

A P P E N D I X 2

Change of Counsel & Change of Plea Transcripts

1 Friday, November 4, 2016 - 9:30 a.m.

2 (Defendant present.)

3 THE CLERK: All rise. This United States District
4 Court, the Honorable Robert J. Bryan presiding, is now in
5 session.

6 THE COURT: Mr. Fieman, we are going to have to
7 appoint a lawyer for this next guy and his lawyer is not here.
8 I don't know whether it would be a CJA lawyer. Mr. Moon, wait
9 a second. I don't know if it would be a CJA lawyer or a
10 public defender.

11 MR. FIEMAN: I don't know who the client is. I would
12 be happy to assist in any way you need me, at least for
13 purposes of this appearance.

14 THE COURT: Stick around a second, it might make
15 sense.

16 MR. GRUBER: I don't know anything about it either.
17 Is it an SR violation?

18 THE COURT: Bring Mr. Hernandez in.

19 THE CLERK: It is a motion to withdraw. Mike Dion's
20 case, and George Trejo is the attorney.

21 THE COURT: Okay, the next matter is United States
22 versus George Edward Hernandez, 16-5358.

23 Mr. Hernandez is present in court. His attorney of
24 record, Mr. Trejo, is not present.

25 Would you put on the record, Dara, what you know about his

1 absence today?

2 THE CLERK: I was notified by his office this morning
3 that he was having problems with his eye. He had eye surgery
4 and he was going to get a prescription and be here as soon as
5 he could, no later than 9:30.

6 THE COURT: Now Mr. Hernandez, I got your letter and
7 that is why we are having this hearing today. Mr. Trejo
8 indicated he, in his response to your letter, he thought the
9 Court should appoint a public defender for you and allow him
10 to withdraw. And is that your desire here?

11 THE DEFENDANT: Yes.

12 THE COURT: And I have your financial affidavit. I
13 take it you don't have any funds with which to employ a lawyer
14 at this point; is that correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Somebody else paid Mr. Trejo for you?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Present in court is Mr. Gruber for
19 the government, and the public defender Mr. Fieman. And I
20 guess Mr. Gruber, I should ask you first if you have any
21 objection to appointment of counsel and allowing Mr. Trejo to
22 withdraw.

23 MR. GRUBER: Your Honor, as the Court knows, I am
24 standing in for Mike Dion, who apparently is stuck in traffic.
25 There was a bad crash on I-5, I guess.

1 objection to appointment of either a CJA lawyer or public
2 defender, depending on which is appropriate?

3 MR. FIEMAN: Correct, Your Honor. We'd be happy to
4 represent Mr. Hernandez. We just merely would need to check
5 for any potential conflicts, then refer it to CJA if there was
6 a problem, but we are happy to take the case.

7 THE COURT: Okay, Mr. Hernandez, I am going to order
8 the withdrawal of Mr. Trejo and appoint a public defender for
9 you, either from the public defender's office or a Criminal
10 Justice Act lawyer if there's a conflict in the public
11 defender's office. The new lawyer will be in touch with you,
12 and will take whatever action is appropriate on your behalf, I
13 assume, and take over the case.

14 Mr. Trejo has an ethical obligation to assist the new
15 lawyer in getting him your case and getting him started and
16 passing records and so forth. I hope he'll take care of that
17 as a lawyer should, but he's not here to talk about it. But
18 anyway, will that solve the problem you find yourself in as
19 near as you can tell, I mean, in terms of representation?

20 THE DEFENDANT: Yes, Your Honor, but if he --

21 THE COURT: I can't hear you.

22 THE DEFENDANT: If he isn't willing to pass on that
23 information, what should I do?

24 THE COURT: You should talk to your new lawyer about
25 that.

1 UNITED STATES DISTRICT COURT FOR THE
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 -----
5 UNITED STATES OF AMERICA,)
6)
6 Plaintiff,) No. CR16-5358 RJB
7)
7 V.)
8)
8 GEORGE EDWARD HERNANDEZ JR.,)
9)
9 Defendant.)
10)
10)

11 -----
12 CHANGE OF PLEA HEARING

13 Before the Honorable J. Richard Creatura

14 January 10, 2017
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23 Transcribed by: Reed Jackson Watkins

24 Court Approved Transcription

25 206.624.3005

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January 10, 2017

THE COURT: -- versus George Hernandez, CR16-5358.

