

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

JAN 13 2009

JOHN F. CORCORAN, CLERK
BY: *K. D. [Signature]*
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UNITED STATES OF AMERICA)
)
)
v.)
)
JIMMY LOUIS CHAMBERS,)
)
Defendant)

CASE No. 5:08cr00031

**REPORT AND
RECOMMENDATION**

By: Hon. James G. Welsh
U.S. Magistrate Judge

The Grand Jury previously returned an Indictment charging this defendant in a single count Indictment with, on or about August 27, 2008, knowingly and intentionally possessing with intent to distribute five hundred (500) grams or more of a mixture and substance containing a detectable amount of cocaine, its salts, optical and geometric isomers, and salts of isomers, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(ii)(II). The defendant was previously arraigned and entered a plea of Not Guilty to this charge. The defendant having now indicated an intent to change his plea, this case was referred for the purpose of conducting a plea hearing in accordance with the provisions of Title 28 U.S.C. § 636(b)(3).

The plea hearing was conducted on January 12, 2009. The defendant was at all times present in person and with his counsel, Andrea S. L. Harris, Assistant Federal Public Defender. The United States was represented by Ryan Souders, Assistant United States Attorney. The proceedings were recorded by a court reporter. See Rule 11(g).

With the defendant's informed and written consent, the undersigned made a Rule 11 inquiry; the government presented a written proffer of evidence for the purpose of establishing an independent basis for the plea, and the defendant entered a plea of guilty to Count One of the Indictment.

A. DEFENDANT'S RESPONSES TO RULE 11 INQUIRY

The defendant was placed under oath and addressed personally in open court. He expressly acknowledged that he was obligated to testify truthfully in all respects under penalty of perjury and that he understood the government's right, in a prosecution for perjury or false statement, to use against him any statement that he gives under oath. *See* Rule 11(b)(1)(A).

The defendant testified that his full legal name is Jimmy Louis Chambers. He stated that he is forty-four (44) years of age; he has an eleventh grade education, and he can read, write and understand English without difficulty. He stated that his mind was clear and that he knew he was in court for the purpose of entering a plea of guilty to a felony offense. He denied having any medical condition, either physical or mental, which might interfere with his ability to understand and participate fully in the proceedings; he similarly denied using (or being under the influence of) any medications, drugs, or alcohol which might impair his ability to understand and participate fully in the proceedings, and he affirmatively represented that his mind was clear. Additionally, defense counsel represented that she had no reservations about the defendant's competency to change his plea and to enter a plea of guilty.

The defendant confirmed that he had in fact previously received a copy of the Indictment

against him. He testified that he had discussed the charge with his attorney, that he understood the charge, and that he knew it was a felony. *See* Rule 11(b)(1)(G). He testified that he had been given adequate time to prepare any defenses he might have to the charge contained in the Indictment, that he was fully satisfied with the services of his attorney, that it was his intention and desire to change his prior plea and to enter a plea of guilty to the charge against him, that he understood he could not later withdraw his plea of guilty, and that his decision to change his plea was made after consulting fully with his attorney.

The defendant confirmed that he fully recognized and understood his right to have the Rule 11 hearing conducted by a United States district judge, and he gave his verbal and written consent to proceed with the hearing before the undersigned United States magistrate judge. The defendant's written consent was filed and made a part of the record.

Counsel for both parties represented that the defendant's proposed change in his prior plea was not being made pursuant to any type of plea agreement. The defendant then testified that no one had made any promise or assurance of any kind in an effort to induce him to plead guilty in this case and that no one had attempted in any way to force him to plead guilty.

Upon further inquiry, the defendant stated that he knew that his plea, if accepted, would result in his being adjudged guilty of the offense for which he was proposing to plead guilty and that such adjudication may deprive him 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 any kind of firearm.

He expressly acknowledged that he was proposing to enter a plea of guilty to Count One of the Indictment which charged him with possessing with intent to distribute five hundred (500) grams or more of a mixture and substance containing a detectable amount of cocaine a Schedule II controlled substances, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(ii)(II).

After the attorney for the government stated the mandatory minimum penalty provided by law for the offense charged in Count One of the Indictment, the defendant acknowledged unequivocally that he understood five (5) years imprisonment to be the mandatory minimum penalty which the court would be required to impose if his plea of guilty is accepted to Count One.¹ *See* Rule 11(b)(1)(I).

