

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

TERRY A. JOHNSON,

Defendant.

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**PLEA AGREEMENT**

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1. The United States of America, by its attorneys, Richard G. Frohling, Acting United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, and the defendant, Terry A. Johnson, individually and by attorney Michelle Jacobs, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, enter into the following plea agreement. Both the Government and the defendant understand that, in accordance with Rule 11(c)(1)(C), if the Court should decide not to accept the Plea Agreement, the defendant has the right to withdraw his plea of guilty and proceed to trial. The specific terms of the agreement are as follows:

**CHARGES**

2. The defendant has been charged in two counts of a two-count superseding indictment which allege violations of Title 21, United States Code, Sections 841, 846, and Title 18, United States Code, Sections 924(c). The defendant has now been charged in a three-count information which alleges violations of Title 21, United States Code, Sections 841, 846, and Title 18, United States Code, Sections 922(g).

3. The defendant has read and fully understands the charges contained in the information. He fully understands the nature and elements of the crimes with which he has been charged, and those charges and the terms and conditions of the plea agreement have been fully explained to him by his attorney. The defendant further agrees to waive prosecution by Indictment and consents to the filing of an Information with the charges noted below.

4. The defendant voluntarily agrees to plead guilty to the following counts set forth in full as follows:

**COUNT ONE**

***THE UNITED STATES ATTORNEY CHARGES THAT:***

1. *Beginning in approximately May 2017, and continuing until on or about August 2, 2019, in the State and Eastern District of Wisconsin and elsewhere,*

***TERRY A. JOHNSON***

*knowingly and intentionally conspired with persons known and unknown to the grand jury, to distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).*

2. *The quantity of drugs involved in the conspiracy involved 1 kilogram or more of a mixture and substance containing heroin, a Schedule I controlled substance; 5 kilograms or more of a mixture and substance containing cocaine, a Schedule II controlled substance; 28 grams or more of a mixture and substance containing cocaine base, in the form of "crack" cocaine, a Schedule II controlled substance; in excess of 400 grams of a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, also known as fentanyl, a Schedule I controlled substance; 50 grams or more of a mixture and substance containing methamphetamine, a Schedule II controlled substance; and a mixture and substance containing marijuana, a Schedule I controlled substance.*

*All in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(A).*

**COUNT TWO**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

*1. On or about June 17, 2019, at XXX S. Webster Avenue, Green Bay, in the State and Eastern District of Wisconsin,*

**TERRY A. JOHNSON**

*knowing he previously had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed firearms, that, prior to his possession, had been transported in interstate commerce, the possession of which was therefore in and affecting commerce.*

*2. The firearms are more fully described as one ATI rifle, serial number A304026; one Leinad 9 mm handgun, model number M-11, serial number 94-0001673; and one Phoenix Arms .22 handgun, model number HP22, serial number 4028778.*

*In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).*

**COUNT THREE**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

*On or about August 26, 2021, in the Village of Ashwaubenon, in the State and Eastern District of Wisconsin,*

**TERRY A. JOHNSON**

*knowingly and intentionally possessed with the intent to distribute a mixture and substance containing cocaine, a Schedule II controlled substance, and a mixture and substance containing cocaine base in the form of "crack" cocaine.*

*In violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C).*

5. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offenses described in paragraph 4. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt. The defendant admits that these facts are true and correct and establish his guilt beyond a reasonable doubt:

The Brown County Drug Task Force (BCDTF) and other law enforcement agencies investigated a drug organization led by Ruben Ortiz Jr., which included Terry Johnson, that distributed controlled substances beginning in at least May 2017 and continuing to August 2019. The investigation included statements by confidential informants, controlled purchases of various drugs, and search warrants executed on residences in the Green Bay area utilized by conspiracy members for the sale and storage of controlled substances.

BCDTF met with a confidential informant (CI-1) who admitted that during the course of the above-described conspiracy, CI-1 supplied Johnson with heroin and cocaine on multiple occasions and discussed the purchase of ½ kilogram quantities of cocaine with Johnson.

