



U.S. Department of Justice

*United States Attorney
District of New Jersey*

*PAUL J. FISHMAN
United States Attorney*

*Matthew T. Smith
Assistant United States Attorney*

*CAMDEN FEDERAL BUILDING & U.S. COURTHOUSE 856/757-5026
401 Market Street, 4th Floor Fax: 856/968-4917
Post Office Box 2098 Direct Dial: 856/757-5104
Camden NJ 08101-2098*

August 25, 2015

VIA EMAIL and FIRST CLASS MAIL

Timothy Anderson, Esq.
The Law Offices of Timothy R. Anderson LLC
225 Broad Street
Red Bank, NJ 07701

Re: Plea Agreement with Kirby C. Santos

Dear Mr. Anderson:

This letter sets forth the plea agreement between your client, Kirby C. Santos, and the United States Attorney for the District of New Jersey (“this Office”). This offer will remain open until Friday, September 18, 2015 at 5:00 p.m., and, if an executed agreement is not received in this Office on or before that date, this offer will expire.

CHARGE

Conditioned on the understandings specified below, this Office will accept a guilty plea from Kirby C. Santos to a one-count Information, charging him with conspiracy to export defense articles, *i.e.*, firearm parts, from the United States to The Philippines without first obtaining the required export license from the United States Department of State and smuggling in violation of Title 18 U.S.C. § 371. If Kirby C. Santos enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all the terms of this agreement, this office will not initiate any further criminal charges against Kirby C. Santos for conspiring to export defense articles from 2008 through October 2013.

However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of the guilty plea does not remain in full force and effect, the defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Kirby C. Santos, may be commenced against him, notwithstanding the expiration of the limitations period after Kirby C. Santos signs the agreement.

SENTENCING

The violation of 18 U.S.C. § 371, conspiracy to commit an offense against then United States, *i.e.*, exporting defense articles without first obtaining a license from the State Department, in violation of the Arms Export Control Act (22 U.S.C. § 2778) and smuggling goods from the United States (18 U.S.C. § 554), to which Kirby C. Santos agrees to plead guilty, carries a maximum prison sentence of five (5) years and a maximum fine equal to \$250,000. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Kirby C. Santos is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Kirby C. Santos ultimately will receive.

Further, in addition to imposing any other penalty on Kirby C. Santos, the sentencing judge: (1) will order Kirby C. Santos to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Kirby C. Santos to pay restitution pursuant to 18 U.S.C. § 3663 *et seq.*; (3) may order Kirby C. Santos, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; and (4) pursuant to 18 U.S.C. § 3583, may require Kirby C. Santos to serve a term of supervised release of not more than three (3) years, which will begin at the expiration of any term of imprisonment imposed. Should Kirby C. Santos be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Kirby C. Santos may be sentenced to not more than two (2) years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on

post-release supervision, and may be sentenced to an additional term of supervised release.

RIGHTS OF THIS OFFICE REGARDING SENTENCING

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Kirby C. Santos by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Kirby C. Santos's activities and relevant conduct with respect to this case.

STIPULATIONS

This Office and Kirby C. Santos agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Kirby C. Santos from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

WAIVER OF APPEAL AND POST-SENTENCING RIGHTS

As set forth in Schedule A, this Office and Kirby C. Santos waive certain rights to file an appeal, collateral attack, writ or motion after sentencing,

including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

IMMIGRATION CONSEQUENCES

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offenses will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

OTHER PROVISIONS

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Kirby C. Santos. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against Kirby C. Santos.


No provision of this agreement shall preclude Kirby C. Santos from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that Kirby C. Santos received constitutionally ineffective assistance of counsel.

NO OTHER PROMISES


This agreement constitutes the plea agreement between Kirby C. Santos and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney


By: Matthew T. Smith
Assistant U.S. Attorney

APPROVED:




R. Stephen Stigall
Attorney-In-Charge

I have received this letter from my attorney, Timothy Anderson, Esq. I have read this letter. My attorney and I have discussed the letter and all of its provisions, including the provisions addressing the charges, sentencing, the stipulations, waiver, and immigration consequences. I understand the letter fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:


_____ Date: 9/1/15
Kirby C. Santos

I have discussed with my client this letter and all of its provisions, including the provisions addressing the charges, sentencing, the stipulations, waiver, and immigration consequences. My client understands the letter fully and wants to plead guilty pursuant to this plea agreement.


_____ Date: 9/1/15
Timothy Anderson, Esq.

Plea Agreement With Kirby C. Santos

Schedule A

1. This Office and Kirby C. Santos recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Kirby C. Santos nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Kirby C. Santos within the Guidelines range that results from the total Guidelines offense level set forth below, with the exception that Kirby C. Santos reserves the right to move for a downward departure or variance at the time of sentencing and the Government reserves the right to oppose such a motion.
2. The version of the United States Sentencing Guidelines ("U.S.S.G.") effective November 1, 2014 applies in this case.
3. The applicable guideline provision for the one-count Information (conspiracy to commit an offense against the United States, *i.e.*, to violate the Arms Export Control Act and smuggling) is set forth in U.S.S.G. §§ 2X1.1(a) and 2M5.2. Here, the guideline carries a base offense level of 26.¹
4. As of the date of this letter, Kirby C. Santos has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Kirby C. Santos's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).
5. As of the date of this letter, Kirby C. Santos has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting this Office to avoid preparing for trial and permitting this Office and the court to allocate their resources efficiently. At sentencing, this Office will move for a further 1-point reduction in Kirby C. Santos's offense level pursuant to U.S.S.G. § 3E1.1(b) if the following conditions are met: (a) Kirby C. Santos enters a plea pursuant to this agreement, (b) this Office in its discretion determines that Kirby C. Santos's acceptance of responsibility has continued through the date of sentencing and Kirby C. Santos therefore qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and (c) Kirby C. Santos's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater.

¹ No decrease under U.S.S.G. § 2X1.1(b)(2) is warranted here as Kirby C. Santos completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offenses.

6. In accordance with the above, the parties agree that the adjusted Guideline offense level applicable to Kirby C. Santos will be 23 (collectively, “the agreed total Guidelines offense level”).

7. The parties agree not to seek or argue for any upward or downward departure, adjustment, or variance not set forth herein. Kirby C. Santos specifically reserves the right to move for a downward departure or variance at the time of sentencing. The Government reserves the right to oppose such a motion. With the exception of a potential departure or variance motion by the defendant, the parties agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level of 23 is reasonable.

8. Kirby C. Santos knows that he has, and voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 23. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 23. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. None of these provisions, however, shall preclude Kirby C. Santos from pursuing, when permitted by law, an appeal, collateral attack, writ, or motion claiming that Kirby C. Santos’s guilty plea or sentence resulted from constitutionally ineffective assistance of counsel.

9. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.