

Chief Magistrate Judge Willie J. Epps, Jr.
Change of Plea Hearing Colloquy

1. INTRODUCTION

This is United States of America vs. _____.

Case Number _____.

Counsel for the Government, please enter your appearance for the record.

Counsel for the Defendant, please enter your appearance for the record.

2. INTERPRETER [if applicable]

Do you swear or affirm that you will justly, truly, fairly, and impartially act as an interpreter in the case now in hearing before the court?

Mr./Ms. _____, are you able to hear the interpreter?

Is [e.g. Spanish] your primary language?

Can you understand the interpreter?

Do you speak any English?

Are you requesting the assistance of an interpreter?

If you are unable to hear the interpreter, or if you do not understand something that is said, will you please let me know?

3. CONSENT

This case comes before me as a U.S. Magistrate Judge pursuant to **this written consent form** signed by both parties allowing this Court, under local rule, to accept felony guilty pleas and thereafter make a Report and Recommendation to the District Judge. Do the parties agree that is the posture of this case? Without objection, I will enter this signed consent into the record.

The Court has been advised there will be a plea of guilty to Count(s) ____, which charge(s) _____ . Is that correct?

Before accepting your guilty plea, Mr./Ms. _____, there are a number of questions the Court must ask you to assure that it is a valid plea. If you do not understand any of the questions, or at any time wish to consult with your attorney, please say so.

4. PLACE WITNESS UNDER OATH

Do you swear that the testimony you are about to give in the case now in hearing shall be the truth, whole truth and nothing but the truth so help you God?

Do you understand that you are now under oath and if you answer any of my questions falsely, you may later be charged and prosecuted for perjury or making a false statement?

What is your full name?

Where were you born?

How old are you?

How far did you go in school?

Have you been treated recently for any mental illness or addiction to narcotic drugs of any kind?

Have you recently been under the care of a physician or a psychiatrist?

Are you currently under the influence of any drug, medication, or alcoholic beverage of any kind?

Do you understand what is happening today?

Does either counsel have any doubt as to the Defendant's competence to plead at this time?

Very well. Based on the Defendant's responses to my questions, my own personal observations of the Defendant, and counsel's representations, I find that the Defendant is competent to understand these proceedings and to enter a knowing plea.

5. SATISFIED WITH ATTORNEY

Have you had ample opportunity to discuss your case with your attorney, who is here with you now?

Are you fully satisfied with the counsel, representation, and advice given to you in this case by your attorney, Mr./Ms. _____?

Did he/she do everything you asked him/her to do?

6. WAIVER OF RIGHTS

Let's talk about the constitutional rights you are waiving today by pleading guilty. **The most important right is your right to a jury trial.** Under the Constitution and laws of the United States, you have an absolute right to that trial by jury. No one, including myself as Judge of this Court, your own attorney, the Government attorney, or any agents for the Government, can deny you your constitutional right to a jury trial on the charges contained in the indictment, and this case will proceed on to trial before the District Judge as scheduled unless you enter a guilty plea here today. By pleading guilty, you are waiving your right to be presumed innocent until your guilt has been established beyond a reasonable doubt at trial, waiving your right to be represented at trial by counsel, waiving your right to confront and cross examine witnesses the government calls, waiving your right to testify and present evidence, and waiving your right to call witnesses on your behalf. Do you understand that? Having discussed your rights with you, do you still wish to plead guilty?

7. INDICTMENT OR INFORMATION

Have you received a copy of the indictment pending against you—that is, the written charges made against you in this case—and have you fully discussed those charges, and the case in general, with your counsel?

Do you have a copy of the indictment in front of you?

Prosecutor - Would you explain precisely and in a meaningful manner the essential elements of the offense charged to which the Defendant intends to plead guilty?

Do you understand the elements for the charge?

Prosecutor – Please state the possible punishment for Count One.

(If there is a mandatory minimum penalty or mandatory term of supervised release, the Court must also provide this explanation.)

(If more than one count to which Defendant intends to plead, follow same procedure with respect to each count.)

(If there are multiple counts, stack the counts in a consecutive manner and advise the Defendant as to potential statutory maximum imprisonment and fine if each were imposed consecutively.)

Do you understand the statutory maximum and minimum penalties?

Do you understand that if you violate the conditions of supervised release, you can be given additional time in prison?

