

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 5:05CR00034
	)	
v.	)	
	)	<u>REPORT AND RECOMMENDATION</u>
TERRY RYAN GRANTHAM,	)	
	)	
	)	By: B. WAUGH CRIGLER
Defendant.	)	U.S. MAGISTRATE JUDGE

In accordance with the provisions of Title 28 U.S.C. § 636(b)(3) and upon the defendant's consent, this case was referred to the undersigned to conduct a plea hearing.

**DEFENDANT'S RESPONSES TO RULE 11 INQUIRY**

The Grand Jury has returned an Indictment charging defendant in Count One with knowingly and intentionally possessing with intent to distribute 50 grams, or more, of a mixture or substance containing a detectable amount of cocaine base, also known as "crack" cocaine, a Schedule II controlled substance, all in violation of Title 21, United States Code, Section 841(a)(1).

On November 28, 2005, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count One of the Indictment.

At this hearing the defendant was placed under oath and testified that his full legal name is Terry Ryan Grantham, that he was born on July 13, 1978, and that he completed the twelfth grade. The defendant stated that he can read, write, and understand the English language. The defendant stated that he was fully aware of the nature of the charges against him and the consequence of pleading guilty to those charges. The defendant further testified that he was not under the influence of alcohol, medicine, or any drug. Defendant stated that he had no other physical or mental condition which impaired his ability to understand the nature of the proceedings being held.

Defendant's counsel stated that he had no reservations as to the defendant's competency to enter a plea of guilty to the offense.

The defendant testified that he had received a copy of the Indictment pending against him and that he had fully discussed the charges therein, and his case in general, with his counsel. The defendant stated that he was pleading guilty of his own free will because he was, in fact, guilty of the offense charged. The defendant also stated that no one had made any promises or made any assurances or threats to him in an effort to induce his plea. The defendant testified that he understood that the offense with which he is charged in Count One is a felony and that, if his plea is accepted, he will be adjudged guilty of that offense. Moreover, the defendant testified that he understood that he will be required to pay a mandatory assessment of \$100.

The defendant was informed that the maximum possible penalty provided by law for the offense with which he is charged in Count One, is life imprisonment and a fine of \$4,000,000, together with supervised release. He was further informed that the minimum sentence for the offense with which he is charged in Count One is 10 years imprisonment. The defendant was informed that under the Sentencing Reform Act of 1984, the United States Sentencing Commission has issued guidelines for judges to follow in determining the sentence in a criminal case. The defendant was then informed that, in light of the United States Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), the sentencing guidelines are no longer mandatory but that the sentencing judge may apply them in an advisory fashion in determining a reasonable sentence. The defendant testified that he and his counsel had discussed how the sentencing guidelines might apply in his case. The defendant also testified that he understood that the court would not be able to determine the applicable guideline range, for advisory purposes, until after a presentence report

has been prepared and both parties have been given an opportunity to challenge the reported facts and application of the guidelines. He stated that he understood that the eventual sentence imposed may be different from any estimate his attorney had given him and that the court has the authority to impose a sentence that is either higher or lower than that called for by the guidelines, so long as the sentence is not greater than the statutory maximum for the offense to which the defendant is pleading guilty. The defendant stated that he knew that parole had been abolished and that if he is sentenced to prison he will not be released on parole but on supervised release, a violation of which could result in additional incarceration.

The defendant testified that he understood that he had the right to a trial by a jury, in addition to the following rights, which will be waived or given up if his guilty plea is accepted:

1. The right to plead not guilty to any offense charged against him;
2. The right at trial to be presumed innocent and to force the government to prove his guilt beyond a reasonable doubt;
3. The right of assistance of counsel at trial and in any subsequent appeal;
4. The right to see, hear and cross-examine witnesses;
5. The right to call witnesses to testify in his own behalf and to the issuance of subpoenas or compulsory process to compel the attendance of witnesses;
6. The right to decline to testify unless he voluntarily elects to do so in his own defense;
7. The right to a unanimous guilty verdict; and
8. The right to appeal a guilty verdict.

