

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
)	
)	No. 3:11-CR-00012
v.)	Judge Sharpe
)	
DEONTE GRAHAM [36])	

PLEA AGREEMENT

The United States of America, through David Rivera, United States Attorney for the Middle District of Tennessee, and Assistant United States Attorney Lynne Ingram, Trial Attorney Laura Gwinn and defendant, Deonte Graham through defendant's counsel, Jonathan P. Farmer, pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

Charges in This Case

1. Defendant acknowledges that he has been charged in the indictment in this case with Conspiracy to Commit Hobbs Act Robbery (2 counts), Attempted Hobbs Act Robbery, Hobbs Act Robbery, Conspiracy to Use Firearms in a Crime of Violence (2 counts), and Use of a Firearm in a Crime of Violence Resulting in Death, in violation of Title 18, United States Code, Sections 1951, 924(o), 924(c)(1)(A), and 924(j).

2. Defendant has read the charges against him contained in the indictment and those charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

3. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Counts 15 and 17 of the indictment charging Hobbs Act Robbery and Use of a Handgun in a Crime of Violence. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment.

Penalties

4. The parties understand and agree that the offenses to which defendant will enter a plea of guilty carry the following maximum penalties:

Count Fifteen:

- a. Maximum term of imprisonment: 20 years.
- b. Mandatory minimum term of imprisonment: None.
- c. Term of supervised release: Up to 3 years.
- d. Maximum fine: \$250,000, due and payable immediately.
- e. Full restitution, due and payable immediately, to all victims of the offenses and relevant conduct.
- f. Mandatory special assessment: \$100.00, due and payable immediately.
- g. Forfeiture of any and all proceeds from the commission of the offense, any and all property used or intended to be used to facilitate the offense, and any property involved in the offense.

Count Seventeen:

- a. Maximum term of imprisonment:
- b. Mandatory minimum term of imprisonment: 5 years
- c. Term of supervised release: Up to 3 years.
- d. Maximum fine: \$250,000, due and payable immediately.
- e. Mandatory special assessment: \$100.00, due and payable immediately.

- f. Forfeiture of any and all proceeds from the commission of the offense, any and all property used or intended to be used to facilitate the offense, and any property involved in the offense.

Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court. Defendant also understands that a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future, regardless of whether the defendant currently has lawful temporary or permanent resident status.

Acknowledgements and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

5. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 3:11- CR -00012.

6. Defendant understands that by pleading guilty he surrenders certain trial rights, including the following:

- a. If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. Defendant has a right to a jury trial, and the trial would be by a judge rather than a jury only if defendant, the government, and the Court all agreed to have no jury.

- b. If the trial were a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a

verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent; that the government bears the burden of proving defendant guilty of the charge(s) beyond a reasonable doubt; and that it must consider each count of the indictment against defendant separately.

c. If the trial were held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

e. At a trial, defendant would have a privilege against self-incrimination so that he could testify or decline to testify, and no inference of guilt could be drawn from his refusal to testify.

7. Defendant understands that by pleading guilty he is waiving all of the trial rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Factual Basis

8. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts 15 and 17 of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

In October 2011, Deonte Graham worked for Singletary Construction in Clarksville, TN, in the Middle District of Tennessee, and had worked there for more than one year. Singletary Construction is engaged in the construction industry both within the state of Tennessee and Kentucky. It obtains some of its supplies from out of the state of Tennessee. The owner of the company believed that Graham had misrepresented the hours he worked and docked his pay. As a result, Graham and Massey decided to set up a robbery of Singletary. Graham told Massey that Singletary would have a large amount of cash on payday. Massey agreed to share the proceeds with Graham.

On October 21, 2011, at approximately 4PM, Singletary was robbed of his \$17,000 cash payroll by two masked men with a gun. They ran toward a waiting vehicle described as a green possibly Cutlass with taped up windows. A gun was dropped and two bandanas were thrown out the window of the car. DNA from the bandanas was compared to Michael Massey's known DNA; they matched. The gun was tested and found to function properly. Graham was not one of those who physically robbed Mr. Singletary.

A witness to the robbery picked Massey's photo from a photo array as the driver of the vehicle. A search warrant was later executed on Massey's wife's vehicle; photos show it to be a blue-green Cutlass with taped up windows.

