

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

UNITED STATES OF AMERICA

y.

JACK W. SHEPHERD

DOCKET NO. 1:07 CR 123-01

## PLEA AGREEMENT

NOW COMES the United States of America, by and through Gretchen C.F. Shappert, United States Attorney for the Western District of North Carolina, and the defendant, JACK W. SHEPHERD, in person and through counsel, GREGORY A. NEWMAN, and respectfully inform the Court that they have reached the following agreement:

## I. Plea

1. The defendant agrees to enter a voluntary plea of guilty to Count Two as set forth in the Superseding Bill of Indictment, and admits to being in fact guilty as charged in that count.
2. If the Court finds the defendant's plea to be voluntary and knowingly made, and accepts the plea, then the United States will move at the appropriate time to dismiss the remaining count against the defendant in the Superseding Bill of Indictment. The United States will also move to dismiss the counts against Harold Denver Shepherd and Jackie Dwayne Jenkins II.

## II. Sentence

3. The defendant is aware that the statutory maximum sentence for this count is as follows:

Count Two: a violation of Title 18 United States Code § 1955, up to a \$ 250,000 fine, and up to five year's imprisonment, or both, and a period of supervised release of up to three years.

4. The defendant understands that supervised release is a term of supervision that runs consecutively to any sentence of incarceration and that if the Court imposes a term of supervised release, the United States Probation Office will supervise him during that term and will require that he make regular reports and visits to its office. The defendant understands that a violation of the conditions of supervised release may subject him to an additional period of incarceration up to the maximum term of years imposed as supervised release.

5. The defendant is aware that the Court will consider the *United States Sentencing Guidelines [U.S.S.G.]* in determining the appropriate sentence and that the sentence will be without parole. The defendant is further aware that the Court has not yet determined the sentence, that any estimate from any source, including defense counsel, of the likely sentence is a prediction rather than a promise, and that the Court has the final discretion to impose any sentence up to the statutory maximum for this count. The defendant further understands that no recommendations or agreements by the United States are binding upon the Court.

6. With regard to the *United States Sentencing Guidelines*, the defendant and the United States, pursuant to Fed. R. Crim P. 11(c)(1)(B), stipulate and agree to the following:

a. The base offense level for Count Two is as follows:

**Base Offense Level [U.S.S.G. § 2E3.1]:**

**12**

In addition, the defendant should receive a 4 level enhancement pursuant to U.S.S.G. § 3B1.1(a) based upon his role in this offense.

b. Provided that the defendant acknowledges to the government, the Probation Office, and the Court the nature and extent of all relevant criminal conduct, the government will recommend a two-level reduction in offense level pursuant to U.S.S.G. § 3E1.1.

c. Provided that the defendant has timely provided information to the government concerning his involvement in the offense charged, or has timely notified authorities of an intention to plead guilty, the government will make a motion requesting an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b).

d. The United States, however, will not be required to make this recommendation if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official. Furthermore, the defendant understands that any reduction in offense level is ultimately for the Court's determination.

e. The defendant and the United States agree that the appropriate sentence is one within "the applicable guideline range" (U.S.S.G. § 5C1.1) and that neither party will seek a departure from that range, other than a possible motion for a downward departure filed by the United States on the basis of the defendant's substantial assistance.

f. The defendant understands and acknowledges, as previously acknowledged

in paragraph 5 above, that the defendant may not withdraw the plea based on the court's decision not to accept sentencing recommendations made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

g. The United States reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, the United States reserves the right to make any recommendation as to quantity and quality of punishment.

7. The parties agree that the Court shall set the amount of fine and shall consider the Fine Table in U.S.S.G. § 5E1.2 as advisory.

8. The defendant hereby agrees to pay the total amount required for assessment (\$100) to the Clerk, United States District Court, before 5:00 p.m. on the date of pleading guilty. The defendant further agrees to participate in the Inmate Financial Responsibility Program to the extent necessary to fulfill all financial obligations due and owing under this agreement and the law.

9. The defendant agrees to reimburse the United States for the cost of court-appointed counsel, if any, and agrees that the Court may include such reimbursement in the Order of Judgment.

### **III. Procedure**

10. The defendant agrees that a duly-qualified federal Magistrate Judge may conduct the hearing required by Fed. R. Crim. P. 11.

11. With the Court's permission, the factual basis, as required by Fed. R. Crim. P. 11(b)(3), will be deferred until the time of sentencing. The defendant stipulates that there is a factual basis for the plea of guilty and that the Court may use the offense conduct set out in the Presentence Report, except any facts to which the defendant has objected, to establish a factual basis for the defendant's plea.

