U.S. Department of Justice

United States Attorney
District of Maryland
Southern Division

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December 16, 2015

Robert Bonsib, Esq.
Marcus and Bonsib
6411 Ivy Lane, Suite 116
Greenbelt, MD 20770

Re: United States v. Robert C. Nalley,
Criminal No. [to be determined]

Dear Mr. Bonsib:

This letter confirms the plea agreement, together with the sealed supplement, which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by **December 30, 2015**, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to waive indictment and plead guilty to a criminal information to be filed against him, which will charge him with deprivation of rights under color of law, in violation of 18 U.S.C. § 242. The Defendant admits that he is, in fact, guilty of this offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows: (1) the Defendant acted under color of law; (2) the Defendant deprived an individual of a right secured or protected by the Constitution or laws of the United States; and (3) the Defendant acted willfully.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: one year of incarceration, one year of supervised release, and a $100,000 fine. In addition, the Defendant must pay $25 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of

sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.[1] If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked – even on the last day of the term – and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the Government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the Government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to

[1] Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of $2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

c. This Office does not oppose a **2**-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees that, if the Defendant continues to accept responsibility, this Office will make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional **1**-level decrease in recognition of the Defendant's timely notification of his intention to plead guilty. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. If the Defendant obtains a 3-level reduction, the final offense level will be **13**.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level.

8. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute.

Obligations of the Defendant and the United States Attorney's Office

9. At the time of sentencing, the parties will jointly recommend a sentence of **one year of probation**. This Office and the Defendant will be free to argue for what each believes to be the appropriate conditions of that probation.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct.

Waiver of Appeal

11. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

a. The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the Defendant's conviction.

b. The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the

decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of probation or supervised release), except as follows: (i) the Defendant reserves the right to appeal any term of imprisonment to the extent that it exceeds any sentence within the advisory guidelines range resulting from an adjusted base offense level of **13**; (ii) and this Office reserves the right to appeal any term of imprisonment to the extent that it is below any sentence within the advisory guidelines range resulting from an adjusted base offense level of **13**.

c. Nothing in this agreement shall be construed to prevent the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

12. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

13. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation

to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

14. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: Kristi O'Malley
Kristi N. O'Malley
Daniel C. Gardner
Assistant United States Attorneys

Vanita Gupta
Principal Deputy Assistant Attorney General
U.S. Department of Justice

By:_____
Mary J. Hahn
Trial Attorney

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

1/20/16
Date

Robert C. Nalley

I am Robert Nalley's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

1/20/16
Date

Robert Bonsib, Esq.

ATTACHMENT A – Statement of Facts

The United States and the Defendant, Robert C. Nalley, stipulate and agree that if this case proceeded to trial, the United States would prove the facts set forth below beyond a reasonable doubt. They further stipulate and agree that these are not all of the facts that the United States would prove if this case proceeded to trial.

The Defendant, **ROBERT C. NALLEY** ("**NALLEY**"), is a resident of La Plata, Maryland. From September 1988 through September 2013, **NALLEY** served as a judge of the Circuit Court for Charles County, Maryland. In or about September 2013, the Maryland Court of Appeals authorized **NALLEY** to continue to preside over cases in the circuit courts and district courts for Charles County, Maryland. Between September 2013 and September 2014, **NALLEY** presided over cases in Charles County Circuit Court.

On July 23, 2014, **NALLEY** presided over the jury selection for a criminal trial of Victim 1, a *pro se* defendant in Charles County. When **NALLEY** took the bench, a Charles County deputy sheriff informed **NALLEY** that Victim 1 was wearing a device known as a stun-cuff. **NALLEY** knew that the stun-cuff is an electro-shock device that, when activated, administers an electrical shock to the individual wearing the stun-cuff, thereby incapacitating him and causing him pain. The deputy sheriff remained in the courtroom to provide security during the proceeding and held a device that could activate the stun-cuff with the push of a button.

Several minutes after the proceedings had begun, **NALLEY** asked Victim 1 whether Victim 1 had voir dire questions to submit to the court. Victim 1 ignored **NALLEY's** questions and on three occasions failed to respond to **NALLEY's** request for his voir dire questions. Instead of responding, Victim 1 read and continued to read from a prepared statement, objecting to **NALLEY's** authority to preside over the proceedings. After ignoring **NALLEY's** three questions asking Victim 1 as to whether he had any voir dire questions to submit, **NALLEY** ordered Victim 1 to "stop." Victim 1 continued to speak. **NALLEY** again ordered Victim 1 to "stop." Victim 1 continued to speak. At that time NALLEY ordered the deputy sheriff to "do it. Use it," intending for the deputy sheriff to activate the stun-cuff.

The deputy sheriff walked over to where Victim 1 was standing and pulled a chair away to clear a place for Victim 1 to fall to the floor. At this point, Victim 1 stopped speaking. The deputy sheriff then activated the stun-cuff, which administered an electric shock to Victim 1 for approximately five seconds. The electric shock caused Victim 1 to fall to the ground and scream in pain. **NALLEY** recessed the proceedings.

Although Victim 1 had verbally interrupted **NALLEY**, he had stood calmly behind a table throughout the proceeding. Victim 1 did not attempt to flee the courtroom, did not make any aggressive movements, and did not pose a threat to himself or to any other person at any point during the proceedings. **NALLEY** acknowledges that the use of the stun cuff was

objectively unreasonable under the circumstances.[1] When **NALLEY** ordered the deputy sheriff to activate the stun-cuff, **NALLEY** acted willfully (i.e., intentionally violating the victim's constitutional rights, or acting in reckless disregard of those established rights) in depriving Victim 1 of his constitutional right to due process, which includes the right be free from the unreasonable use of force.

* * *

I have read this Statement of Facts and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. I do not wish to change any part of it.

1/20/16
Date

Robert C. Nalley

I am Robert Nalley's attorney. I have carefully reviewed every part of this Statement of Facts with him. To my knowledge, his decision to sign it is an informed and voluntary one.

1/20/16
Date

Robert Bonsib, Esq.

[1] For the purposes of this stipulation, and at Defendant's request, the parties have agreed to apply the standard announced by the Supreme Court in Kingsley v. Hendrickson, 135 S. Ct. 2466 (2015).