In December 2012, Graham ran into a former employee of Singletary construction with whom he had worked. Graham bragged to him that he had set up the robbery because Singletary owed him money.

This statement of facts is provided to assist the Court in determining whether a factual basis exists for defendant's plea of guilty. The statement of facts does not contain each and every

fact known to defendant and to the United States concerning defendant's and/or others' involvement in the offense conduct and other matters.

Sentencing Guidelines Calculations

9. The parties understand that the Court will take account of the United States Sentencing Guidelines (hereinafter "U.S.S.G."), together with the other sentencing factors set forth at 18 U.S.C. § 3553(a), and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence. The parties agree that the U.S.S.G. to be considered in this case are those effective November 1, 2014.

10. For purposes of determining the U.S.S.G. advisory sentencing range, the United States and defendant recommend to the Court, pursuant to Rule 11(c)(1)(B), the following:

a. Offense Level Calculations.

i. The base offense level for the first count of conviction is 20, pursuant to U.S.S.G. § 2B3.1.

ii. Two additional levels are added for restraint of victim (see 2B3.1(b)(4)) and an additional level is added because more than \$10,000 was taken (see 2B3.1(b)(7)). Pursuant to 3B1.1(c), 2 additional levels are added for defendant's aggravating role in the offense. This results in a base offense level of **25**.

iii. The minimum mandatory sentence for the second count of conviction is 5 years (60 months).

iv. Assuming defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to

U.S.S.G. § 3E1.1(a). Furthermore, assuming defendant accepts responsibility as described in the previous sentence, the United States will move for an additional one-level reduction pursuant to U.S.S.G § 3E1.1(b), because defendant will have given timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently.

v. The parties agree that no additional upward or downward adjustments, or U.S.S.G.-based departures, are appropriate.

vi. The parties agree that the dismissed counts of Eight through Thirteen shall not be considered relevant conduct for purposes of guidelines calculations.

b. Criminal History Category. The parties agree that defendant has the following relevant criminal history:

In 2013 the defendant was convicted of possession of marijuana in the Circuit Court for Montgomery County, Tennessee. The parties agree that defendant's criminal history points equals 1, and therefore agree to recommend, and will recommend, to the Court a Criminal History Category of I.

Therefore, the parties agree to recommend to the Court a final offense level of 22 (the "Recommended Offense Level"). Defendant understands that the offense level as ultimately determined by the Court (the "court-determined offense level") may be different from the Recommended Offense Level. Defendant likewise understands that the guidelines range as ultimately determined by the Court (the "court-determined guidelines range") may be based on an offense level different from the Recommended Offense Level.

When combined with the anticipated Criminal History Category of I, the Recommended Offense Level would result in a recommended advisory sentencing range of 101-111 months imprisonment and a fine range of \$250,000-\$500,000 (the "Recommended Guidelines Range"). Defendant understands that the court-determined guidelines range may be different from the Recommended Guidelines Range.

c. Defendant is aware that the Guidelines Range is a prediction, not a promise, and is not binding on the Probation Office or the Court. Defendant understands that the Probation Office will conduct its own investigation and make its own recommendations, that the Court ultimately determines the facts and law relevant to sentencing, that the Court's determinations govern the final guidelines calculations, and that the Court determines both the final offense level and the final guidelines range. Accordingly, the validity of this agreement is not contingent upon the Probation Officer's or the Court's concurrence with the above calculations. In the event that the Probation Office or the Court contemplates any U.S.S.G. adjustments, departures, or calculations different from those recommended above, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same. Defendant further acknowledges that if the Court does not accept the U.S.S.G. recommendations of the parties, defendant will have no right to withdraw his guilty plea.

Agreements Relating to Sentencing

11. The government agrees to recommend that a sentence not greater than 103 months be imposed. The defendant may seek any sentence he deems appropriate pursuant to the factors set out in 18 U.S.C. §3553.

12. Regarding restitution, the parties acknowledge that the amount of restitution owed to victim is \$17,000, and that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make restitution in this amount, minus any credit for funds repaid prior to sentencing. Unless the Court orders otherwise, restitution shall be due immediately.

13. Defendant agrees to pay the special assessment of \$200 at or before the time of sentencing to the Clerk of the U.S. District Court.

