

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

UNITED STATES OF AMERICA, )  
 )  
v. )  
 )  
LICOIS FANFAN, )  
 a/k/a "James," )  
 a/k/a "Fin-Fin," )  
 )  
 Defendant. )

CASE NO. 5:06CR00040-1

REPORT AND RECOMMENDATION

By: B. WAUGH CRIGLER  
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 a multiple count Indictment charging defendant in Count One with willfully and knowingly combining, conspiring, confederating and agreeing with persons known and unknown to the Grand Jury, to commit offenses against the United States, to wit: to distribute and possess with intent to distribute 50 or more grams of cocaine base, in violation of Title 21, United States Code, Section 841(a), all in violation of Title 21, United States Code, Section 846.

On April 23, 2007, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count One of the Indictment pursuant to a plea agreement between defendant and the government. In exchange for his plea of guilty to Count One, the government has agreed to move for dismissal of the remaining counts of the Indictment upon acceptance of his plea of guilty.

At this hearing the defendant was placed under oath and testified that his full legal name is Licois Fanfan, that he was born in Haiti on April 28, 1983, and that he is one year short of completing high school. The defendant stated he was not born in the United States, and as such, he

cannot understand the English language “well”.<sup>1</sup> The defendant stated that he was fully aware of the nature of the charges against him and the consequences of pleading guilty to those charges. The defendant further testified that he was not under the influence of alcohol or drugs.<sup>2</sup> The defendant stated that he had no other physical or mental condition which impaired his ability to understand the nature of the proceedings being held. The defendant’s counsel stated that she 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. He also testified that he had read the plea agreement in its entirety and had discussed the plea agreement with his counsel before signing the agreement. He stated that he understood the terms of the agreement and that the document presented to the court set forth his agreement with the government in its entirety. The defendant specifically testified that he understood that under the terms of the agreement he was waiving rights to appeal or collaterally attack his conviction or sentence and that he was waiving his right to have a jury determine beyond a reasonable doubt the facts alleged in Count One, including any facts related to sentencing. The defendant stated he knew the government had reserved its right to appeal any sentencing issues.

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 other than those contained in his agreement with the government, or made any assurances or threats to him

---

<sup>1</sup>An interpreter assisted the defendant during the hearing.

<sup>2</sup>The defendant testified that although he takes medication for a medical condition, the medication did not impact his ability to understand the Rule 11 proceedings.

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 acknowledged that he consented to the administrative forfeiture, official use and/or destruction of any illegal firearms or contraband seized by any law enforcement agency from his possession or from his direct or indirect control. The defendant further acknowledged that he consented to forfeit any right, title and interest he has in assets purchased with proceeds of his illegal activity, directly or indirectly and that such a forfeiture of property is proportionate to the degree and nature of the offense he committed and does not raise any of the concerns addressed in *United States v. Austin*, 113 S.Ct. 2801 (1993). The defendant stated that he understood that he must submit to the government a complete and truthful financial statement revealing all his assets and liabilities on a form provided by the government within 30 days of the date of the plea agreement. The defendant stated that he was waiving his right to raise the defense of the statute of limitations if for any reason the plea agreement is withdrawn or otherwise not consummated. The defendant also testified that he was waiving all rights under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of his case.

The defendant was informed that the maximum possible penalty provided by law for the offense with which he is charged, in the case of Count One, is life imprisonment and a fine of \$4,000,000, together with supervised release. The defendant was further informed that Count One has a mandatory minimum sentence of ten years imprisonment. Finally, the defendant was informed

that his assets may be subject to forfeiture.