8. PLEA AGREEMENT

I have had presented to me a document entitled “Plea Agreement”. Is this your signature?

Have you read this document?

Did you discuss it with your attorney before you signed it?

Does the plea agreement represent in its entirety any understanding you have with the government?

****Court to go through Plea Agreement and explain essential parts of Plea Agreement.

Is that your understanding of your agreement with the Government?

Do you understand the terms of the plea agreement?

Has anyone made any promise or assurance that is not in the plea agreement to persuade you to accept this agreement?

Has anyone threatened you in any way to persuade you to accept this agreement?

Do you understand that the Court is not bound by this agreement, which is a contract between, and only between, you and the Government?

Do you understand that the terms of the plea agreement are merely recommendations to the court—that the Court can reject the recommendations without permitting you to withdraw your plea of guilty and impose a sentence that is more severe than you may anticipate, up to the maximum permitted by law?

[DEFENSE COUNSEL], were all formal plea offers by the government conveyed to the Defendant?

I find the Plea Agreement to be in proper form and direct that it be filed of record.

9. FELONY AND LOSS OF RIGHTS

Do you understand that the offense to which you are pleading guilty is a felony offense, that if your plea is accepted you will be adjudged guilty of that offense, and that such adjudication may deprive you of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess any kind of firearm?

(NOTE SPECIAL ADVISEMENTS IF A NON-CITIZEN OR A SEX OFFENSE: SEE BENCH BOOK P. 67)

10. SENTENCING GUIDELINES

Do you understand that your sentence will be determined by a combination of advisory Sentencing Guidelines, possible authorized variances from those guidelines, and other statutory sentencing factors?

Have you and your attorney talked about how these advisory Sentencing Guidelines might apply to your case?

Do you understand that the court will not be able to determine the advisory guideline range for your case until after the presentence report has been completed and you and the government have had an opportunity to challenge the reported facts and the application of the guidelines recommended by the probation officer, and that the sentence ultimately imposed may be different from any estimate your attorney may have given you?

Do you also understand that, after your initial advisory guideline range has been determined, the court has the authority in some circumstances to vary upward or downward from that range, and will also examine other statutory sentence factors, under 18 U.S.C. §

3553(a), that may result in the imposition of a sentence that is either greater or lesser than the advisory guideline sentence?

Do you also understand that parole has been abolished and that if you are sentenced to prison you will not be released on parole?

Do you understand that under some circumstances you or the government may have the right to appeal any sentence that the District Judge may impose?

11. Factual Basis for Guilty Plea

Prosecutor - Please tell us what your evidence would be if we were on trial.

Defense Counsel - Do you agree that would be the Government's evidence in this case?

Defendant - Do you agree with the Government's summary of what you did? Did you do what he said you did?

(NOTE: Ask Defendant "pointed" questions about the offense to make certain Defendant acknowledges his guilt in open court.)

12. The Guilty Plea

Has anyone attempted in any way to force you to plead guilty or otherwise threatened you?

Has anyone made any promises or assurances of any kind to get you to plead guilty (other than those that are in the plea agreement)?

Are you pleading guilty because you are guilty? And are you doing this of your own free will? What is your plea?

I hereby find that there is indeed a factual basis for the plea of guilty, and [DEFENDANT'S NAME], since you acknowledge that you are in fact guilty as charged in Count(s) _____, since you know your right to a trial by jury, what the maximum possible punishment is, and since you are voluntarily pleading guilty, I accept your guilty plea. This Court will file a Report and Recommendation with the District Judge recommending an entry of judgment on your plea of guilty.

13. Pre-Sentence Investigation Report and Sentencing Date

A pre-sentence investigation report is hereby ordered. [DEFENDANT'S NAME], it is in your best interest to cooperate with the probation officer in furnishing information for that report, since the report will be very important in the District Judge's decision as to what your sentence will be.

You and your counsel have a right and will have an opportunity to examine the report and to object and comment on it. Sentencing will be set before the Honorable _____, U.S. District Judge.

(If Defendant at liberty on bond) Does the Government have any objection to the present bond being continued to the date of sentencing?

14.CONCLUSION

[DEFENDANT'S NAME], do you have any questions about anything we've discussed today? Is there anything else that needs to be addressed at this time from either party?

This case is in recess until the date of sentencing.