If the parties could make their appearances.

MR. VELAMoor: Good morning, Your Honor. Siddharth Velamoor for the United States.

THE COURT: Good morning.

MR. FIEMAN: Good morning, Your Honor. Colin Fieman for Mr. Hernandez, who is seated to my right.

You're fine.

THE COURT: Good morning.

And good morning, Mr. Hernandez.

THE DEFENDANT: Good morning.

THE COURT: Mr. Hernandez, we're here to go over a proposed plea agreement. Now, you have the right to have this proceeding before a district court judge. This consent allows me, a magistrate judge, to conduct the hearing.

Did you review that with Mr. Fieman before you signed it?

THE DEFENDANT: Yes.

THE COURT: And based on this consent, we'll proceed forward.

And Mr. Fieman, can you please review for me what you've done to go over the plea agreement with your client?

MR. FIEMAN: Thank you, Your Honor.

1 We did review the entire plea agreement together.
2 Mr. Hernandez also read it through. I answered any
3 questions that he had. He signed the original in my
4 presence, and I believe he is entering the plea knowingly,
5 intelligently and voluntarily.

6 THE COURT: Thank you.

7 Mr. Hernandez, I need to ask you some questions under
8 oath. Could you please stand and raise your right hand.

9 Do you solemnly swear the testimony you're about to give
10 will be the truth, the whole truth and nothing but the
11 truth?

12 THE DEFENDANT: Yes, Your Honor.

13

14 GEORGE EDWARD HERNANDEZ JR., Witness herein, having first been
15 duly sworn on oath, was examined
16 and testified as follows:

17

18 THE COURT: Thank you. Please be seated.

19 Please state your full name and your age.

20 THE DEFENDANT: George Ed Hernandez Jr., 32 years old.

21 THE COURT: What's your education?

22 THE DEFENDANT: Eleventh grade.

23 THE COURT: So you read and understand English?

24 THE DEFENDANT: Yes.

25 THE COURT: The reason I'm asking you these questions is I

1 need to be satisfied that you're entering into this
2 agreement knowingly, intelligently and voluntarily.

3 So Mr. Fieman says that he has gone over the plea
4 agreement with you. Have you also had a chance to read it
5 over yourself?

6 THE DEFENDANT: Yes.

7 THE COURT: After reading it over and talking to
8 Mr. Fieman, do you believe you understand it?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. We're going to go through some portions
11 of it. If you have any questions during the course of my
12 questioning, you can feel free to ask Mr. Fieman any
13 questions you wish.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Do you have a copy of the agreement in
17 front of you there? Good.

18 The first part of the agreement describes the charges that
19 you would be pleading guilty to. Paragraph 2 on page 2
20 describes the elements of those offenses, and then
21 paragraph 3, which is the bottom of page 2 and most of
22 page 3, describes the potential penalties you're facing if
23 you decide to plead guilty.

24 I'm going to ask the Assistant United States Attorney to
25 summarize the charges, the elements of the offenses, and the

1 potential penalties, and then I'll ask you if you understand
2 the same.

3 Mr. Velamoor.

4 MR. VELAMOOR: Thank you, Your Honor.

5 The charges to which the defendant is expected to plead
6 guilty are Possession of Controlled Substances with Intent
7 to Distribute, a lesser included offense of the offense
8 charged in Count 1, in violation of Title 21 U.S.C. Sections
9 841(a)(1) and 841(b)(1)(B).

10 The potential penalties associated with this count are
11 imprisonment for not less than five years and not more than
12 forty years, a fine of up to \$5 million, a period of
13 supervision following release from prison of not less than
14 four and up to five years, and a \$100 mandatory special
15 assessment.

16 The elements of this offense are, first, that the
17 defendant knowingly and intentionally possessed controlled
18 substances; and second, that the defendant possessed the
19 controlled substances with the intent to distribute them to
20 another person. It is also an element of this offense that
21 the substances at issue involved 50 grams or more of a
22 mixture or substance containing methamphetamine.

23 The second count to which the defendant is expected to
24 plead guilty is Possession of a Firearm During and in
25 Furtherance of a Drug Trafficking Crime as charged in Count

1 6 of the indictment, in Violation of 18 U.S.C. 924(c).

