

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 23-CR-87

GERALD B. DIAMOND II,

Defendant.

PLEA AGREEMENT

1. The United States of America, by its attorneys, Gregory J. Haanstad, United States Attorney for the Eastern District of Wisconsin, and Andrew J. Maier, Assistant United States Attorney, and the defendant, Gerald B. Diamond II, individually and by attorney Krista Halla-Valdes, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

CHARGES

2. The defendant has been charged in a three-count indictment, which alleges the following violations:

- Possession with Intent to Distribute Methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C); and
- Possession of a Firearm in Furtherance of Drug Trafficking, in violation of Title 18, United States Code, Section 924(c)(1)(A); and
- Felon in Possession of a Firearm, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(8).

3. The defendant has read and fully understands the charges contained in the indictment. He fully understands the nature and elements of the crimes with which he has been

charged, and the charges and the terms and conditions of the plea agreement have been fully explained to him by his attorney.

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

COUNT ONE

(Possession with Intent to Distribute Methamphetamine)

THE GRAND JURY CHARGES THAT:

On or about March 6, 2023, in the State and Eastern District of Wisconsin,

GERALD B. DIAMOND II

knowingly possessed with the intent to distribute a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance.

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

and

COUNT THREE

(Felon in Possession of a Firearm)

THE GRAND JURY FURTHER CHARGES THAT:

1. *On or about March 6, 2023, in the State and Eastern District of Wisconsin,*

GERALD B. DIAMOND II

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

2. *The firearms are more fully described as a Ruger .22 caliber revolver bearing serial number 206-37782.*

All in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(8).

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:

At approximately 11:10 p.m. on March 6, 2023, a Menominee County Sheriff's Deputy saw a black Mitsubishi with a Wisconsin license plate traveling east on County Highway VV near LaMotte Lake Road, which is just east of the city of Keshena. This is a location within the boundaries of the Menominee Indian Reservation. The deputy ran the license plate on the vehicle and received a response that the vehicle registration was suspended for "Safety Responsibility." The deputy turned on his emergency light to stop the vehicle and it pulled into the driveway at W2583 County Highway VV.

The deputy made contact with the defendant Gerald B. Diamond II, who was the driver of the vehicle. The deputy quickly realized all of the occupants of the vehicle were Native American Indians and therefore under the jurisdiction of the Menominee Tribal Police. Tribal officers arrived to complete the traffic stop, during which time officers learned Diamond had a felony arrest warrant. Officers also saw drug paraphernalia in plain view in the vehicle and in the purse of one of the occupants. A subsequent search of the vehicle revealed paraphernalia associated with the use and sale of drugs, a backpack with approximately two pounds of marijuana, .22 caliber ammunition, 14.23 grams of a white rocklike substance which later tested positive for the presence of methamphetamine and fentanyl, 9 pills, 2.1 grams of a brownish-tan powdery substance which tested positive for the presence of heroin and fentanyl, numerous plastic baggies, multiple digital scales, smoking devices, and burnt and unburnt squares of aluminum foil. Officers also recovered a loaded Ruger .22 revolver from the backpack.

Interviews of the occupants of the vehicle led to all three passengers indicating the backpack was Diamond's, and that the drugs were intended for distribution to others. The defendant admits that he possessed the Ruger revolver, which was recovered from the backpack, to protect himself during drug transactions.

Diamond made an unprompted statement about the guns and drugs belonging to him when a tribal police detective collected DNA from him.

The defendant has been convicted of crimes with a maximum sentence of greater than one year in prison on numerous occasions and has been notified of the prohibition against possession of firearms or ammunition on each occasion. Most recently, the defendant was convicted of Possession with Intent to Deliver Heroin in Sawyer County case number 18CF235 and sentenced on January 8, 2019, where he received a firearms admonition before imposition of 2 years of Initial Confinement and 3 years of Extended Supervision.

The Ruger revolver was manufactured outside of Wisconsin in New Hampshire, North Carolina, or Arizona, and necessarily traveled in interstate commerce prior to Diamond's possession of it.