On June 17, 2019, BCDTF searched Johnson's residence located on S. Webster Avenue, Green Bay. In a west bedroom, BCDTF recovered 34 grams crack in shoe box, Johnson's driver's license, and \$2,000. In a laundry basket, BCDTF recovered multiple bags of heroin and crack. In the living room closet, BCDTF seized one ATI .22 caliber long rifle and bullet drum, Leined M-11 9 mm handgun, Glock Model 21 .45 caliber with four magazines, and Phoenix Arms HP 22 handgun and miscellaneous bag of ammunition. In total, BCDTF seized approximately 12.6 grams of heroin and 93 grams of crack. BCDTF also recovered a Glock Model 45 at a different residence in Green Bay after speaking with Johnson's girlfriend who stated she purchased the firearm for Johnson.

Johnson was arrested at the S. Webster residence and agreed to speak with law enforcement. Johnson admitted storing drugs and guns at both residences. He admitted that Ortiz was his drug supplier. For at least the previous year, Johnson purchased multiple pounds of marijuana, up to four ounces cocaine, and 20 grams of heroin approximately 3-4 times per month.

In sum, Johnson agrees that the quantity of drugs involved in the conspiracy as a result of his own conduct and the conduct of other conspirators reasonably foreseeable to him involved in excess of 5 kilograms of cocaine and 1000 grams of heroin, in excess of 24 grams of crack cocaine and multiple pounds of marijuana. Further, during the course of the conspiracy, including the time of his arrest, Johnson possessed one or more firearms knowing he was prohibited from doing so due to a prior felony conviction including that of Possession with Intent to Deliver cocaine from April 28, 2014, Sheboygan County case number 14CF72.

As to Count Three of the Information, Johnson agrees that on August 26, 2021, law enforcement stopped him for speeding while driving a vehicle in the Village of Ashwaubenon. Law enforcement observed marijuana in the car and arrested Johnson. While searching the trunk of the car, law enforcement located one baggie containing approximately 14.5 grams of cocaine and a second baggie containing 14.5 grams of crack cocaine. Law enforcement also located a scale and unused plastic baggies in the car. Johnson agrees that the cocaine and crack were possessed with the intention of delivering to another.

This information is provided for the purpose of setting forth a factual basis for the plea of guilty. It is not a full recitation of the defendant's knowledge of, or participation in, these offenses.

#### **PENALTIES**

6. The parties understand and agree that Count One carries the following maximum penalties: a maximum of life imprisonment and a \$10,000,000 fine; a mandatory minimum term of 10 years of imprisonment; and a mandatory special assessment of \$100. Count One also requires at least 5 years of supervised release, and a maximum of a lifetime on supervised release. Count Two carries a maximum of ten-years imprisonment, a maximum fine of \$250,000, a special assessment of \$100, and a maximum term of three-years' supervised release. Count Three carries a maximum of 20 years imprisonment, at least 3 years and up to life on supervised release, a \$1,000,000 fine and a mandatory special assessment of \$100.

#### **Dismissal of Indictment**

7. The government agrees to move to dismiss the Superseding Indictment as to Johnson at the time of sentencing.

8. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes as well as the applicable sentencing guidelines with his attorney including any possibility that the defendant may qualify as career offender under the sentencing guidelines.

#### **PROOF OF DRUG WEIGHT FOR STATUTORY MAXIMUM PENALTY**

9. The parties understand and agree that for the penalties in 21 U.S.C. § 841(b)(1)(A) to apply, as provided in paragraph 6 above, the government must prove beyond a reasonable doubt that the offense to which the defendant is pleading guilty involved at least 5 kilograms of a mixture and substance containing cocaine. The defendant agrees that the government possesses sufficient, admissible evidence to meet this burden.

### **ELEMENTS**

10. The parties understand and agree that in order to sustain the charge set forth in Count One, the government must prove each of the following propositions beyond a reasonable doubt:

First, the conspiracy as alleged in the information existed;

Second, the defendant knowingly and intentionally joined the conspiracy with the intent to further its objective.

