulfill completely each and every one of his obligations under this plea agreement, then the United States will be free of its obligations under the agreement, but the defendant will not be allowed to withdraw his guilty plea.

12. The defendant is aware that the law provides certain limited rights to withdraw a plea of guilty. The defendant has discussed these rights with defense counsel and knowingly and expressly waives any right to withdraw the plea once the District Court has accepted it.

13. The defendant understands and agrees that by pleading guilty, she expressly waives the following rights:

- a. to be tried by a jury;
- b. to be assisted by an attorney at trial;
- c. to confront and cross-examine witnesses; and
- d. not to be compelled to incriminate one's own self.

14. The defendant and defendant's counsel warrant that they have discussed: (1) defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and/or sentence through an appeal or post-conviction after entering a plea agreement; (2) whether or not there are potential issues which might be relevant to an appeal or post-conviction action; and (3) the possible impact of any such issue on the desirability to the Defendant of entering into this plea agreement.

The defendant, in exchange for the concessions made by the United States in this plea agreement, waives all such rights to contest the conviction and/or the sentence except for: (1) claims of ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) the sentence, but only to the extent defendant contests the sentence on the basis that one or more findings on guideline issues were inconsistent with the explicit stipulations contained in any paragraph in the plea agreement filed herein, or on the basis of an unanticipated issue that arises during the sentencing hearing and which the District Judge finds and certifies to be of such an unusual nature as to require review by the Fourth Circuit Court of Appeals.

Also, in exchange for the concessions made by the United States, defendant agrees that the United States preserves all its rights and duties with respect to appeal as set forth in 18 U.S.C. § 3742(b), while the defendant waives all rights to appeal or collaterally attack the sentence of conviction with the three exceptions set forth above. This agreement does not limit the United States in its comments in or responses to any post-conviction matters.

15. The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

16. The defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the Bill of 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.

V. Assistance to Government

17. If requested by the United States, but only if so requested, the defendant agrees to cooperate with the United States, including but not limited to the following:

- a. The defendant will provide truthful information about the subject charges and about any other criminal activity within the defendant's knowledge to any government agent or agency that the United States designates.
- b. The defendant will testify truthfully in any trial, hearing, or grand jury proceeding, including but not limited to testimony against any co-defendants, as the United States designates.
- c. The defendant will truthfully disclose all monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by or to the defendant in exchange for a controlled substance in violation of state or federal law, and all proceeds traceable to such exchanges, and all monies, negotiable instruments, securities, or other things of value used or intended to be used to facilitate a violation of state or federal law. The defendant further agrees to voluntarily forfeit said property to the United States.
- d. In the event that the defendant's cooperation includes testifying, the defendant hereby waives payment of any witness fees or expenses to which he may otherwise be entitled pursuant to 28 U.S.C. § 1821.
- e. The information that defendant provides may be verified by polygraph or any other method that the United States chooses.
- f. The defendant understands that the United States desires only truthful and accurate information and testimony and, in fact, that knowingly giving false information or testimony can be prosecuted as an additional criminal offense.

Further, if the defendant knowingly gives false testimony, the Plea Agreement will become null and void, except that the defendant's plea of guilty and the resulting guilty verdict will stand.

- g. The defendant will not violate any federal, state or local law, or any order of any court including any conditions of pretrial, pre-sentence, or post-sentence release.
 - h. Nothing that the defendant discloses pursuant to this Plea Agreement will be used against her in any other criminal proceeding, except if necessary in a prosecution for perjury.
18. When and if the defendant assists the government as described above:
- a. The United States, in its sole discretion, will determine whether said assistance has been substantial.
 - b. Upon a determination that the defendant has rendered substantial assistance, the government will make a motion for a downward departure pursuant to U.S.S.G. §5K1.1 or Fed. R. Crim. P. 35 as appropriate.
 - c. Regardless of the nature and extent of any substantial assistance that the defendant renders, the United States has no obligation to move for a downward departure if the defendant also knowingly furnishes information that is materially false.
 - d. Any determination that the defendant has failed to provide substantial assistance or has knowingly provided false information is within the sole discretion of the United States, and the defendant waives all objections and rights of appeal or collateral attack of such a determination.
 - e. The defendant understands that if the United States makes a motion for downward departure, the motion is not binding on the District Court. The Court will determine in its discretion whether to grant or deny such departure, and the extent of any departure, including whether to impose a term of imprisonment below any applicable statutory minimum.

VII. Conclusion

19. The defendant understands that if she violates this agreement, any federal, state or local law, or any order of any court, including any condition of pretrial, pre-sentence, or post-sentence release, the United States may void this agreement, and that the defendant's plea of guilty and the resulting guilty verdict will stand.

20. There are no agreements, representations, or understandings between the parties in this case, other than those that are explicitly set forth in this Plea Agreement and none will be entered into unless executed in writing and signed by all the parties.

SO AGREED:

ROBERT J. CONRAD, JR., UNITED STATES ATTORNEY

Assistant United States Attorney

DATED: _____

Attorney for Defendant

DATED: _____

Defendant

DATED: _____