



U.S. Department of Justice

*United States Attorney
District of Connecticut*

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October 5, 2007

Eric P. Daigle, Esq.
Halloran & Sage LLP
225 Asylum Street
Hartford, CT 06103

**Re: United States v. Jose R. Silva
Criminal No.**

Dear Mr. Daigle:

This letter confirms the plea agreement entered into between your client, Jose R. Silva (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government") concerning the referenced criminal matter.

THE PLEA AND OFFENSE

Jose R. Silva agrees to plead guilty to a one-count information charging him with deprivation of an individual's civil rights, in violation of Title 18 U.S.C. § 242. He understands that to be guilty of this offense the following essential elements of the offense must be satisfied:

1. The defendant was acting under the color of law;
2. The defendant acted willfully; and
3. The defendant deprived the victim of a right secured or protected by the Constitution or laws of the United States.

THE PENALTIES

This offense carries a maximum penalty of one year imprisonment and a \$100,000 fine. In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than one year, to begin at the expiration of any term of imprisonment imposed. The defendant understands that should he violate any condition of the supervised release during its term, he may be required to serve a further term of imprisonment equal to the period of the supervised release, that is not more than one year, with no credit for the time already spent on

supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; (3) \$100,000; or (4) the amount specified in the section defining the offense.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$25.00 on the count of conviction. The defendant agrees to pay the special assessment to the Clerk of the Court on the day the guilty plea is accepted.

Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§3572 (h), (I) and § 3612(g).

Restitution

In addition to the other penalties provided by law, the Court must also order that the defendant make restitution under 18 U.S.C. §3663A.

The order of restitution has the effect of a civil judgment against the defendant. In addition to the court ordered restitution, the court may order that the conditions of its order of restitution be made a condition of probation or supervised release. Failure to make restitution as ordered may result in a revocation of probation, or a modification of the conditions of supervised release, or in the defendant being held in contempt under 18 U.S.C. § 3583(e). Failure to pay restitution may also result in the defendant's re-sentencing to any sentence which might originally have been imposed by the Court. See 18 U.S.C. §3614. The Court may also order that the defendant give notice to any victim(s) of his offense under 18 U.S.C. § 3555.

THE SENTENCING GUIDELINES

i. Applicability

The defendant understands that although application of the United States Sentencing Guidelines is not mandatory, they are advisory and the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case. *See United States v. Booker*, 125 S.Ct. 738 (2005). The defendant expressly understands that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Officer who prepares the presentence investigation report. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated.

Under the advisory guideline calculation, at this time, the Government agrees to recommend that the Court reduce by three levels the defendant's Adjusted Offense Level under section §3E1.1(a) of the Sentencing Guidelines, based on the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. This recommendation is conditioned upon the defendant's full, complete, and truthful disclosure to the Probation Office of information requested, of the circumstances surrounding his commission of the offense, of his criminal history, and of his financial condition by submitting a complete and truthful financial statement. The defendant expressly understands that the Court is not obligated to accept the Government's recommendation on the reduction.

The Government will not make this recommendation if the defendant engages in any acts which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (Sentencing Guideline section §3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (Sentencing Guideline §3C1.1); or (3) constitute a violation of any condition of release. Moreover, the Government will not make this recommendation if the defendant seeks to withdraw his plea of guilty. The defendant expressly understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make this recommendation.

iii Guideline Stipulation

The Government and the defendant stipulate the defendant's applicable Sentencing Guideline sentence is 12 months imprisonment. See U.S.S.G. § 5G1.1(a).

The base offense level under U.S.S.G. § 2H1.1 is 12. Six levels are added under U.S.S.G. § 2H1.1(b)(1) because the defendant was a public official at the time of the offense as well as because the defendant was acting under the color of law. Three levels are subtracted under U.S.S.G. § 3E1.1 for acceptance of responsibility, as noted above, resulting in a total offense level of 15. A total offense level of 15 with a criminal history category I, which the parties calculate the defendant to be, results in a range of 18 to 24 months of imprisonment (sentencing table) and a fine range of \$4,000 to \$40,000, U.S.S.G. § 5E1.2(c)(3). However, under the facts of this case, the statutory maximum penalty is 12 months; therefore, the guidelines sentence is 12 months pursuant to Section 5G1.1(a) of the Sentencing Guidelines.”

The defendant expressly understands that the Court is not bound by this agreement on the Guideline and fine ranges specified above. The defendant further expressly understands that he will not be permitted to withdraw the plea of guilty if the Court imposes a sentence outside the Guideline range or fine range set forth in this agreement.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the Government expressly reserves the right to challenge or defend any sentencing determination, other than that stipulated by the parties, in any post-sentencing proceeding.

iv. Appeal Rights Regarding Sentencing

The parties reserve their respective rights to appeal and to oppose each other's appeal of the sentence imposed as permitted by the statute.

v. Information to the Court

The Government expressly reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, it is expressly understood that the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation Office and will provide the Probation Officer with access to its file, with the exception of grand jury material.