2 The potential penalties associated with this count are a
3 mandatory minimum sentence of five years of imprisonment and
4 up to life, and that the sentence must be served
5 consecutively of the other sentence imposed on Count 1, a
6 fine of up to \$250,000, a period of supervision following
7 release from prison of not more than five years, and a \$100
8 mandatory special assessment.

9 The elements of this charge are, first, that the defendant
10 committed a drug trafficking crime as charged in Count 1;
11 second, that the defendant knowingly possessed a firearm;
12 and third, that the defendant knowingly possessed the
13 firearm in furtherance of the drug trafficking crime charged
14 in Count 1.

15 THE COURT: Mr. Hernandez, do you believe you understand
16 the nature of these charges, the elements of the offense and
17 the potential penalties?

18 THE DEFENDANT: Yes.

19 THE COURT: And if you could turn to page 4 of the
20 agreement, paragraph 4 talks about the quantity of drugs
21 involved.

22 Now, as the Assistant United States Attorney explained,
23 one of the elements that would lead to the potential
24 penalties you're facing here has to do with the amount of
25 drugs that were claimed as part of this charge. This

1 paragraph says that you're acknowledging that Count 1
2 involves 50 or more grams of a mixture or substance
3 containing methamphetamine.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: And are you prepared to admit that fact?

7 MR. FIEMAN: You need to answer out loud, George.

8 THE DEFENDANT: Yes.

9 THE COURT: Also, paragraph 5 makes it clear that if you
10 decide to plead guilty to this drug offense, it may make you
11 ineligible for certain food stamp and Social Security
12 benefits in the future.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And if you decide to plead guilty, you're
16 giving up certain constitutional rights. The Government has
17 the obligation of proving its case against you beyond a
18 reasonable doubt at trial. And by pleading guilty, you're
19 giving up your right to a trial.

20 Now, at that trial, you would have the right to confront
21 and cross-examine witnesses, you could subpoena witnesses to
22 appear on your own behalf, you could testify or you could
23 remain silent. And if you remain silent, that couldn't be
24 used against you. You have the right to be represented by
25 counsel, and if you could not afford counsel, then counsel

1 would be appointed for you.

2 Even if you were to be found guilty at trial, you could
3 appeal that finding of guilt, but if you decide to plead
4 guilty, you're giving up those rights. There would be no
5 trial. Instead, you would proceed to sentencing.

6 Do you understand these things?

7 THE DEFENDANT: Yes.

8 THE COURT: If you could turn to page 5 of the agreement.
9 Paragraph 7 is an acknowledgement that no one has promised
10 or guaranteed to you what sentence the Court will impose.
11 Now, there is a recommendation as far as what the
12 recommended sentence would be. It's a joint recommendation.
13 We're going to talk about that in a little bit, but that
14 recommendation is not binding on the Court, and the Court
15 can impose any penalty that's authorized by law, and you
16 can't withdraw your guilty plea based solely on that
17 sentence.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: So has anyone promised or guaranteed to you
21 what sentence the Court will impose?

22 THE DEFENDANT: No.

23 THE COURT: Now, the Statement of Facts is on page 5,
24 paragraph 8, and it goes over to page 6, line 7. Now, this
25 Statement of Facts is critical to this agreement, because

1 this is your case, and I have evaluated the facts that
2 you're admitting here to determine whether or not each of
3 the elements of the charges that you're pleading guilty to
4 have been admitted to. You can also assume that the
5 sentencing judge in this case, I think it's Judge Bryan, is
6 going to consider the facts you're admitting here to
7 determine in part what your sentence should be. So it's
8 very important that the facts are accurate and that you're
9 prepared to admit them.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Have you looked over every single line
13 of paragraph 8?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you satisfied those facts are accurate?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you admitting those facts?

18 THE DEFENDANT: Yes.

19 THE COURT: Let's go to page 6, paragraph 9. This talks
20 about the United States Sentencing Guidelines. Now, these
21 guidelines can be complicated. Have you had a chance to
22 talk to Mr. Fieman as to how these guidelines and the nine
23 factors set forth in paragraph 9 may affect your sentence?

24 THE DEFENDANT: No.

25 THE COURT: Okay. Well, then I'd like you to take an

1 opportunity to have Mr. Fieman describe those to you.