Presentence Investigation Report/Post-Sentence Supervision

14. Defendant understands that the United States Attorney's Office, in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing, shall fully apprise the District Court and the United States Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, as well as any related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

15. Defendant agrees to execute truthfully and completely a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the United States Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the Probation Officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 and enhancement of his sentence for obstruction of justice under U.S.S.G. § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

16. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Plea Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

Entry of Guilty Plea

17. The parties jointly request that the Court accept the defendant's plea of guilty as set forth in this agreement and enter an order reflecting the acceptance of the plea while reserving acceptance of this plea agreement until receipt of the pre-sentence report and sentencing.

Waiver of Appellate Rights

18. Regarding the issue of guilt, defendant hereby waives all (i) rights to appeal any issue bearing on the determination of whether he is guilty of the crime(s) to which he is agreeing to plead guilty; and (ii) trial rights that might have been available if he exercised his right to go to trial. Regarding sentencing, Defendant is aware that 18 U.S.C. § 3742 generally affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal any sentence within or below the guideline range associated with the Recommended Offense Level when combined with defendant's criminal history category as determined by the Court]. Defendant also knowingly waives the right to challenge the sentence imposed in any collateral attack, including, but not limited to, a motion brought pursuant to 28 U.S.C. § 2255

and/or § 2241, and/or 18 U.S.C. § 3582(c). However, no waiver of the right to appeal, or to challenge the adjudication of guilt or the sentence imposed in any collateral attack, shall apply to a claim of involuntariness, prosecutorial misconduct, or ineffective assistance of counsel. Likewise, the government waives the right to appeal any sentence: (i) within or above the guideline range associated with the Recommended Offense Level when combined with defendant's criminal history category; or (ii) below such guideline range if the government has moved for a downward departure pursuant to U.S.S.G. §5K1.1.

Other Terms

19. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

20. Should defendant engage in additional criminal activity after he has pled guilty but prior to sentencing, defendant shall be considered to have breached this Plea Agreement, and the government at its option may void this Plea Agreement.

Conclusion

21. Defendant understands that the indictment and this Plea Agreement have been or will be filed with the Court, will become matters of public record, and may be disclosed to any person.

22. Defendant understands that his compliance with each part of this Plea Agreement extends until such time as he is sentenced, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement,

rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may require defendant's specific performance of this Plea Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Plea Agreement, or defendant breaches any of its terms and the government elects to void the Plea Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

23. Defendant and his attorney acknowledge that no threats have been made to cause defendant to plead guilty.

24. No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

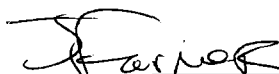
25. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this Plea Agreement, and I voluntarily agree to it.

Date: 6/26/2015


Deonte Graham
Defendant

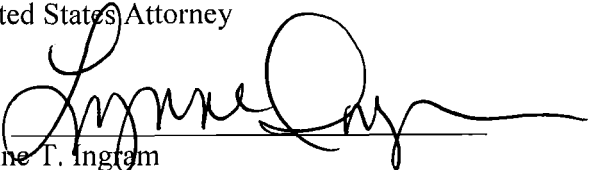
26. Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one.

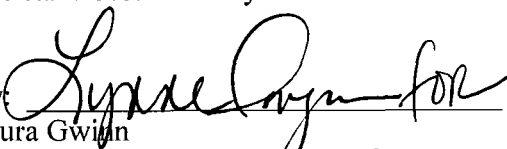
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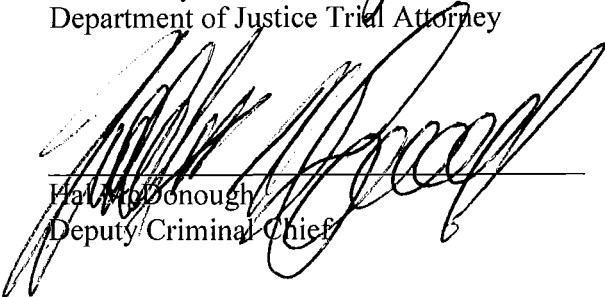

Jonathan P. Farmer
Attorney for Defendant

Respectfully submitted,

DAVID RIVERA
United States Attorney

By: 
Lynne T. Ingram
Assistant U.S. Attorney

By: 
Laura Gwin
Department of Justice Trial Attorney


Paul McDonough
Deputy Criminal Chief