

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA

v.

DAVID R. LEWIS

) DOCKET NO.: 3:20-CR-297
)
) **PLEA AGREEMENT**
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)
)

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, and Corey R. Amundson, Chief of the Criminal Division's Public Integrity Section, and the defendant, David R. Lewis, in person and through counsel, Joshua B. Howard, and respectfully inform the Court that they have reached an agreement pursuant to Federal Rule of Criminal Procedure ("Rule") 11. References to the United States herein shall mean the United States Attorney for the Western District of North Carolina and the Chief of the Criminal Division's Public Integrity Section.

I. Plea

1. The defendant agrees to waive indictment by a grand jury and plead guilty to Counts One and Two in the Bill of Information. The defendant admits to being in fact guilty as charged in Counts One and Two of the Bill of Information.

2. The defendant understands that the charging concessions made by the government were made in exchange for the defendant's agreement to plead guilty. The defendant further understands that his failure to comply with the terms herein will result in termination of this agreement. In the event of the defendant's failure to comply with the terms set forth in this agreement the government will be free to prosecute the defendant on any charges not brought in the above-referenced Bill of Information and the defendant hereby agrees that such additional charges will not be barred on the basis of Double Jeopardy or on any other basis.

3. The defendant understands that each and every provision set forth below is a material term of the Plea Agreement. Each of the following constitutes a breach of the Plea Agreement: (a) the defendant's failure to fully comply with any provision of the Plea Agreement; (b) the defendant's attempt to withdraw the guilty plea; or (c) the defendant's violation of any federal, state or local law or any order of any court, including any condition of pre-trial or pre-sentence, or post-sentence release.

4. In addition to any other remedy available in law, the defendant's breach: (a) will relieve the United States of its obligations under the Plea Agreement, without relieving the defendant of the defendant's obligations under the Plea Agreement or permitting the defendant to withdraw the guilty plea; (b) may constitute the defendant's failure to accept responsibility under U.S.S.G. § 3E1.1; and (c) will permit the United States to proceed on any dismissed, pending, superseding or additional charges and, if applicable, any Information pursuant to 21 U.S.C. § 851.

II. Sentence

5. The defendant is aware that the maximum sentences for each count are as follows:

Count One: a violation of 18 U.S.C. § 1014 (*False Statement to a Bank*); a maximum term of thirty (30) years' imprisonment, \$ 1,000,000 fine, or both, and no more than five (5) years' supervised release.

Count Two: a violation of 26 U.S.C. § 7203 (*Failure to File a Tax Return*); a maximum term of imprisonment of one (1) year, a \$25,000 fine, or both, and no more than one year of supervised release.

6. The defendant understands that a violation of supervised release may subject the defendant to an additional period of incarceration.

7. The defendant is aware that the Court: (a) will consider the advisory *United States Sentencing Guidelines (U.S.S.G.)* in determining the sentence; (b) has not yet determined the sentence, and any estimate of the likely sentence is a prediction rather than a promise; (c) has the final discretion to impose any sentence up to the statutory maximum for each count; and (d) is not bound by recommendations or agreements by the United States. Knowing this, the defendant understands that the defendant may not withdraw the plea as a result of the sentence imposed.

8. Pursuant to Rule 11(c)(1)(B), the parties agree that they will jointly recommend that the Court make the following findings and conclusions as to the U.S.S.G.:

a. The amount of loss that was known to or reasonably foreseeable by the defendant was \$6,500 or less. The defendant understands that "loss" under U.S.S.G. §§ 2B1.1 or 2T4.1 may be different from, greater, or lesser than restitution under 18 U.S.C. § 3556.

b. The United States agrees that if the defendant is found by the Court to have accepted responsibility under U.S.S.G. § 3E1.1(a), the United States will acknowledge that the defendant's entry of a guilty plea is timely for purposes of U.S.S.G. § 3E1.1(b), if that section applies to defendant.

c. The parties agree that the following apply to the offense to which the defendant is pleading guilty:

Count One (False Statements to a Bank):

Base Offense level [U.S.S.G. § 2B1.1(a)(1)]: 7

Specific Offense Characteristics

- U.S.S.G. § 2B1.1(b)(1)(A):
 - Loss less than \$6,500 (+0)