2 MR. FIEMAN: We are ready to proceed, Your Honor.

3 THE COURT: Excuse me?

4 MR. FIEMAN: We're ready to proceed. Thank you, Your
5 Honor.

6 THE COURT: Okay. As I've said, these guidelines can be
7 complicated, so if you feel like you need additional time to
8 discuss them with Mr. Fieman, that's certainly fine. There
9 are a few things to keep in mind. Do you think you need
10 more time to talk about it with Mr. Fieman?

11 THE DEFENDANT: No.

12 THE COURT: Okay. Well, there are a few things to keep in
13 mind about these guidelines. These are just guidelines.
14 The Court uses them to evaluate what sentence to impose.
15 And they can be complicated, but your counsel and the U.S.
16 Attorney's Office will be submitting their evaluations as to
17 how the guidelines apply, as will Probation, which is a
18 separate arm of the Court. All of those recommendations
19 will be given to Judge Bryan for his consideration, but they
20 are only guidelines. Judge Bryan will make his own
21 evaluation as to how the guidelines apply and then will
22 decide whether or not to follow the guidelines. The Court
23 doesn't need to follow the guidelines and can impose any
24 sentence that's authorized by law up to the maximum.

25 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Paragraph 10 on page 7 talks about acceptance
3 of responsibility. Now, one of the things in the guidelines
4 is that, by agreeing to accept a plea of guilty here, you're
5 relieving the Government of its obligation to prove its case
6 against you at trial. And the guidelines will acknowledge
7 that by accepting this responsibility that the level of the
8 offense may be reduced up to three levels.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Again, that's within the discretion of the
12 Court and the Court doesn't need to do that.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, the Sentencing Recommendation is in
16 paragraph 11. And the parties have jointly agreed to
17 recommend to the Court a total term of imprisonment for both
18 charges of 132 months.

19 Is that your understanding as to what the parties have
20 agreed to?

21 THE DEFENDANT: Yes.

22 THE COURT: But do you also understand that that is not
23 binding on the Court?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Now, there is a sentence here that

1 says, "The United States may recommend that the sentence run
2 consecutively with any other pending sentences." I can tell
3 you, I didn't know what that was referencing.

4 Are there other pending sentences that are not in this
5 agreement?

6 MR. VELAMOOD: Your Honor, that sentence refers to a State
7 prosecution that Mr. Hernandez also has been subject to as a
8 result of some of the underlying conduct and unrelated
9 conduct as well.

10 THE COURT: I see.

11 So do you understand what is being referred to by, "Other
12 sentences that may be imposed"?

13 THE DEFENDANT: Yes.

14 THE COURT: And by the sentence "running consecutively,"
15 that would mean one after the other.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Now, paragraph 12 talks about
19 non-prosecution of additional offenses. Now, I'm not going
20 to repeat all of the language in this paragraph, but in
21 essence, it says the Government believes it could be
22 charging you or proceeding on other charges, but are
23 choosing not to go forward with those charges in exchange
24 for your willingness to plead guilty to these charges.
25 However, if the agreement does not go forward for some

1 reason or you break this agreement in any way, then the
2 Government is reserving for itself the right to proceed
3 against you on these other charges.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Paragraph 13 is Forfeiture. In essence, it's
7 saying that you're giving up any and all interest in any
8 vehicles, currency, firearms, ammunition or illegal
9 contraband that was seized during this investigation.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Paragraph 15 talks about breach, waiver and
13 post-plea conduct. Now, we talked earlier that if you break
14 this agreement in some way, that in essence all bets are
15 off, the Government can proceed against you on any and all
16 other charges, it could ask for a different sentence if it
17 chose to.

18 Now, one way that you could break this agreement is if you
19 engage in any illegal conduct between now and the time of
20 sentencing.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Paragraph 16 talks about waiver of appellate
24 rights and rights to collateral attack. Now, we talked
25 earlier that if you decide to plead guilty, you're giving up

1 your right to appeal that finding of guilt. This paragraph
2 is different. It says that, so long as the Court imposes a
3 custodial sentence that is within or below the sentencing
4 guideline range, or the mandatory minimum if greater than
5 the guideline range, as determined by the Court at the time
6 of sentencing. And you're giving up most of your rights to
7 appeal that sentence as well.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, one of the things the Court evaluates
11 when looking at a Waiver of Appellate Rights is the quantum
12 of information that's available to you at the time that
13 you're doing this waiver. And in this circumstance, the
14 amount of the drugs is a determining factor on the sentence.
15 And the parties have agreed to what the recommended sentence
16 should be.

