

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 12 CR 50032
) Judge Frederick J. Kapala
)
)
vs.)
)
ROBERT J. GRAY,)
)
also known as "4-Rob")

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant ROBERT J. GRAY, and his attorney, DANIEL J. CAIN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with knowingly possessing a firearm that had previously been transported in interstate and foreign commerce after being convicted of a felony, in violation of Title 18, United States Code, Section 922(g)(1), and possessing a firearm with an obliterated serial number, in violation of Title 18, United States Code, Section 922(k).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the indictment: Count One, which charges defendant with knowingly possessing a firearm that had previously been transported in interstate and foreign commerce after being convicted of a felony, in violation of Title 18, United States Code, Section 922(g)(1). In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt, constitute relevant conduct pursuant to Guideline § 1B1.3, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

On May 8, 2012, at Rockford, Illinois, defendant, previously having been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess a firearm, namely, an SKS Norinco semi-automatic rifle with an obliterated serial number and sixteen rounds of SADU 07 7.62 caliber ammunition, which possession was in and affecting commerce in that the firearm had previously been transported in interstate

commerce and foreign commerce, in violation of Title 18, United States Code, Section 922(g)(1).

Specifically, on May 8, 2012, defendant lived in a single-family home on Ellis Road in Rockford, Illinois (hereinafter referred to as “Ellis Road residence”). On May 8, 2012, defendant possessed in the Ellis Road residence an SKS Norinco semi-automatic rifle with an obliterated serial number and sixteen rounds of SADU 07 7.62 caliber ammunition. The SKS Norinco semi-automatic rifle was manufactured in China, and, having been found in Illinois, traveled in foreign commerce. In addition to the SKS Norinco semi-automatic rifle and sixteen rounds of SADU 07 7.62 caliber ammunition, defendant had in the Ellis Road residence approximately \$372,993 in United States currency, six cellular telephones, a Pelouze Model 4040 (400 lb capacity) digital scale commonly used to weigh large quantities of marijuana, plastic grocery bags filled with rubber bands, a MT Pocket Scale 500g, a black food saver V3020 heat sealer and three boxes of food saver rolls of heat seal bags, and various pieces of diamond jewelry.

Prior to May 8, 2012, defendant was convicted of a felony. Specifically, on October 7, 2002, defendant was convicted in the Circuit Court of the 17th Judicial Circuit, Winnebago County, in case 01CF1893, with unlawful possession with intent to distribute a controlled substance, in violation of 720 ILCS 570/402, a Class 1 felony punishable by imprisonment for a term exceeding one year.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 10 years' imprisonment. The judge also may impose a sentence of probation of between 1 and 5 years. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2012 Guidelines Manual.

b. **Offense Level Calculations.**

i. Pursuant to Guideline § 2K2.1(a)(3), the base offense level is 22 because the offense involved a semiautomatic firearm capable of accepting a large

capacity magazine and defendant committed the instant offense subsequent to sustaining one felony conviction for a crime of violence or controlled substance offense, specifically the conviction described in subparagraph 9.c.xii.

ii. Pursuant to Guideline § 2K2.1(b)(4)(B), the base offense level is increased by four levels to level 26 because defendant possessed a firearm with an altered or obliterated serial number.

iii. The government contends, and defendant reserves the right to disagree, that the offense level must be increased by 2 levels to 28 pursuant to Guideline § 3C1.1 because defendant willfully obstructed or impeded the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense. As a result of this adjustment, the government contends, and defendant reserves the right to disagree, that defendant has not accepted responsibility within the meaning of Guideline §3E1.1(a).

iv. The government contends, and defendant reserves the right to disagree, that the offense level must be increased by 4 levels to 32 pursuant to Guideline § 2K2.1(b)(6)(B) because defendant possessed the firearm in connection with another felony offense.

v. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested

financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level will be appropriate. Defendant understands that the government will argue at sentencing that defendant has not accepted responsibility within the meaning of Guideline §3E1.1(a).

