

FILED
CHARLOTTE, NC
MAY 12 2014

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

US District Court
Western District of NC

UNITED STATES OF AMERICA)
)
 v.)
)
(2) PATRICK DEANGELO CANNON)
_____)

DOCKET NO. 3:14CR87

PLEA AGREEMENT

UNDER SEAL

NOW COMES the United States of America, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina, and the defendant, PATRICK DEANGELO CANNON, in person and through counsel, James E. Ferguson, II and Henderson Hill and respectfully inform the Court that they have reached an agreement pursuant to Federal Rules of Criminal Procedure ("Rule") 11. References to the United States herein shall mean the United States Attorney for the Western District of North Carolina.

I. Plea

1. The defendant agrees to enter a voluntary plea of guilty to Count One as set forth in the Bill of Information (hereinafter the "Information"), and admits to being in fact guilty as charged in that Count.
2. The defendant understands that each and every provision set forth below is a material term of the plea agreement. The defendant's failure to fully comply with any provision of the plea agreement or attempt to withdraw the guilty plea (i) will relieve the United States of its obligations under this plea agreement, but the defendant will not be relieved of his obligations or allowed to withdraw his guilty plea; (ii) may constitute his failure to accept responsibility under United States Sentencing Guideline § 3E1.1; and (iii) will permit the United States to proceed on any dismissed, pending, superseding or additional charges.

II. Sentence

3. The defendant is aware that the statutory maximum sentence for the charged offense is as follows:

Count One: a violation of 18 U.S.C. § 1343, a maximum term of twenty (20) years imprisonment, a \$250,000 fine, or both, and a period of supervised release.
4. The defendant understands that a violation of supervised release may subject him to an additional period of incarceration.

5. 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 he may not withdraw his plea as a result of the sentence imposed.

6. 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. That U.S.S.G. § 2C1.1 is the applicable Guideline.
- b. That the defendant was an elected public official. U.S.S.G. § 2C1.1 (a)(1) and (b)(3).
- c. That the charged offense involved more than one bribe. U.S.S.G. § 2C1.1 (b)(1).
- d. That the total value of the bribes known to the United States at the time of this plea are no less than \$50,000 and no greater than \$70,000. U.S.S.G. §§ 2C1.1 (b)(2); 2B1.1(b)(1)(D).
- e. The offense level for the subject offense as set forth in the Factual Basis filed herewith is as follows:

U.S.S.G. § 2C1.1(a)(1)	14
U.S.S.G. § 2C1.1(b)(1)	2
U.S.S.G. § 2C1.1(b)(2)	6
<u>U.S.S.G. § 2C1.1(b)(3)</u>	<u>4</u>

Adjusted Offense Level 26

- f. The cooperation agreement set forth below is made pursuant to U.S.S.G. § 1B1.8. As of the date of this plea agreement, the United States does not have sufficient information, independent of information derived directly or indirectly from the defendant pursuant to U.S.S.G. § 1B1.8, to determine whether the total value of the bribes received by the defendant exceeded \$70,000.
- g. Provided that the defendant clearly demonstrates acceptance of responsibility for his offenses, as well as all relevant conduct, the United States will recommend a two-level reduction in offense level pursuant to U.S.S.G. § 3E1.1(a).
- h. The Government agrees that the defendant's entry of plea is timely for purposes of U.S.S.G. § 3E1.1(b).

- i. The United States, however, will not be required to make this recommendation or motion 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 United States 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 United States entity or official. Furthermore, the defendant understands that any reduction in offense level is ultimately for the Court's determination.
 - j. The parties agree that either party may seek a departure or variance from the "applicable Guideline range." However, absent a material breach of this plea agreement, the United States will not move for an upward departure or variance.
 - k. The United States will inform the Court and the probation office of all facts pertinent to the sentencing process and will present any evidence requested by the Court.
7. The defendant agrees to the following with respect to financial disclosures, monetary penalties, forfeiture and restitution, if applicable:
- a. To pay full restitution, regardless of the resulting loss amount, to all victims directly or indirectly harmed by the defendant's "relevant conduct," including conduct pertaining to any dismissed counts or uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant understands that such restitution will be included in the Court's Order of Judgment and an unanticipated amount of a restitution order will not serve as grounds to withdraw his guilty plea.
 - b. To make full disclosure of all current and projected assets to the U.S. Probation Office immediately and prior to the termination of the defendant's supervised release or probation, such disclosures to be shared with the U.S. Attorney's Office, including the Financial Litigation Unit, for any purpose.
 - c. To truthfully complete under penalty of perjury within thirty days of the execution of this plea agreement a financial statement provided by the U.S. Attorney's Office and to update the statement with material changes within seven days of the change.
 - d. That monetary penalties imposed by the Court will be (i) subject to immediate enforcement as provided for in 18 U.S.C. § 3613, and (ii) submitted to the Treasury Offset Program so that any federal payment or transfer of returned