Further, while not an element, for the increased penalties to apply, the government must prove that the offense involved 5 kilograms or more of mixture and substance containing cocaine.

As to the felon in possession of firearm offense as charged in Count Two, the government must prove each of the following propositions beyond a reasonable doubt:

First, that, prior to June 17, 2019, the defendant was previously convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

Second, the defendant knew he previously had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

Third, that on June 17, 2019, the defendant knowingly possessed a firearm; and

Fourth, that the firearm possessed by the defendant had traveled in interstate or foreign commerce prior to defendant's possession of it on that date.

As to the possession of cocaine and crack cocaine with intent to distribute offense as charged in Count Three, the government must prove each of the following propositions beyond a reasonable doubt:

First, that on or about the alleged date, the defendant knowingly or intentionally possessed a controlled substance; and

Second, the defendant possessed the controlled substance with the intent to deliver it to another person.

Third, the defendant knew the substance was some kind of controlled substance.

### **SENTENCING PROVISIONS**

11. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

12. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

13. The defendant acknowledges and agrees that his attorney has discussed the potentially applicable sentencing guidelines provisions with him to the defendant's satisfaction.

14. The parties acknowledge and understand that prior to sentencing the United States Probation Office will conduct its own investigation of the defendant's criminal history. The parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of the defendant's criminal history.

15. Pursuant to Rule 11(c)(1)(C), the parties enter into this plea agreement. If the Court accepts this Plea Agreement, the Defendant will receive the stipulated sentence set forth in paragraph 25. If the Court rejects this Plea Agreement, the Defendant will have the opportunity to withdraw his plea of guilty and proceed to trial, as provided under Rule 11(d)(2)(A).

#### **Sentencing Guidelines Calculations**

16. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court must impose a sentence within the range as agreed to by the parties. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

### **Relevant Conduct**

17. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offense to which the defendant is pleading guilty.

18. The parties agree to recommend to the sentencing court that the relevant conduct attributable to the defendant is at least 5 kilograms but less than 15 kilograms of a mixture and substance containing cocaine, a Schedule II controlled substance; at least 700 grams but less than 1 kilogram of a mixture and substance containing heroin, a Schedule I controlled substance; at least 28 but less than 112 grams of cocaine base; and at least 2.5 but less than 5 kilograms of marijuana.

### **Base Offense Level**

19. The parties will recommend to the sentencing court that the applicable base offense level for the offense charged in Count One is 30 under Sentencing Guidelines Manual § 2D1.1(c)(5). The parties will recommend that the applicable base offense level for the offense charged in Count Two is 20 under Sentencing Guidelines Manual § 2K2.1(a)(4).

### **Specific Offense Increases**

20. The parties acknowledge and understand that the government will recommend a 2-level increase for possession of a dangerous weapon under Sentencing Guidelines Manual §2D1.1(b)(1) as to Count One; a 2-level increase for number of firearms under Sentencing Guidelines Manual §2K2.1(b)(1) as to Count Two; and a 4-level increase for possession of a dangerous weapon under Sentencing Guidelines Manual §2K2.1(b)(6)(B) as to Count Two.



### **Acceptance of Responsibility**

21. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility. In addition, if the court determines at the time of sentencing that the defendant is entitled to the two-level reduction under § 3E1.1(a), the government agrees to make a motion recommending an additional one-level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b) because the defendant timely notified authorities of his intention to enter a plea of guilty.

### **CAREER OFFENDER**

22. The parties acknowledge, understand, and agree that the defendant may qualify as a career offender under the sentencing guidelines. The parties further understand, acknowledge, and agree that the defendant may not move to withdraw the guilty plea solely as a result of a determination that under the guidelines, the defendant is determined to be a career offender.

### **Sentencing Recommendations**

23. Both parties reserve the right to provide the district court and the probation office with any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

24. Both parties reserve the right to make any recommendation regarding any and all factors pertinent to the determination of the sentencing guideline range; the fine to be imposed; the amount of restitution and the terms and condition of its payment; the length of supervised release and the terms and conditions of the release; the defendant's custodial status pending the sentencing; and any other matters not specifically addressed by this agreement.