vi. If the Court determines that defendant has fully accepted responsibility within the meaning of Guideline § 3E1.1(a), and that the offense level is 16 or higher prior to the application of any reduction for acceptance of responsibility pursuant to §3E1.1(a), the government will move for an additional one-level reduction in the offense level pursuant to Guideline §3E1.1(b) because defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal 14 and defendant's criminal history category is VI:

i. On or about December 21, 2010, in case number 10 CF 200, in the Circuit Court of Logan County, defendant was convicted of driving on a suspended driver's license and sentenced to 30 days' jail and 24 months' conditional discharge. Pursuant to Guideline §§ 4A1.1(c) and 4A1.2(c), this conviction results in 1 criminal history point.

ii. Because defendant committed the instant offense while defendant was on conditional discharge for the conviction described in paragraph i, 2 criminal history points are added pursuant to Guideline § 4A1.1(d)

iii. On or about February 23, 2010, in case number 09 TR 4185, in the Circuit Court of DeKalb County, defendant was convicted of driving on a suspended driver's license and sentenced to 30 days' jail. Pursuant to Guideline §§ 4A1.1(c) and 4A1.2(c), this conviction results in 1 criminal history point.

iv. On or about July 19, 2007, in case numbers 06 CM 4744 and 06 TR 33133, in the Circuit Court of Winnebago County, defendant was convicted of resisting a peace officer and driving on a suspended driver's license and sentenced to 28 days' jail and 12 months' conditional discharge. Pursuant to Guideline § 4A1.2(c), this conviction results in 0 criminal history points.

v. On or about March 15, 2007, in case number 04 TR 73702, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to 12 months' conditional discharge. Pursuant to Guideline § 4A1.2(c), this conviction results in 0 criminal history points.

vi. On or about March 30, 2005, in case number 03 TR 9261, in the Circuit Court of Boone County, defendant was convicted of driving on a suspended driver's license and sentenced to 40 days' jail. Pursuant to Guideline §§ 4A1.1(c) and 4A1.2(c), this conviction results in 1 criminal history point.

vii. On or about January 18, 2005, in case number 02 CM 8623, in the Circuit Court of Winnebago County, defendant was convicted of theft and sentenced to 3 weeks' court supervision. Pursuant to Guideline § 4A1.1(c), this conviction results in 1 criminal history point.

viii. On or about April 28, 2004, in case number 03 TR 58852, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to fines and costs. Pursuant to Guideline § 4A1.2(c), this conviction results in 0 criminal history points.

ix. On or about December 12, 2002, in case number 02 TR 54305, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to 120 days' jail and 12 months' conditional discharge. Pursuant to Guideline § 4A1.2(b), this conviction results in 2 criminal history points.

x. On or about December 12, 2002, in case number 02 TR 45722, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to 120 days' jail and 12 months' conditional discharge. Pursuant to Guideline § 4A1.2(b), this conviction results in 2 criminal history points.

xi. On or about December 12, 2002, in case number 02 TR 26331, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to 120 days' jail and 12 months' conditional

discharge. Pursuant to Guideline § 4A1.2(b), this conviction results in 2 criminal history points.

xii. On or about October 17, 2002, in case number 01CF1893, in the Circuit Court of Winnebago County, defendant was sentenced to possession with intent to distribute cocaine and sentenced to 180 days' jail and 48 months' probation. Pursuant to Guideline § 4A1.1(b), this conviction results in 2 criminal history points. Also on October 17, 2002, in case numbers 01CM5938 and 01CM5937, defendant was convicted of resisting a police officer and possession of marijuana and sentenced to 18 months' probation. Pursuant to Guideline § 4A1.2(c), these convictions result in 0 criminal history points.

xiii. On or about May 17, 2002, in case number 01 TR 37077, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to 45 days' jail and 12 months' conditional discharge. Pursuant to Guideline § 4A1.1(c), this conviction results in 0 criminal history points.

xiv. On or about March 23, 2001, in case number 00TR53793, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to 45 days' jail and 12 months' conditional discharge. Pursuant to Guideline § 4A1.2(e)(2), this conviction results in 0 criminal history points.