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 the offenses to which the defendant will enter a plea of guilty carry the following maximum sentences:

- Count One: 20 years in prison, \$1 million in fines, and between 3 years and life on supervised release; and
- Count Three: 15 years in prison, \$250,000 in fines, and up to 3 years on supervised release.

Each count also carries a mandatory special assessment of \$100.

7. 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 a career offender under the sentencing guidelines.

ELEMENTS

8. The parties understand and agree that in order to sustain the charge of Possession with Intent to Distribute Methamphetamine as set forth in Count One, the government must prove each of the following propositions beyond a reasonable doubt:

First, the defendant knowingly possessed a mixture of methamphetamine and fentanyl; and

Second, the defendant intended to distribute the substance to another person; and

Third, the defendant knew the substance contained some sort of controlled substance. The government is not required to prove that the defendant knew the substance was a mixture of methamphetamine and fentanyl.

9. The parties understand and agree that in order to sustain the charge of Felon in Possession of a Firearm as set forth in Count Three, the government must prove each of the following propositions beyond a reasonable doubt:

First, the defendant knowingly possessed a firearm;

Second, at the time of the charged act, the defendant was a person who had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

Third, at the time of the charged act, the defendant knew he was a person who had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; and

Fourth, the firearm had been shipped or transported in interstate commerce.

SENTENCING PROVISIONS

10. 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.

11. 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.

12. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offenses set forth in paragraph 4.

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

13. 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.

Sentencing Guidelines Calculations

14. 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 may impose a reasonable sentence above or below the guideline range. 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

15. 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 offenses to which the defendant is pleading guilty.

16. The parties agree as part of their sentencing recommendation to request that the court specifically take into account the facts of Sawyer County cases 20CF243 and 22CF40 and consider the facts of those cases as true, even though they will have been dismissed by the State

of Wisconsin previous to the sentencing date in this case. The parties agree that the facts alleged in the Criminal Complaints filed in each of those cases will serve as a factual basis for the court's consideration of this other relevant conduct.

Base Offense Level

17. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in Count One is 16 under Sentencing Guidelines Manual § 2D1.1(a)(5) and (c)(12).

18. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in Count Three is 24 under Sentencing Guidelines Manual § 2K2.1(a)(2).

Specific Offense Characteristics

19. The parties agree to recommend to the sentencing court that a two-level increase to the base offense level in Count One is appropriate under Sentencing Guidelines Manual § 2D1.1(b)(1), because the defendant possessed a dangerous weapon during and in relation to the offense.

Acceptance of Responsibility

20. 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

21. The parties acknowledge, understand, and agree that the defendant may qualify as a career offender under the sentencing guidelines. The total advisory guidelines range for the offenses in the Indictment would then be 262 – 327 months in prison under Sentencing Guidelines Manual §§ 4B1.1(a) and 4B1.1(c)(2)(B). 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

22. 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.

23. Both parties reserve the right to make any recommendation any other matters not specifically addressed by this agreement.

24. The parties agree to jointly recommend a sentence of 12 years in prison.

Court's Determinations at Sentencing

25. 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. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 6 above. The parties further understand that the sentencing court

will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

26. 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.

FINANCIAL MATTERS

27. 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. 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.

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

Fine

29. The parties agree to recommend to the sentencing court that no fine be imposed against the defendant.

Special Assessment

30. The defendant agrees to pay the special assessment in the amount of \$200 prior to or at the time of sentencing.

DEFENDANT'S WAIVER OF RIGHTS

31. 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.

32. 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 offense 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.

33. The defendant acknowledges and understands that he will be adjudicated guilty of the offenses 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.

34. 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

35. 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

36. 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.

37. The parties acknowledge, understand, and agree that this plea agreement will be filed and become part of the public record in this case.

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: 8/7/23


GERALD B. DIAMOND II
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: 8/7/23


KRISTA HALLA-VALDES
Attorney for Defendant

For the United States of America:

Date: 8/7/2023


GREGORY J. HAANSTAD
United States Attorney

Date: 8/7/2023


ANDREW J. MAIER
Assistant United States Attorney