### **IV. Waivers**

12. The defendant understands and agrees that if he should fail to specifically perform or to fulfill completely each and every one of his obligations under this Plea Agreement, then the United States will be relieved of its obligations under the agreement, but the defendant will not be allowed to withdraw his guilty plea.

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

14. The defendant acknowledges that Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 are rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The defendant knowingly and voluntarily waives the rights which arise under these Rules. As a result of this waiver, he understands and agrees that any statements which are made in the course of his guilty plea or in connection with his cooperation pursuant to this plea agreement will be admissible against him for any purpose in any criminal or civil proceeding if his guilty plea is subsequently withdrawn.

15. The defendant understands and agrees that by pleading guilty, he is expressly waiving the following rights:

- 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. Defendant and defendant's counsel warrant that they have discussed: (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 after entering into a plea agreement; (2) whether or not there are potential issues which might be relevant to an appeal or post-conviction action; and (3) the possible impact of any such issue on the desirability to the defendant of entering into this plea agreement.

Defendant, in exchange for the concessions made by the United States in this plea agreement, waives all such rights to contest the conviction and/or the sentence except for: (1) claims of ineffective assistance of counsel or (2) prosecutorial misconduct.

Also, in exchange for the concessions made by the United States, defendant agrees that the United States preserves all its rights and duties with respect to appeal as set forth in 18 U.S.C. § 3742(b), while the defendant waives all rights to appeal or collaterally attack the sentence of conviction with the exceptions set forth above. This agreement does not limit the United States in its comments in or responses to any post-conviction matters.

17. The defendant waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency of the United States 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 of 1974, 5 U.S.C. § 552a.

18. The defendant stipulates that any sentence that falls within the applicable guideline range as determined by the United States Probation Office and pursuant to any departures from the applicable range as recommended by the government is *per se* reasonable. The defendant waives

any right to contest such a sentence on the basis that the Court's imposition of such a sentence was unreasonable or an abuse of its discretion.

#### **V. Assistance to Government**

19. If requested by the United States, but only if so requested, the defendant agrees to cooperate with the United States, including but not limited to the following:

a. The defendant will provide truthful information about the subject charges and about any other criminal activity within the defendant's knowledge to any government agent or agency that the United States designates.

b. The defendant will testify truthfully in any trial, hearing, or grand jury proceeding, including, but not limited to, testimony against any co-defendants, as the United States designates.

c. The defendant will truthfully disclose all monies, negotiable instruments, securities, or other things of value that are proceeds of or have been involved in, or have been used or intended to be used to facilitate a violation of state or federal law. The defendant further agrees to voluntarily forfeit said property to the United States.

d. In the event that the defendant's cooperation includes testifying, the defendant hereby waives payment of any witness fees or expenses to which he may be otherwise entitled pursuant to 28 U.S.C. § 1821.

e. The defendant understands that the United States desires only truthful and accurate information and testimony and, in fact, that knowingly giving false information or testimony can be prosecuted as an additional criminal offense.

Further, if the defendant knowingly gives false testimony, the United States will be relieved of its obligations under this Plea Agreement, except that the defendant's plea of guilty and the resulting guilty verdict will stand.

f. The defendant will not violate any federal, state, or local law, or any order of any court, including any conditions of pretrial, pre-sentence, or post-sentence release.

Nothing that the defendant discloses pursuant to this Plea Agreement will be used against him in any other criminal proceeding, subject to the following exceptions:

1. the United States or other jurisdiction may use any and all relevant information regarding crimes of violence;

2. the United States may use any and all information as necessary in a prosecution for perjury, or in any trial for impeachment or rebuttal;

3. if the defendant withdraws his plea of guilty, the United States may use any and all disclosures in any subsequent trials or criminal proceedings;

4. if the defendant violates any of the terms of this Plea Agreement, including the obligation to provide truthful information, then the United States may use any and all disclosures in subsequent trials or criminal proceedings; and,

5. the United States may make indirect use of any information that the defendant provides, including investigative leads or other witnesses.

g. The defendant's obligation under this section is a continuing one, and will continue after sentencing until all investigations and/or prosecutions to which the defendant's cooperation may be relevant have been completed. This provision is a material condition of this Plea Agreement and of all benefits that accrue to the defendant pursuant to this agreement.

In the interests of fulfilling all obligations under this section, the defendant agrees to waive all rights under Chapters 213 and 208 of Title 18 until such time as the United States determines that all relevant investigations and/or prosecutions have been completed.

h. The defendant fully understands that any breach of this agreement, including but not limited to withholding information, misleading the United States or any law enforcement officer, or failing to testify truthfully at any trial, grand jury, or other judicial proceeding, will allow the government, in its sole discretion, to withdraw from its obligations under this Plea Agreement. In such event, the United States will be free to proceed on any properly-filed pending, superseding, or additional charges, including any charges dismissed pursuant to this agreement.