xv. On or about March 23, 2001, in case numbers 00TR20262 and 00TR20261, in the Circuit Court of Winnebago County, defendant was convicted of

driving on suspended driver's license and operating an uninsured motor vehicle, respectively, and sentenced to 45 days' jail and 12 months' conditional discharge. Pursuant to Guideline § 4A1.2(e)(2), these convictions result in 0 criminal history points.

xvi. On or about April 12, 2000, in case numbers 00TR11903 and 00TR11902, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and operating an uninsured motor vehicle, respectively, and sentenced to fines and costs. Pursuant to Guideline § 4A1.2(e)(2), these convictions result in 0 criminal history points.

xvii. On or about January 20, 2000, in case number 98CF1881, in the Circuit Court of Winnebago County, defendant was convicted of possession of cocaine and sentenced to 30 months' probation. Pursuant to Guideline § 4A1.2(e)(2), this conviction results in 0 criminal history points.

xviii. On or about March 12, 1999, in case number 99TR2975, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and sentenced to fines and costs. Pursuant to Guideline § 4A1.2(e)(2), this conviction results in 0 criminal history points.

xix. On or about September 16, 1999, in case numbers 98TR70974 and 98TR70973, in the Circuit Court of Winnebago County, defendant was convicted of fleeing/attempt to elude and driving on a suspended driver's license, respectively, and sentenced to 14 days' jail and 12 months' conditional discharge. Pursuant to Guideline § 4A1.2(e)(2), these convictions result in 0 criminal history points.

xx. On or about June 19, 1998, in case numbers 98TR19781 and 98TR19780, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and operating an uninsured motor vehicle, respectively, and sentenced to fines and costs. Pursuant to Guideline § 4A1.2(e)(2), these convictions result in 0 criminal history points.

xxi. On or about April 29, 1998, in case numbers 98TR6209 and 98TR6208, in the Circuit Court of Winnebago County, defendant was convicted of driving on a suspended driver's license and operating an uninsured motor vehicle, respectively, and sentenced to fines and costs. Pursuant to Guideline § 4A1.2(e)(2), these convictions result in 0 criminal history points.

d. Anticipated Advisory Sentencing Guidelines Range.

Therefore, based on the facts now known to the government, the government contends, and defendant reserves the right to disagree, that the anticipated offense level is 32, which, when combined with the anticipated criminal history category of VI, results in an anticipated advisory Sentencing Guidelines range of 210 to 262 months' imprisonment. However, because the statutory maximum term of imprisonment for a violation of 18 U.S.C. § 922(g) is not more than 10 years' imprisonment, *see* 18 U.S.C. § 924(a)(2), defendant's anticipated advisory Sentencing Guidelines range is 120 months' imprisonment, in addition to any supervised release, and fine the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions

upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The government agrees to recommend that the Court impose a sentence of imprisonment within the applicable guidelines range and to make no further recommendation concerning what sentence of imprisonment should be imposed.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

13. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining count of the indictment as to defendant.

Forfeiture

14. Pursuant to 18 U.S.C. § 924(d)(1), defendant has subjected personal property to forfeiture, namely an SKS Norinco semi-automatic rifle with an obliterated serial number and sixteen rounds of SADU 07 7.62 caliber ammunition ("property"). By entry of a guilty plea to Count One of the indictment, defendant acknowledges that the property identified above is subject to forfeiture.

15. Defendant agrees to the entry of a forfeiture judgment against the property identified above, in that this property is subject to forfeiture. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture relinquishing any right of

ownership he has in the property and further agrees to the seizure of the property so that the property may be disposed of according to law.

16. Defendant understands that forfeiture of this property shall not be treated as satisfaction of any fine, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

17. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 12 CR 50032.

18. This Agreement concerns criminal liability only. Except as expressly set forth in this 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 Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

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

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count

separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. 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.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a 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 in his own behalf.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant

understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

20. 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 Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

21. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the 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 Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

22. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

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

Conclusion

24. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

25. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the

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

26. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

27. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

GARY S. SHAPIRO
United States Attorney

ROBERT J. GRAY
Defendant

SCOTT R. PACCAGNINI
Assistant U.S. Attorney

DANIEL J. CAIN
Attorney for Defendant