WAIVER OF RIGHTS

Waiver of Trial Rights and Consequences of Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to compulsory process for the attendance of witnesses to testify in his defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

Waiver of Statute of Limitations

The defendant understands and agrees that should the conviction following defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement may be commenced or reinstated against defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

Waiver of Right To Post-Conviction DNA Testing of Physical Evidence

The defendant understands that the Government has various items of physical evidence in its possession in connection with this case that could be subjected to DNA testing. The defendant further understands that following conviction in this case, he could file a motion with the Court to require DNA testing of physical evidence pursuant to 18 U.S.C. § 3600 and § 3600A in an attempt to prove his innocence. The defendant fully understands his right to have all the physical evidence in this case tested for DNA, has discussed this right with his counsel, and knowingly and voluntarily waives his right to have such DNA testing performed on the physical evidence in this case. Defendant fully understands that because he is waiving this right, the physical evidence in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

ACKNOWLEDGEMENT OF GUILT; VOLUNTARINESS OF PLEA

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

The defendant expressly acknowledges that he is not a “prevailing party” within the meaning of Public Law 105-119, section 617 (“the Hyde Amendment”) with respect to the count of conviction or any other count or charge that may be dismissed pursuant to this agreement. The defendant voluntarily, knowingly, and intelligently waives any rights he may have to seek reasonable attorney’s fees and other litigation expenses under the Hyde Amendment.

SCOPE OF THE AGREEMENT

The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant understands and acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving him.

COLLATERAL CONSEQUENCES

The defendant further understands that he will be adjudicated guilty of each offense to

which he has pleaded guilty and may be deprived of certain rights. The defendant understands that pursuant to section 203(b) of the Justice For All Act, the Bureau of Prisons or the Probation Office will collect a DNA sample from the defendant for analysis and indexing. Finally, the defendant understands that the Government reserves the right to notify any state or federal agency by which he is licensed, or with which he does business, as well as any current or future employer of the fact of his conviction.

SATISFACTION OF FEDERAL CRIMINAL LIABILITY; BREACH

The defendant's guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participation in the November 9, 2006 search at 65-67 Truman Street which resulted in the unlawful arrest of an individual.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw his plea of guilty.

NO OTHER PROMISES

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,
KEVIN J. O'CONNOR
UNITED STATES ATTORNEY

NORA R. DANNEHY
ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter and its attachment(s) or has had it read or translated to him, that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.

Jose R. Silva
The Defendant

Date

I have thoroughly read, reviewed and explained this plea agreement and its attachment(s) to my client who advises me that he understands and accepts its terms.

Eric P. Daigle, Esq.
Attorney for the Defendant

Date

STIPULATION OF OFFENSE CONDUCT

The defendant Jose R. Silva and the Government stipulate and agree to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the Information:

1. From approximately October 1995 through the present, Jose R. Silva was a member of the New Haven Police Department. In approximately April 2004, defendant Jose R. Silva was promoted to the position of Detective and from approximately May 2004 to March 25, 2007 was a member of the Narcotics Enforcement Unit within the New Haven Police Department.

2. At all times relevant to this Information, the Narcotics Enforcement Unit was comprised of approximately a Lieutenant, a Sergeant and five detectives. The primary function of the Narcotics Enforcement Unit was to enforce the narcotics laws of the State of Connecticut within the City of New Haven.

3. At all times relevant to this Information, the mission of the New Haven Police Department was to provide pro-active community police services to the public by furthering the partnership with its community to protect life and property, prevent crime and resolve problems.

4. On approximately November 9, 2006, Jose R. Silva was a co-affiant on a warrant to search a location identified as 65-67 Truman Street, New Haven, Connecticut. The warrant authorized the search and seizure of, amongst other items, crack cocaine, cutting agents and other indicia of drug trafficking.

5. On November 9, 2006, the defendant and other detectives and officers executed the search warrant at 65-67 Truman Street, first floor apartment. Upon entering the first floor apartment, the defendant observed a black male coming out of the back bedroom. The individual was secured during the execution of the warrant. As part of the search, the defendant and others searched the basement of 65-67 Truman Street, access to which was from the common hallway. The following narcotics were found in the basement: a sandwich bag containing a white powder-like substance (suspected cocaine) with an approximate weight of 7.4 grams; 19 white rock-like substances (suspected crack cocaine); and 1 clear plastic bag containing 40 small red baggies, each with a green plant like substance (suspected marijuana). With the defendant's knowledge, the narcotics were moved to the back bedroom of the first floor apartment, resulting in the unlawful arrest of the individual found within the apartment.

6. On approximately November 9, 2006, the defendant, under the penalty of state law for making a false statement, filed a case incident report and falsely stated that the suspected cocaine, crack, and marijuana were found by another New Haven Police Detective on top of the dresser in the bedroom from which the individual emerged. The report also falsely stated that all the seized items were found next to the individual's identification card.

7. On or about March 1, 2007, subsequent to the execution of a search, during which a substantial amount of money was seized, at a location on Filmore Street in New Haven, Connecticut, another detective with the New Haven Police Department notified the defendant that he (the detective) had left a "surprise" for the detective in the defendant's jacket. The defendant later found \$500 in his jacket which the defendant knew was money from the Filmore

search that the detective had illegally taken. The defendant kept the money and never reported the detective's actions.

The written stipulation above is incorporated into the preceding plea agreement. It is understood, however, that the defendant and the Government reserve their right to present additional relevant offense conduct to the attention of the Court in connection with sentencing.

Jose R. Silva
The Defendant

Nora R. Dannehy
Assistant United States Attorney

Eric P. Daigle, Esq.
Attorney for the Defendant