Adjusted Offense Level: 7

Acceptance of Responsibility [U.S.S.G. § 3E1.1(a)]	(-2)
Offense level:	5
<u>Count Two (Failure to File):</u>	
Base Offense level [U.S.S.G. § 2T1.1]:	6
Specific Offense Characteristics	(+0)
Adjusted Offense Level:	6
Acceptance of Responsibility [U.S.S.G. § 3E1.1(a)]	(-2)
Offense level:	4
COMBINED OFFENSE LEVEL:	5 (0-6 months)

d. Unless otherwise set forth herein, the parties agree that they will make the above recommendations as to the offense level, and will not seek any other enhancements or reductions to the offense level.

e. Having fully considered the factors set forth in 18 U.S.C. § 3553(a), the parties agree that the appropriate sentence is one within “the applicable guideline range” (U.S.S.G. § 5C1.1) determined by the district court at sentencing, and that a sentence within that range is sufficient but not greater than necessary to achieve the purposes set forth in that provision. Neither party will seek a departure or variance from that range. Furthermore, the United States agrees to recommend a sentence that does not include an active term of incarceration.

9. The defendant agrees to the following with respect to monetary penalties, assets, and financial disclosures:

a. To entry of an order for monetary penalties due and payable immediately, such penalties including full restitution, regardless of the resulting loss amount, to all victims directly or indirectly harmed by the defendant’s “relevant conduct,” as defined by U.S.S.G. § 1B1.3, including conduct pertaining to any dismissed counts or uncharged conduct, regardless of whether such conduct constitutes an “offense” under 18 U.S.C. §§ 2259, 3663 or 3663A. Further, Defendant agrees that, should the Court impose a payment schedule, the payment schedule sets forth minimum payments and does not foreclose additional collection of restitution.

b. To forfeit, via an administrative or judicial proceeding, all assets listed in the charging document and, if applicable, Bill of Particulars, or seized during this investigation or a related investigation; to withdraw any claims and petitions for such assets; to entry of a money judgment in the amount specified in the charging document or Bill of Particulars; to a Magistrate Judge conducting forfeiture proceedings; to waive any

rights to notice of forfeiture and to pronouncement of forfeiture at sentencing; and to abandonment of the defendant's interests, if any, in any seized assets not forfeited.

c. To truthfully complete under penalty of perjury, within thirty days of the execution of this Plea Agreement, a financial statement provided by the United States Attorney's Office and to update the statement within seven days of any material change, and to make full disclosure of all current and projected assets to the United States Probation Office before sentencing and again before termination of supervised release or probation, such disclosures to be shared with the United States Attorney's Office.

d. That monetary penalties will be subject to immediate enforcement as provided in 18 U.S.C. § 3613; that monetary penalties and the forfeiture money judgment will be submitted to the Treasury Offset Program so that payments to the defendant may be applied to federal debts; and to satisfaction of the 21 U.S.C. § 853(p) factors so that the forfeiture money judgment may be satisfied via forfeiture of substitute property.

e. To participation in the Inmate Financial Responsibility Program and to waiver of any challenge relating to defendant's participation in the Program.

III. Procedure

10. The defendant agrees that a federal Magistrate Judge may conduct the hearing required by Rule 11.

11. The defendant stipulates that there is a factual basis, as required by Rule 11(b)(3), for the plea of guilty. The defendant further stipulates that the defendant has read and understood the Factual Basis filed with this Plea Agreement pursuant to Local Criminal Rule 11.2 and that such Factual Basis may be used by the Court, the United States Probation Office, and the United States without objection by the defendant for any purpose, including to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a).

12. The defendant also agrees that the Factual Basis filed with the Plea Agreement does not necessarily represent all conduct relevant to sentencing; the United States may submit to the United States Probation Office a "Statement of Relevant Conduct" pursuant to Local Criminal Rule 32.4; and the United States may present to the Court additional relevant facts prior to or at sentencing.

IV. Waivers

13. The defendant is aware that the law provides certain limited rights to withdraw a plea of guilty, has discussed these rights with defense counsel, and knowingly and voluntarily waives any right to withdraw the plea once the Magistrate Judge has accepted it.