property the defendant receives may be offset and applied to federal debts but will not affect the periodic payment schedule.

8. With regard to each and every asset listed in the Information or seized in a related investigation or administrative, state, or local action the defendant stipulates and agrees:
 - a. To its forfeiture herein, if necessary 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, or in a separate administrative or civil judicial proceeding. The United States may use the value of forfeited property for restitution but is not required to do so.
 - b. To sign a consent order including forfeiture of all such assets and, if requested by the government, a forfeiture money judgment in an amount up to the total amount of criminal proceeds as stated in the Factual Basis filed herewith; provided that defendant's liability for the amount of the money judgment shall be joint and several with any other defendant to whom any part of all of the same monetary amount was reasonably foreseeable, as provided by law.
 - c. To the Magistrate Judge conducting all proceedings necessary for any civil forfeiture of the property, including entry of judgment, pursuant to 28 U.S.C. §636(c).
 - d. To assist the United States in the recovery of all assets by (i) taking whatever steps are necessary or requested by the United States to pass clear title to the United States; (ii) preventing the disbursement of any moneys and sale of any property or assets; (iii) not encumbering or transferring any real estate after the defendant's signing of this plea agreement; and (iv) directing all financial institutions to turn over and surrender to the United States all funds and records regarding accounts listed in any document signed by the defendant pursuant to this plea agreement, as criminal proceeds or substitute property.
9. The defendant waives all rights to notice of forfeiture under Rule 32.2 and of any other action or proceeding regarding such assets. The defendant consents and waives all rights to compliance by the United States with any applicable deadlines under 18 U.S.C. § 983(a). Any related administrative claim filed by the defendant is hereby withdrawn.
10. If the United States discovers that the defendant has not fully disclosed all assets, the United States may seek forfeiture of any subsequently-discovered assets, and the defendant agrees to the immediate forfeiture of any such assets.
11. The defendant further agrees to participate in the Inmate Financial Responsibility Program to fulfill all financial obligations due and owing under this agreement and the law.

III. Procedure

12. The defendant agrees that a duly-qualified federal Magistrate Judge may conduct the hearing required by Rule 11.
13. The defendant stipulates that there is a factual basis, as required by Fed. R. Crim. P. 11(b)(3), for his plea of guilty. The defendant further stipulates that he has read and understands the Factual Basis filed with this plea agreement, and that such Factual Basis may be used by the Court and the United States Probation Office without objection by the defendant to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a), except for the objections explicitly reserved herein.

IV. Waivers

14. 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 expressly waives any right to withdraw the plea once the Magistrate Judge has accepted it.
15. The defendant acknowledges that Rule 11(f) and Fed. R. of Evid. 408 and 410 are rules which 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 his guilty plea or this plea agreement (in part or in its entirety, at the sole discretion of the United States) will be admissible against him for any purpose in any criminal or civil proceeding if he fails to enter or attempts to withdraw his guilty plea, or in any post-conviction proceeding challenges the voluntary nature of the guilty plea.
16. The defendant agrees that by pleading guilty, he is expressly waiving his 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.
17. The defendant has discussed with his attorney: (1) his 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 there are potential issues relevant to an appeal or post-conviction action; and (3) the possible impact of any such issue on the desirability of entering into this plea agreement.
18. The defendant, in exchange for the concessions made by the United States in this plea agreement, waives all such rights to contest the conviction except for: (1) claims of ineffective assistance of counsel or (2) prosecutorial misconduct. The defendant also knowingly and expressly waives all rights conferred by 18 U.S.C. § 3742 or otherwise to appeal whatever sentence is imposed with the two exceptions set forth above. The defendant agrees that the United States preserves all its rights and duties as set forth in 18 U.S.C. § 3742(b).