After the attorney for the government had informed the defendant of the maximum possible penalty provided by law for the offense charged in Count One of the Indictment, the defendant expressly acknowledged that he understood imprisonment for forty (40) years and a \$2,000,000.00 fine to be the maximum penalty provided by law for conviction of the felony set forth in Count One. Additionally, he acknowledged that upon release following any term of incarceration he would be required to serve a significant period of supervised release. *See* Rule 11(b)(1)(H).

The defendant was informed, and he expressly acknowledged, that the court's determination of his sentence would include consideration of multiple factors, including: the nature and circumstances of the offense; the defendant's history and characteristics; the seriousness of the

¹ The defendant was informed that he could be sentenced to less than five years imprisonment if the government makes a motion pursuant to 18 U.S.C. § 3553(e) on his behalf or in the unlikely event that he qualifies for the "Safety Valve" set forth in 18 U.S.C. § 3553(f). The defendant represented to the court that he fully understood both possible exceptions and had discussed both in detail with his attorney.

offense; the need to promote respect for the law; the need to provide for just punishment and afford adequate deterrence; the need to protect the public; any determined need to provide the defendant with educational or vocational training, medical care or other correctional treatment in the most efficient manner; the kinds of available sentences; the pertinent sentencing guidelines and policy statements; the need to avoid unwanted sentence disparities; and any need to provide restitution. He acknowledged that he understood that the court may order him to make full restitution to any victim and may require him to forfeit certain property to the government. *See* Rule 11(b)(1)(J)–(K). He also stated that he knew that he would be required to pay the mandatory One Hundred Dollar (\$100.00) special assessment. *See* Rule 11(b)(1)(L).

The defendant testified that he and his attorney had talked about how the Sentencing Commission Guidelines might apply to his case, including the obligation of the court to consider these Guidelines and the court's discretion to depart from them under certain circumstances and in accordance with applicable court decisions. *See* Rule 11(b)(1)(M); *United States v. Booker*, 543 U.S. 220 (2005); *United States v. Moreland*, 437 F.3d 424 (4th Cir. 2006). In addition, he acknowledged that he understood the court would not be able to determine the recommended guideline sentence for his case until after the presentence report had been completed and he and the government each had an opportunity to challenge the facts reported by the probation officer. He acknowledged that he understood, irrespective of any sentence imposed by the court, he would have no right to withdraw his plea of guilty. He was informed and acknowledged that parole had been abolished and that he would not be released on parole.

Each of the defendant's procedural rights surrendered on a plea of guilty was also explained: including: his right to persist in his previous plea of not guilty to the offense charged against him (*See* Rule 11(b)(1)B)); his attendant rights to a trial by jury (*See* Rule 11(b)(1)(C)) and right to be represented and to have the assistance of counsel at trial and at every other stage of the proceeding (*See* Rule 11(b)(1)(D)); his right at trial to see, to hear, to confront and to have cross-examined all adverse witnesses (*See* Rule 11(b)(1)(E)); his right to be protected from compelled self-incrimination; his right to testify and to present evidence in his defense; his right to the issuance of subpoenas, or compulsory process, to compel the attendance of witnesses to testify in his defense (*See* Rule 11(b)(1)(E)); his presumption of innocence; the obligation of the government to prove his guilt beyond a reasonable doubt; the right on his part to decline to testify unless he voluntarily elected to do so in his own defense; and his right to have a unanimous guilty verdict. The defendant testified that he understood his right to persist in his plea of not guilty and the attendant rights that he would waive upon entry of a guilty plea to Count One of the Indictment. *See* Rule 11(b)(1)(F).

He stated that he understood he would be bound by, and could not withdraw, his guilty plea even if the court's sentence was more severe than he expected. He stated that he knew parole had been abolished, that he would not be released on parole from any period of incarceration, that he understood that he would likely be ordered to serve a period of "supervised release" in addition to a term of imprisonment, and that any violation of the terms and conditions of supervised release could result in his return to prison for an additional period of time.

Without equivocation, the defendant stated that he knew that his entry of a guilty plea

constituted an admission of all the elements of a formal criminal charge and that he was pleading guilty because he was in fact guilty of the crime charged in Count One of the Indictment.

In response to further questioning to ensure that his proposed plea was voluntary, the defendant again stated that his plea did not result from any force, threats, or promises of any kind (*See* Rule 11(b)(2)), that his decision to plead guilty was in fact fully voluntary on his part, and that it was being made with the advice and assistance of counsel.

