

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CASE NO. 16-CR-00067-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROCKY ALLEN,

Defendant.

**DEFENDANT'S WRITTEN PLEA OF GUILTY AND
STATEMENT OF FACTS RELEVANT TO SENTENCING**

Mr. ROCKY ALLEN, hereinafter Mr. Allen, by and through counsel, Timothy P. O'Hara, Assistant Federal Public Defender, submits the following Written Plea of Guilty and Statement of Facts Relevant to Sentencing.

I. PLEA OF GUILTY

Mr. Allen intends to plead guilty to Counts 1 and 2 of the Indictment charging violations of 18 U.S.C. § 1365(a), Tampering with a Consumer Product and 21 U.S.C. § 843(a)(3), Obtaining a Controlled Substance by Deception.

Consistent with that plea of guilty, Mr. Allen should be entitled to receive the full downward adjustment for acceptance of responsibility pursuant to the advisory sentencing guidelines. This plea is submitted to the Court for its consideration pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Court's Exhibit

II. ELEMENTS OF THE OFFENSES

The elements of 18 U.S.C. § 1365(a) are as follows:

- (1) With reckless disregard for and extreme indifference to the risk that another person would be placed in danger of death or bodily injury;
- (2) The defendant tampered with a consumer product or the container for such product, or attempted to do so; and
- (3) Which consumer product affected interstate or foreign commerce.


The elements of 21 U.S.C. § 843(a)(3) are as follows:

- (1) The defendant knowingly or intentionally;
- (2) Obtained a controlled substance;
- (3) By means of deception or subterfuge.

III. STATUTORY PENALTIES

The maximum statutory penalty for Count One, charging a violation of 18 U.S.C. § 1365(a), Tampering with a Consumer Product, is a term of imprisonment of not more than ten (10) years, not more than \$250,000 fine, or both a fine and imprisonment; not more than three (3) years supervised release; a \$100 Special Assessment fee; and restitution as determined by the Court. The offense is a Class C Felony. See 18 U.S.C. §3582(b)(3). There is no applicable statutory minimum sentence of imprisonment.

The maximum statutory penalty for the violation of Count Two, charging a violation of 21 U.S.C. § 843(a)(3), Obtaining a Controlled Substance by Deceit, is a term of imprisonment of not more than four (4) years, not more than \$250,000 fine, or both a fine and imprisonment; not more than ^{one}~~three~~ (3) years supervised release; a \$100

TPG 2 

Special Assessment fee; and restitution as determined by the Court. The offense is a Class ~~E~~¹ Felony. There is no applicable statutory minimum sentence of imprisonment.

The Court will impose a separate sentence on each count of conviction and may, to the extent permitted by law, impose such sentences either concurrently or consecutively to each other.

IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury. Also, a violation of the conditions of probation or supervised release may result in a separate prison sentence.

V. FACTUAL BASIS

Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which are relevant, pursuant to § 1B1.3, for computing the appropriate guideline range.

The statement of facts herein does not preclude the defendant or the government from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the guideline computation (§ 1B1.3) or to sentencing in general (§ 1B1.4).

Mr. Allen agrees that the following is true:

Mr. Allen was employed as a Surgical Technologist at Swedish Hospital in Denver, Colorado, from August 2015 to January 22, 2016. Mr. Allen, ~~neither in his capacity as a Surgical Technologist or otherwise~~, was not authorized to possess fentanyl, an opioid and a Schedule II narcotic. TPO
DA

On January 22, 2016, at Swedish Hospital, numerous members of a surgical team were present in an operating room with a patient on the operating table. Mr. Allen entered the operating room although he was not assigned to staff that particular case. On that date and at that time, without permission and/or authority and acting with deception, Mr. Allen took a syringe originally loaded with 5 mL of 50 mcg/mL fentanyl ~~from~~ and replaced it with another syringe containing saline solution (NA+ and CL-). Mr. Allen had falsely labeled the replacement syringe with a sticker identifying the contents of the syringe as fentanyl. By switching the syringes, Mr. Allen introduced a syringe falsely purporting to contain fentanyl into interstate commerce for use on a patient of the hospital.¹ The replacement syringe was not used on the patient because a Neuro Spine Coordinator assigned to the operating room witnessed Mr. Allen switch the syringes and alerted the anesthesiologist not to use it. TPO
DA

As part of the hospital's internal investigation, on January 22, 2016, Mr. Allen voluntarily submitted to a urine screen. Testing determined the presence of fentanyl,

¹ The fentanyl inside of the syringe in question was purchased by Swedish Hospital from an out-of-state agency and crossed state lines prior to its arrival at Swedish Hospital.

norfentanyl, and marijuana. The contents of the replacement syringe were tested and were consistent with saline solution. ⊗ TPO RA

Mr. Allen admits that he tampered with a consumer product affecting interstate commerce, acting with reckless disregard for and extreme indifference to the risk that another person would be placed in danger of bodily injury. Also, Mr. Allen admits that he knowingly obtained a controlled substance by means of deceit.

VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

Mr. Allen understands that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. Mr. Allen estimates the advisory guideline range as follows:

A. The base guideline is § 2N1.1, with a base offense level of **25**.²

B. There are no victim-related, role-in-offense, obstruction and/or multiple count adjustments which apply.

C. The adjusted offense level is therefore **25**.

D. Acceptance of Responsibility: Mr. Allen should receive a **3** level adjustment for acceptance of responsibility. The resulting offense level therefore would be **22**.

² Since the two offenses group (§3D1.2(a)), and the level of Count Two (§2D2.2) is more than nine levels below the offense level of Count One (§2N1.1), the base offense level as calculated herein is based on the offense level of Count One. See §3D1.4(c).

E. Criminal History Category: Mr. Allen understands that the criminal history computation is tentative. The criminal history category is determined by the Court based on Mr. Allen's prior convictions. Based on information currently available to the parties, it is estimated that Mr. Allen's **Criminal History Category would be II**.

F. The career offender/criminal livelihood/armed career criminal adjustments would not apply.

G. Imprisonment: The advisory guideline range resulting from these calculations is **46-57 months**. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level estimated above could conceivably result in a range from **41 months** (bottom of Category I) to **105 months** (top of Category VI).

The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.

H. Fine: Pursuant to guideline § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be \$15,000.00 to \$150,000.00, plus applicable interest and penalties.

I. Supervised Release: Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is to be at least one year and not more than three years.

J. Restitution: There is no restitution expected in this case.

Mr. Allen understands that although the Court will consider the foregoing estimate, the Court must make its own determination of the guideline range. In doing so,

the Court is not bound by estimate herein.

No estimate regarding the guideline range precludes Mr. Allen or the government from asking the Court, within the overall context of the guidelines, to depart from the guideline range at sentencing if Mr. Allen or the government believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate regarding the guideline range precludes Mr. Allen or the government from asking the Court to vary from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. § 3553 factors.

Mr. Allen understands that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

VII. CONCLUSION


There is no plea agreement in this case and also there are no promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this plea of guilty, Mr. Allen has not relied, or is not relying, on any terms, promises, conditions, or assurances not expressly stated in herein.

Date: 7/12/16



Rocky Allen
Defendant

Date: 7/12/16



Timothy P. O'Hara
Attorney for Defendant