14. The defendant acknowledges that Rule 11(f) and Fed. R. of Evid. 408 and 410 are rules that ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions. The defendant knowingly and voluntarily waives these rights and agrees that any statements made in the course of the defendant's guilty plea or this Plea Agreement (in part or in

its entirety, at the sole discretion of the United States) and the Factual Basis will be admissible against the defendant for any purpose in any criminal or civil proceeding if the defendant fails to enter, or attempts to withdraw, the defendant's guilty plea, or in any post-conviction proceeding challenging the knowing or voluntary nature of the guilty plea.

15. The defendant agrees that by pleading guilty, the defendant is knowingly and voluntarily waiving the right: (a) to be tried by a jury; (b) to be assisted by an attorney at trial; (c) to confront and cross-examine witnesses; and (d) not to be compelled to incriminate himself.

16. The defendant has discussed with defense counsel: (1) defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and/or sentence through an appeal or post-conviction action after entering into a Plea Agreement; (b) whether there are potential issues relevant to an appeal or post-conviction action; and (c) the possible impact of any such issue on the desirability of entering into this Plea Agreement.

17. The defendant, in exchange for the concessions made by the United States in this Plea Agreement, waives all rights to contest the conviction and sentence in any appeal or post-conviction action. Claims of (1) ineffective assistance of counsel and (2) prosecutorial misconduct, and those claims only, are exempt from the waiver. This waiver precludes the defendant from challenging his conviction or sentence on the basis of any other claim, including but not limited to any claim that the statute(s) to which the defendant is pleading guilty is or are unconstitutional and any claim that the admitted conduct does not fall within the scope of the statute(s).

18. The defendant agrees that the United States preserves all its rights and duties as set forth in 18 U.S.C. § 3742(b). Should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to the defendant's offense(s) and explicitly make such an amendment retroactive, the United States agrees that it will not assert this waiver as a bar to the defendant's filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2). However, if the defendant files such a motion, the United States reserves the right to oppose the motion on any other grounds, and reserves the right to assert this waiver as a bar to an appeal from the district court's decision regarding the motion.

19. The defendant knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

20. The defendant hereby waives any potential challenge to venue and expressly agrees to enter a plea of guilty to both offenses charged in the Bill of Information in the Western District of North Carolina.

V. Effects of Plea

21. The defendant understands that upon acceptance of the guilty plea, a judicial officer shall order the defendant to be detained, unless the judicial officer finds that the defendant satisfies one of the statutory exceptions to the detention presumption, permitting the defendant's release.

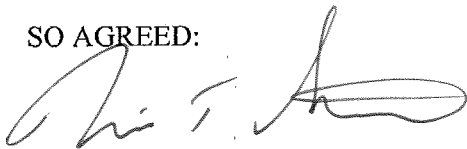
22. The defendant recognizes that pleading guilty may affect the defendant's immigration status if the defendant is not a citizen of the United States. The defendant understands that no one can predict with certainty the effect of the defendant's conviction(s) on the defendant's immigration status. The defendant nevertheless seeks to plead guilty, even if the consequence is the defendant's automatic removal from the United States.

VI. Conclusion

23. This Plea Agreement is effective and binding once signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this Plea Agreement at the date and time scheduled by the Court.

24. There are no agreements, representations, or understandings between the parties in this case, other than those explicitly set forth in this Plea Agreement, or as noticed to the Court during the plea colloquy and contained in writing in a separate document signed by all parties.

SO AGREED:



William Stetzer, First Assistant United States Attorney

DATED: 8/20/20



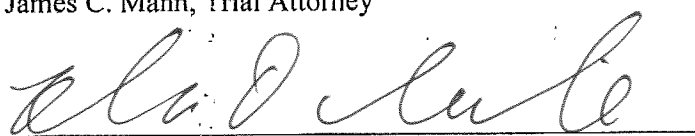
Dana O. Washington, Assistant United States Attorney

DATED: 8/20/20




for James C. Mann, Trial Attorney

DATED: 8/20/20



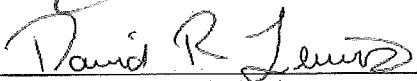
for Erica O'Brien Waymack, Trial Attorney

DATED: 8/20/20



Joshua B. Howard, Attorney for Defendant

DATED: 8/12/20



David R. Lewis, Defendant

DATED: 8/12/20