20. When and if the defendant assists the government as described above:

a. The United States, in its sole discretion, will determine whether said assistance has been substantial.

b. Upon a determination that the defendant has rendered substantial assistance, the government may make a motion pursuant to U.S.S.G. § 5K1.1 for imposition of a sentence below the applicable Sentencing Guidelines. The United States may also, within its sole discretion, move the Court pursuant to 18 U.S.C. § 3553(c) to impose a sentence below any applicable statutory mandatory minimum.

The defendant recognizes that, even if the United States makes a recommendation pursuant to U.S.S.G. § 5K1.1, the Court cannot depart below the statutory minimum unless the United States also includes a specific recommendation pursuant to 18 U.S.C. § 3553(c).

c. Regardless of the nature and extent of any substantial assistance that the defendant renders, the United States will not move for a downward departure if the defendant also knowingly furnishes information that is materially false.

d. Any determination that the defendant has failed to provide substantial assistance or has knowingly provided false information is within the sole discretion of the United States, and the defendant waives all objections and rights of appeal or collateral attack of such a determination.

e. The defendant understands that if the United States makes a motion for downward departure, the motion is not binding on the District Court. The Court will determine in its discretion whether to grant or deny such departure and the extent of the departure.

## **VI. Forfeiture**

21. The defendant forfeits and otherwise waives any ownership right in all property seized during the investigation of the acts alleged in the Superseding Bill of Indictment and, but not limited to, all property specifically listed in the Superseding Bill of Indictment, except for the following two pieces of real property, which are not subject to forfeiture:

a) Property located at 120 Sams Road, Weaverville, North Carolina, and found in Buncombe County Deed Book 4468, Page 0917.

b) Property located at 120 Sams Road, Weaverville, North Carolina, identified in Madison County Tax Records as Parcel PIN Number 9745-49-6230.

With regard to the remaining three pieces of real property set forth in Paragraph 23(2)(a), (d), and (e) of the Superseding Bill of Indictment, in the sole discretion of the United States, the defendant may be allowed to substitute cash in the amount of his equity in those real properties.

22. The defendant agrees to the entry of a personal monetary judgment of forfeiture in the amount of \$ 684,854, which sum represents proceeds obtained, directly or indirectly, from the offenses. The defendant further agrees to forfeit all interest in any additional property that is traceable proceeds of, is involved in, or is facilitating property concerning the offense(s) of conviction.

23. The defendant has surrendered or will surrender the property under defendant's control to the United States Marshal or other agent of the United States. The defendant agrees to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, surrender of title, the signing of a consent decree, a stipulation of facts regarding the transfer and basis for the forfeitures, and signing any other documents necessary to effectuate such transfers. If and when requested to do so by the government, defendant agrees to ask any

nominee holder of the property to execute a form waiving all rights to the property and consenting to forfeiture and/or use of the property for restitution. The defendant further agrees to direct any financial institutions mentioned above to turn over to the United States the amount of currency and all records regarding the aforementioned accounts.

24. The defendant agrees to assist the United States fully in the recovery and return to the United States of all such property and also agrees to prevent the disbursement of any moneys and sale of any property or assets identified, if such disbursements or sales are within the defendant's direct or indirect control. The defendant further agrees not to encumber or transfer any real property, vehicles (incl. trailers, watercraft, and aircraft), or other capital asset that he owns after the signing of this Plea Agreement.

25. If so requested by the United States, the defendant agrees to be interviewed by attorneys and agents of the United States in order to identify fully all the defendant's property, real and personal, either domestic or foreign, that may be used to satisfy any money judgment or that may be substituted for any included or described property that is or may become unavailable. For the same purpose and if so requested by the United States, the defendant further agrees to submit a personal financial statement, a separate financial statement for any business that he has an ownership interest in, and his federal and state income and business tax returns.

26. The defendant stipulates and agrees that the property described in the Superseding Bill of Indictment or described above constitutes property derived from or traceable to proceeds of the defendant's offense(s) herein; property involved in the offenses, or any property traceable to such property; and/or property used in any manner to facilitate the commission of such offense(s); and is therefore subject to forfeiture pursuant to 18 U.S.C. § 924(d), 18 U.S.C. § 982, 21 U.S.C. § 853, 18 U.S.C. § 2253(a), 26 U.S.C. § 5872, and/or 28 U.S.C. § 2461(c), or other applicable forfeiture statute.

