

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

UNITED STATES OF AMERICA,)	CASE NO. 5:06CR00041-5
)	
)	
v.)	
)	<u>REPORT AND RECOMMENDATION</u>
ROLAND DONELLA JACKSON,)	
a/k/a “Don Don”,)	
)	
)	
Defendant.)	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 together, with diverse other persons known and unknown to the Grand Jury, to commit offenses against the United States, to wit: to manufacture, 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; in Count Thirteen with knowingly and intentionally distributing approximately 9.18 grams of a mixture or substance containing a detectable amount of cocaine base, or “crack,” a Schedule II controlled substance, all in violation of Title 21, United States Code, Section 841(a) and 841(b)(1)(B); in Count Fourteen with knowingly and intentionally distributing less than five (5) grams of a mixture or substance containing a detectable amount of cocaine base, or “crack,” a Schedule II controlled substance, all in violation of Title 21, United States Code, Section 841(a) and 841(b)(1)(C); in Count Fifteen with knowingly and intentionally

possessing with intent to distribute in excess of five (5) grams of a mixture or substance containing a detectable amount of cocaine base, or “crack,” a Schedule II controlled substance, all in violation of Title 21, United States Code, Section 841(a) and 841(b)(1)(B); and in Count Twenty-Nine a forfeiture allegation pursuant to Title 21, United States Code, Section 853.

On January 11, 2007, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count One of the Indictment. The government has agreed to move for the dismissal of the remaining counts of the Indictment upon acceptance of defendant’s guilty plea. The defendant agreed that the government had probable cause to bring all counts in the Indictment which are being dismissed.

At this hearing the defendant was placed under oath and testified that his full legal name is Roland Donella Jackson, he was born on January 24, 1978, and he earned a GED. 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.

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 specifically testified that he understood that under the terms of the agreement he was waiving any right to appeal or to collaterally attack his conviction or sentence and that he was waiving his right to have a jury determine beyond a reasonable doubt any facts

alleged in Count One. The defendant testified that he also understood that the government retained its right to appeal sentencing issues. The defendant stated that no one had made any promises, assurances, or threats to him in an effort to induce his plea. The defendant agreed that if for any reason the plea agreement is withdrawn or otherwise not consummated he waived his right to raise the defense of the statute of limitations. 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. The defendant stated 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 thirty days of the date of the plea agreement. 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 acknowledged that he consented to the forfeiture, official use and/or destruction of any illegal firearms or illegal contraband seized by law enforcement officials from his possession or 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 was informed that the maximum possible penalty provided by law for the offense with which he is charged in Count One is a \$4,000,000 fine, life imprisonment, plus a period of supervised release. The defendant was further informed that Count One has a mandatory

minimum sentence of ten years imprisonment. The defendant was made aware 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 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 stated that he agreed to accept responsibility for his conduct and 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 under USSG § 3E1.1(a), and because he meets the listed

criteria, the government agrees that he should be granted an additional one-level (1) reduction under USSG § 3E1.1(b), if the sentencing level calculated by the court is 16 or greater. 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 agreed that a two level (2) reduction in his offense level was applicable because he played a minor role in the offense. The defendant stated that he understood that even if he fully cooperates with law enforcement officials, the government is under no obligation to file a motion for substantial assistance. The defendant stated that he and the government agreed that for purposes of USSG §§ 2D1.1 and 1B1.3 he should be held responsible for at least 150 but less than 500 grams of cocaine base. The defendant stated that he understood that any information given by him during a proffer or cooperation would not be used against him to enhance his sentence under USSG § 1B1.8.

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 is as follows:

Come now the United States of America, by counsel, and ROLAND DONELLA JACKSON, 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 stipulate as follows:

Beginning at an unknown date but not later than January 2002, and continuing to September 6, 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.

On September 23, 2004, ROLAND DONELLA JACKSON sold 1.5 grams of crack cocaine

in Stephens City, Virginia, to a person working under the close supervision of law enforcement.

On September 25, 2004, ROLAND DONELLA JACKSON sold .969 grams of crack cocaine in Front Royal, Virginia, to a person working under the close supervision of law enforcement.

On September 30, 2004, ROLAND DONELLA JACKSON sold 4.56 grams of crack cocaine in Stephens City, Virginia, to an undercover police officer.

On October 7, 2004, ROLAND DONELLA JACKSON sold 9.18 grams of crack cocaine in Front Royal, Virginia, to an undercover police officer for the price of \$900.

On November 24, 2004, ROLAND DONELLA JACKSON sold .2 grams of crack cocaine in Front Royal, Virginia, to a person working under the close supervision of law enforcement.

On November 30, 2004, ROLAND DONELLA JACKSON sold .148 grams of crack cocaine in Front Royal, Virginia, to a person working under the close supervision of law enforcement

On December 9, 2004, ROLAND DONELLA JACKSON sold 5.276 grams of crack cocaine in Winchester, Virginia, to an undercover police officer.

On October 7, 2005, ROLAND DONELLA JACKSON sold .54 grams of crack cocaine in Winchester, Virginia, to a person working under the close supervision of law enforcement, for the price of \$100. JACKSON was arrested in a traffic stop following this purchase and was in possession of an additional 17.5 grams of cocaine base.

Interviews with witnesses and coconspirators as of the date of this Statement of Facts establish that ROLAND DONELLA JACKSON, either directly or through conduct by coconspirators that was reasonably foreseeable to him, was responsible at least 150 but less than 500 grams of cocaine base.

ROLAND DONELLA JACKSON sold to users of crack cocaine, did not have a supervisory or managerial role over other individuals in the conspiracy, and was a minor participant in the criminal

activity charged in this and related indictments.

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 March 26, 2007 at 11:30 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