To permit the court to determine that an independent factual basis existed for the plea, counsel for the government submitted, by proffer, a written Statement of Facts outlining the evidence the government was prepared to introduce at trial.

After consultation with his attorney, the defendant waived a reading of the Indictment and entered a plea of GUILTY to Count One alleging his violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(ii)(II). The defendant then executed the requisite written form, and it was filed and made a part of the record.

After entering his plea as aforesaid, after an independent basis for the plea was established and after being informed that the undersigned would recommend acceptance of his aforesaid plea, the defendant reiterated his satisfaction with the advice and assistance of his attorney, and he thanked him for his services.

Pursuant to the order of referral, the appropriate probation office was directed to initiate a presentence investigation and preparation of a presentence report. The defendant was then remanded to the custody of the United States Marshal pending completion of a presentence report.

B. GOVERNMENT'S EVIDENCE

As noted above, to provide an independent factual basis for the defendant's plea, counsel for the government submitted a written Statement of Facts outlining the evidence the government was prepared to introduce at trial. It is made a part of this report and incorporated herein by reference *in haec verba*. Upon inquiry, counsel for the government represented that the drug weight and controlled substance content set forth in the written proffer had been confirmed by laboratory analysis, and counsel for the defendant stated that she had in fact been provided with a copy of the relevant laboratory report. The fact that the weight and Schedule II content of the drugs involved in this matter were confirmed by proper laboratory analysis is also incorporated herein and made a part hereof.

Counsel for the defendant also confirmed that the proffer accurately outlined the evidence upon which the government would rely at trial, and she noted for the record two minor evidentiary issues the defense had with the written proffer. Although the proffer correctly mentioned that the defendant was not eligible to drive, it incorrectly described his licence as being suspended. Since he had never been licenced to drive, it was only his potential privilege to drive that had been suspended. Secondly, defense counsel noted that the vehicle's owner denied having given the trooper permission to search, but the issue was not of significance because the trooper was in fact prepared, as the proffer outlined, to testify that he smelled marijuana in the vehicle and therefore had probable cause for his search.

With those two caveats, the defendant similarly confirmed that the proffer summarized the government's case against him. Counsel for the defendant also represented that she had previously received and discussed the contents of the written Statement of Facts with her client. After noting that the written Statement of Facts had been endorsed by counsel for both parties, it was received and filed and made a part of the record.

C. FINDINGS OF FACT

Based on the evidence, representations of counsel, and the defendant's sworn testimony presented as part of the Rule 11 hearing, the undersigned 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 fully understands and is fully aware of the nature of the charge against him and the consequences of his plea of guilty to Count One;
3. The defendant is fully informed, and he understands, the enumerated items set forth in Rule 11(b)(1)(A)–(N);
4. The defendant's plea of guilty was made pursuant to no agreement or understanding with the government;
5. The defendant's tender of a plea of guilty to Count One was made with the advice and assistance of counsel;
6. The defendant's entry of a plea of guilty to Count One was made with full knowledge and understanding both of the nature of the offense and the full range of punishment which might be imposed;
7. The defendant's plea of guilty is intelligently made, is fully voluntary, and did not result from any force, threats, or promises of any kind;
8. The defendant's plea of guilty is a admission on his part of the substantive offence charged in Count One of the Indictment; and

9. The evidence presents an independent factual basis containing each essential element of the offense to which the defendant is pleading guilty.

D. RECOMMENDED DISPOSITION

Based on the above findings of fact, the undersigned RECOMMENDS that the court accept the defendant's plea of guilty to Count One of the Indictment, that the defendant be adjudged guilty of the said offense, and that a sentencing hearing be scheduled before the presiding district judge on April 23, 2009 at 9:30 a.m.

E. NOTICE TO PARTIES

Notice is hereby given to the provisions of 28 U.S.C. § 636(b)(1)(C). Within ten (10) 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 the rules of court. The presiding district judge shall make a *de novo* determination of those portions of the report or specified findings or recommendations to which an 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 presiding district 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 ten (10) days could waive appellate review.**

The clerk is directed to transmit a copy of this Report and Recommendation to all counsel of record. And at the conclusion of the ten-day period, the Clerk is directed to transmit the record in this matter to the presiding United States district judge.

DATED: 12th day of January 2009.

/s/ JAMES G. WELSH
United States Magistrate Judge