27. The defendant stipulates, pursuant to Federal Rules of Criminal Procedure 32.2(b)(1) & (c)(2), that there is the requisite nexus between the property and the offense(s) to which the defendant has pleaded guilty and/or that a personal money judgment in the amount of criminal proceeds may be entered and that the defendant has a legal and ownership interest in the property.

28. Defendant agrees to the entry of a Preliminary or Consent Order of Forfeiture, pursuant to Federal Rule of Criminal Procedure 32.2(b), on the date of his guilty plea pursuant to Federal Rule of Criminal Procedure 11 and to a Final Order of Forfeiture, pursuant to Federal Rule of Criminal Procedure 32.2(c), as to all of defendant's interest in the property described above.

29. The defendant herein waives any additional requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment against defendant. The defendant waives any additional notice concerning the forfeiture and disposal of the property described above.



30. If any of this property is not otherwise subject to forfeiture, the defendant agrees to its forfeiture as substitute property under 21 U.S.C. § 853(p), as made applicable by 18 U.S.C. § 982(b)(1) or any other statute. If a personal money judgment of forfeiture is included herein or if any of the included or described property is or becomes available, the defendant agrees the United States may substitute property or take steps to collect the judgment from any property, real or personal, of the defendant, in accordance with the substitute-asset provisions of 21 U.S.C. § 853(p).

31. If the United States later discovers that the defendant has made false statements or not fully disclosed all property required by the provisions of this forfeiture section of the Plea Agreement, the United States, in its sole discretion, may withdraw from its obligations under this Plea Agreement. However, the defendant's guilty plea will stand. Alternatively, the United States may seek the forfeiture of any subsequently-discovered assets, in which case the defendant agrees that such assets are governed by this Plea Agreement just as if they had been properly disclosed and listed herein.

32. Defendant further understands and agrees that the United States may commence an administrative action and/or a separate civil action for forfeiture of this property if it is not used for restitution. Defendant therefore waives all claims to the property and all rights of redemption and reinstatement in connection with any lien or security interest held by any lender; stipulates to proof by preponderance of the evidence for its forfeiture as proceeds of and/or property used to facilitate one or more violations of federal criminal law; and agrees to its forfeiture to the United States for disposition according to law. Defendant consents to the assignment of any related civil forfeiture case to the District Judge or Magistrate Judge assigned to any part of this criminal case. Defendant waives further notice in any proceedings necessary to obtain a civil judgment of forfeiture and consents to the Magistrate Judge conducting all proceedings necessary for any civil forfeiture of the property, including entry of an Order of Judgment, pursuant to 28 U.S.C. § 636(c). Defendant waives all rights to compliance by the United States with any and all applicable deadlines under 18 U.S.C. § 983(a).

33. The defendant agrees to waive any rights under the Speedy Trial Act and understands and agrees that sentencing may be delayed until the cooperation phase has been completed and title to all property has fully vested in the United States. This waiver is necessary so that the Court will have the benefit of all relevant information at sentencing.

34. This agreement does not bind the Internal Revenue Service or affect its authority to collect taxes.

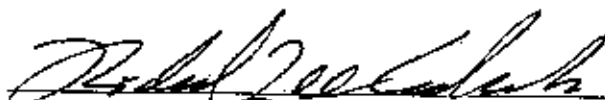
35. The Court has jurisdiction over the disposition of all property seized in the investigation of the acts alleged in the Bill of Indictment and may order the investigative agency to dispose of the property in such manner as provided by the agency's regulations.

## VI. Conclusion

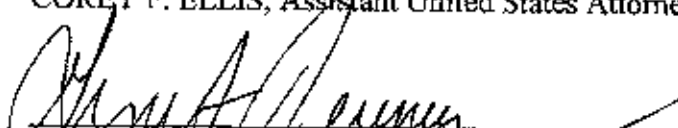
36. The defendant understands that if he breaches this Plea Agreement, or violates any federal, state or local law, or any order of any court, including any condition of pre-trial or pre-sentence, or post-sentence release, the United States will be relieved of its obligations under this Plea Agreement, but the defendant will not be allowed to withdraw his guilty plea. The United States will be free to proceed on any properly-filed dismissed, pending, superseding, or additional charges.

37. There are no agreements, representations, or understandings between the parties in this case, other than those explicitly set forth in this Plea Agreement and none will be entered into unless executed in writing and signed by all parties.

SO AGREED:

  
RICHARD LEE EDWARDS, Assistant United States Attorney  
COREY F. ELLIS, Assistant United States Attorney

DATED: 3/7/08

  
GREGORY A. NEWMAN, Attorney for Defendant

DATED: 3.6.08 4:50pm

  
JACK W. SHEPHERD, Defendant

DATED: 3-6-08  
4:50 p.m.