The defendant also testified that he understood that if he is adjudged guilty of these charges, he may be deprived 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 a firearm.

The defendant stated that he was fully satisfied with the advice and representation given to him in this case by his counsel. The defendant also stated that he believed his counsel's representation had been effective. The defendant testified that he understood the possible consequences of his plea. The

defendant asked the court to accept his plea of guilty to Count One of the Indictment.

### **THE GOVERNMENT'S EVIDENCE**

The defendant waived his right to have the government's Factual Summary read in open court and had no objection to the Summary. The Factual Summary having been filed in open court, the evidence presented therein regarding the offense charged is as follows:

An officer was contacted by a confidential informant who informed the officer that he was going to purchase two ounces of crack cocaine from a subject that he knew as Terry. The following day, March 3, 2005, law enforcement had the confidential informant make a monitored telephone call to arrange the purchase of two ounces of crack cocaine. On March 4, 2005, after making a series of additional monitored telephone calls to Terry, the confidential informant and drug task force officer Special Agent Ray Floyd, acting in an undercover capacity, arranged to meet Terry at the State Line Exxon Station in Winchester, Virginia, which is in the Western District of Virginia. At approximately 7:00 p.m., the confidential informant observed Terry pulling onto the lot. The confidential informant got out of SA Floyd's vehicle, walked over to Terry's car and got in. The confidential informant then returned to SA Floyd's vehicle where he informed the officer that Terry had shown him the crack cocaine.

An arrest team moved in and Terry was taken into custody. During a post-Miranda, post-arrest interview, Terry, who was identified as Terry Ryan Grantham, the defendant before the Court in this matter, told drug task force Special Agent Carl Voskamp that he had placed the crack cocaine into his underpants prior to his arrest, whereupon, and wherefrom, two bags containing a white, rock-like substance were removed. The defendant also confessed that he had purchased the crack cocaine in West Virginia. Grantham was transported to the CFW Regional Jail where he was booked on state

charges. After arriving at the jail, Grantham told SA Voskamp that he had paid \$1,600 in cash for the crack cocaine and planned to sell the crack cocaine for \$2,400. Although he refused to reveal his source, Grantham admitted that he had purchased from the same source on three separate occasions.

The government would have proved that the substance recovered from Grantham was cocaine base, or crack cocaine. In addition, it would have proved that it weighed over fifty grams. Lastly, the government would have proved beyond a reasonable doubt that defendant had no applicable defense to this charge.

### **FINDINGS OF FACT**

Based on the evidence presented at the plea hearing, the undersigned now submits the following formal findings of fact, conclusions and recommendations:

1. The defendant is fully competent and capable of entering an informed plea;
2. The defendant is aware of the nature of the charges and the consequences of his plea;
3. The defendant knowingly and voluntarily entered a plea of guilty to Count One of the Indictment; and
4. The evidence presents an independent basis in fact containing each of the essential elements of the offense to which the defendant is pleading guilty.

### **RECOMMENDED DISPOSITION**

Based upon the above findings of fact, the undersigned RECOMMENDS that the court accept the defendant's plea of guilty to Count One and adjudge him guilty of that offense. The undersigned further DIRECTS that a presentence report be prepared. A sentencing hearing hereby is scheduled for

February 21, 2006 at 1:30 p.m. before the presiding District Judge in Harrisonburg.

**NOTICE TO PARTIES**

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C): Within ten days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. The presiding District Judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The presiding District Judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the undersigned. The judge may also receive further evidence or recommit the matter to the undersigned with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 10 days could waive appellate review. At the conclusion of the 10-day period, the Clerk is directed to transmit the record in this matter to the presiding United States District Judge.

The Clerk is hereby directed to send certified copies of this Report and Recommendation to all counsel of record.

ENTERED: \_\_\_\_\_  
United States Magistrate Judge

\_\_\_\_\_  
Date