25. Pursuant to Rule 11(c)(1)(C), both the government and the Defendant agree that, after consideration of all the factors set forth in Title 18, United States Code, Section 3553(a), the appropriate sentence to be imposed in this case is between 11 and 12 years' imprisonment with the parties free to argue for a sentence within that range. The parties further agree that this sentence will run concurrently with any state sentence the defendant is serving at the time of the federal sentencing. The parties also agree that any previous term of imprisonment served in the state prison system as a result of a revocation of a state court imposed supervision due to the conduct stemming from this case cannot be used to reduce the sentence to be imposed within the 11-12 year prison range. The parties also agree that, upon his release from prison, the Defendant should be subject to a 5-year term of supervised release. The government remains free to take a position with respect to any fact or factor pertinent to the sentencing decision consistent with this agreement

#### **Court's Determinations at Sentencing**

26. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court.

27. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

#### **FORFEITURE**

28. The defendant agrees that all properties listed in the superseding indictment and in the Information as set forth above, constitute the proceeds of the offense to which he is pleading guilty, or were used to facilitate such offense. The defendant agrees to the forfeiture of these properties and to the immediate entry of a preliminary order of forfeiture. The defendant agrees that he has an interest in each of the listed properties. The parties acknowledge and understand that the government reserves the right to proceed against assets not identified in this agreement.

### **FINANCIAL MATTERS**

29. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable in full upon entry of the judgment of conviction or on further order of the court. The defendant further understands that any payment schedule imposed by the sentencing court shall be the minimum the defendant is expected to pay and that the government's collection of any and all court imposed financial obligations is not limited to the payment schedule. The defendant agrees not to request any delay or stay in payment of any and all financial obligations. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the court specifically directs participation or imposes a schedule of payments.

30. The defendant agrees to provide to the Financial Litigation Unit (FLU) of the United States Attorney's Office, upon request of the FLU during any period of probation or supervised release imposed by the court, a complete and sworn financial statement on a form provided by FLU and any documentation required by the form.

### **Special Assessment**

31. The defendant agrees to pay the special assessment in the amount of \$300 prior to or at the time of sentencing.

### **DEFENDANT'S WAIVER OF RIGHTS**

32. In entering this agreement, the defendant acknowledges and understands that he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the

judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.

- b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.
- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.
- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his own behalf. The defendant would be entitled to compulsory process to call witnesses.
- e. At such trial, defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify on his own behalf.

33. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offenses to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

34. The defendant acknowledges and understands that he will be adjudicated guilty of the offense to which he will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

35. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

#### **Further Civil or Administrative Action**

36. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorney and understands that nothing contained in this agreement, including any attachment, is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

#### **GENERAL MATTERS**

37. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

38. The parties acknowledge, understand, and agree that the United States Attorney's office is free to notify any local, state, or federal agency of the defendant's conviction.

### **EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT**

39. The defendant acknowledges and understands if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. The defendant further acknowledges and understands that the government's agreement to dismiss any charge is conditional upon final resolution of this matter. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.

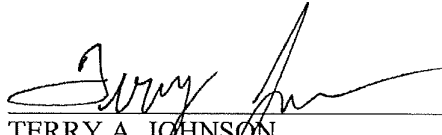
### **VOLUNTARINESS OF DEFENDANT'S PLEA**

40. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

**ACKNOWLEDGMENTS**

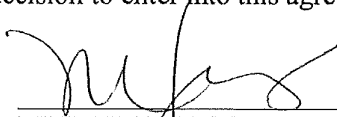
I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 10-12-21

  
TERRY A. JOHNSON  
Defendant

I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 10/12/21

  
MICHELLE JACOBS  
Attorney for Defendant

For the United States of America:

Date: 10/13/21

  
RICHARD G. FROHLING  
Acting United States Attorney

Date: 10/13/21

  
WILLIAM J. ROACH  
Assistant United States Attorney