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 agreed that USSG § 2D1.1 is applicable to his criminal conduct, and that for purposes of USSG §§ 2D1.1 and 1B1.3, he and the government agreed he should be held responsible for at least 500 grams but less than 1.5 kilograms of cocaine base. The defendant stated that he understood that, contingent upon his acceptance of responsibility and continued cooperation in the sentencing process, and fulfillment of his duties under the plea agreement, the government will recommend a two-level (2) reduction in his offense level for acceptance of responsibility under USSG § 3E1.1(a), and because he meets the listed criteria, he should be granted an additional one-

level (1) reduction pursuant to USSG § 3E1.1(b), if the court calculates his offense level at 16 or greater. The defendant stated that he understood that the government is under no obligation to file a motion for substantial assistance, but that to the extent the government does exercise such discretion in this regard, he must provide such assistance in a manner set forth in the plea agreement. The defendant stated that he understood that a determination as to whether he had provided “substantial assistance” was a matter within the discretion of the United States Attorney’s Office. The defendant stated that he was aware that pursuant to the Sentencing Guidelines the sentencing judge could add or subtract up to four sentencing points to his sentencing level based upon his role in the offense, and defendant informed the court that he and the government had stipulated that there should be no adjustment, as he neither played an aggravating nor a mitigating role in the offense. The defendant testified he and the government stipulated and agreed that he satisfies the factual requirements of 18 U.S.C. § 3553(f)(2)-(4) and USSG § 5C1.2(2)-(4), and the parties contemplate that if he meets the criminal history requirements of subsection (1), and if the court finds at sentencing under subsection (5) that he has provided the government with all the information and evidence he has about the offense, the court shall sentence him in accordance with the applicable guidelines, without regard to any statutory minimum sentence. The defendant testified that he and the government also stipulated and agreed that he meets the factual criteria of USSG § 5C1.2(2)-(4), and it is contemplated by the parties that if he meets the criminal history requirements of subsection (1), and truthfully provides information under subsection (5), and his offense level under USSG § 2D1.1 is 26 or greater, the offense level should be decreased two levels. The defendant acknowledged he knew that any information given during a proffer or cooperation will not be used against him to enhance his sentence under USSG § 1B1.8. 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.<sup>3</sup>

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 and "very good, very good." The defendant testified that he understood the possible consequences of his plea and the consequences of breaching any term of the plea agreement. 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

---

<sup>3</sup>The defendant would not possess these rights which appertain only to citizens.

and had no objection to the fact that if the government had submitted evidence, the Factual Summary represented the evidence that would have been presented.<sup>4</sup> The Factual Summary having been filed in open court, the evidence presented therein regarding the offense charged is as follows:

Come now the United States of America, by counsel, and Licois Fanfan, by counsel and in proper person, and stipulate to following facts in support of the guilty plea. The parties agree that the stipulated facts set forth below are accurate in every respect and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt. In addition, the United States and I agree to the stipulation of facts with the belief that said stipulation sets forth the relevant facts and circumstances as required by Section 6B1.4 of the Sentencing Guidelines. The parties reserve the right to introduce additional facts and circumstances relating to the offense, and stipulate as follows:

Beginning at an unknown date but not later than December 2005, and continuing to June 2, 2006, an agreement existed in the Western District of Virginia between two or more persons to distribute and possess with intent to distribute 50 or more grams of cocaine base, or “crack”. The defendant knew of the agreement, and he knowingly and voluntarily became a member of the conspiracy.

Beginning in or about December 2005 and continuing to June 2, 2006, LICOIS FANFAN obtained supplies of cocaine base from other conspirators and distributed the cocaine in the Winchester, Virginia, area.

On March 10, 2006, Jennifer Marie Holborn and LIOCOIS FANFAN distributed 15.3 grams of cocaine base to a cooperating individual working under the supervision of law enforcement officers.

---

<sup>4</sup>The undersigned was informed that the interpreter read the Factual Summary to the defendant.

On March 29, 2006, Jennifer Marie Holborn and LICOIS FANFAN distributed 17.3 grams of cocaine base to a cooperating individual working under the supervision of law enforcement officers.

Interviews with witnesses and coconspirators as of the date of this Statement of Facts establish that Licois Fanfan, either directly or through conduct by coconspirators that was reasonably foreseeable to him, was responsible at least 500 grams but less than 1.5 kilograms of cocaine base.

### **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 is hereby scheduled for July 23, 2007 at 10:30 a.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