19. The defendant 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.

V. Effects of Plea

20. The defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. The defendant understands that no one can predict to a certainty the effect of the defendant's conviction on his immigration status and wants to plead guilty regardless, even if the consequence is his automatic removal from the United States.

VI. Assistance to United States

21. 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. He will provide truthful information about the subject charges and about any other criminal activity within his knowledge to any United States agent or agency that the United States designates.
 - b. He 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. Should the defendant testify at the request of the United States, he hereby waives payment of any witness fees or expenses.
 - c. He will be reasonably available for debriefing and pre-trial conferences as the United States may require.
 - d. He will provide to the United States all documents or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
 - e. He 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.
 - f. He 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.

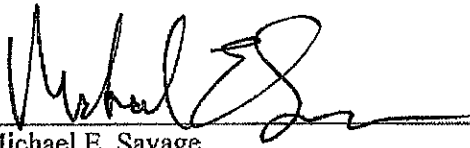
- g. His obligation under this section is a continuing one, and will continue after sentencing until all investigations and/or prosecutions to which the defendant's cooperation may be relevant have been completed.
22. The United States agrees that nothing that the defendant discloses pursuant to this plea agreement will be used against the defendant in any other criminal proceeding, except:
- a. Information regarding crimes of violence;
 - b. In a prosecution for any crime committed by the defendant after the effective date of this plea agreement;
 - c. As necessary in a prosecution for false statements, perjury, obstruction of justice, or in any proceeding for impeachment, rebuttal, or countering a defense (whether presented through opening statements, cross-examination, or otherwise);
 - d. By making indirect use of any information that the defendant provides, including investigative leads or other witnesses.
23. Nothing in this agreement places any obligation on the United States to seek the defendant's cooperation or assistance. If the defendant so assists the United States:
- 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 United States may make a motion pursuant to U.S.S.G. § 5K1.1 for imposition of a sentence below the applicable Sentencing Guidelines or pursuant to Rule 35(b) for a reduction in the defendant's term of imprisonment. The United States may also, within its sole discretion, move the Court pursuant to 18 U.S.C. § 3553(e) and/or Rule 35(b) to impose a sentence below any applicable statutory mandatory minimum
 - c. 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. The defendant understands that if the United States makes a motion for reduction of sentence, the motion is not binding on the District Court.

VII. Conclusion

24. This 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 the entry of this plea agreement at the date and time scheduled by the Court.
25. 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.

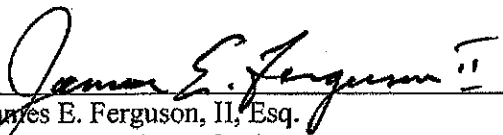
SO AGREED:

ANNE M. TOMPKINS, United States Attorney



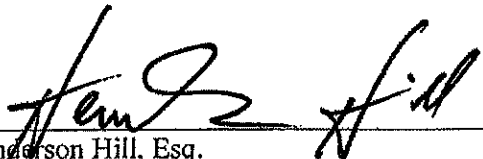
Michael E. Savage
Craig Randall
Assistant United States Attorneys

DATED: 5/9/14



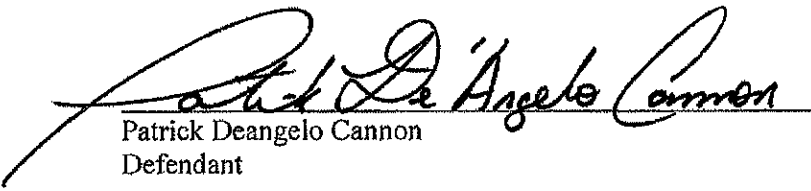
James E. Ferguson, II, Esq.
Attorney for the Defendant

DATED: 5/18/14



Henderson Hill, Esq.
Attorney for the Defendant

DATED: 5/8/2014



Patrick Deangelo Cannon
Defendant

DATED: 5-8-14