17 So with that information, do you believe that that's
18 sufficient information to waive these appellate rights that
19 you may have on an ultimate sentence that's decided by the
20 Court?

21 Do you understand my question?

22 THE DEFENDANT: Yes.

23 THE COURT: Is that an affirmative answer to my first
24 question? Are you satisfied you have enough information?

25 THE DEFENDANT: Yes.

1 THE COURT: Now, let me tell you a couple things about
2 this Waiver of Appeal Rights to keep in mind.

3 One is, courts try to do their best to properly apply the
4 sentencing guidelines, but they make mistakes and that's why
5 we have appellate courts. But you don't know whether or not
6 Judge Bryan is going to make a mistake at this point,
7 because that's something that's going to happen, if at all,
8 in the future. So you're giving up a mistake that you don't
9 know about that may happen in the future.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: The second aspect of this is that it's a
13 unilateral waiver. What I mean by that is, you're giving up
14 your right to appeal that sentence, but if for any reason
15 Judge Bryan makes a mistake in the sentencing guidelines,
16 and the Government believes that the sentence is too low,
17 the Government is not giving up its right to appeal that
18 sentence.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, there are a couple of exceptions to this
22 waiver that are set forth in the agreement.

23 One, as I told you, you're entitled to the effective legal
24 representation. And after this case is over, if you do not
25 believe you have been effectively represented by counsel,

1 you don't give up your right to appeal that issue.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you believe you've been effectively
5 represented by Mr. Fieman so far?

6 THE DEFENDANT: Yes.

7 THE COURT: Also, if during your period of incarceration
8 you believe that your rights have been violated -- for
9 instance, you haven't received sufficient food or medical
10 care -- you do not give up your right to petition the Court
11 in that event either.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Has anyone made any threats to you that are
15 compelling you to go forward today?

16 THE DEFENDANT: No.

17 THE COURT: Have you received any promises other than the
18 promises contained in this plea agreement?

19 THE DEFENDANT: No.

20 THE COURT: There is an enhanced penalty paragraph here,
21 paragraph 19. It says that, so long as you fulfill the
22 terms and conditions of this agreement, the U.S. Attorney's
23 Office agrees not to file an enhanced penalty information
24 alleging any other prior felony drug convictions.

25 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Now, after going through this plea agreement,
3 do you have any other questions of Mr. Fieman before we
4 proceed?

5 THE DEFENDANT: No.

6 THE COURT: Is this your signature that appears on the
7 last page of the agreement?

8 THE DEFENDANT: Yes.

9 THE COURT: Counsel, do you have any other changes,
10 modifications or additions that you would like to bring to
11 the Court's attention before I accept the change in plea?

12 MR. VELAMOOR: Not for the Government, Your Honor. Thank
13 you.

14 MR. FIEMAN: No, Your Honor. I would just note on page 8,
15 the enumerated paragraphs skip from 13 to 15. That's a
16 typographical error, there is not a missing provision. And
17 otherwise, I have nothing to add.

18 THE COURT: I'm sorry. Could you say that again?

19 MR. FIEMAN: On page 8, just the enumerated paragraphs go
20 from 13 to 15. There is no missing paragraph 14, it just
21 chronologically skipped a beat. So I just wanted to note
22 that for the record that -- otherwise, it's complete and
23 accurate.

24 THE COURT: Okay. Any other changes, modifications or
25 additions?

1 MR. FIEMAN: No, Your Honor. Thank you.

2 THE COURT: Okay. Then, Mr. Hernandez, as to the charge
3 of Possession of Controlled Substances with Intent to
4 Distribute, which is a lesser included offense of the
5 offense charged in Count 1 of the indictment in violation of
6 Title 21 U.S.C. Section 841(a)(1) and (b)(1)(B), how do you
7 plead, guilty or not guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: And as to the charge of Possession of a
10 Firearm During and in Furtherance of a Drug Trafficking
11 Crime as charged in Count 6 in violation of Title 18 U.S.C.
12 Section 924(c)(1)(A)(i), how do you plead, guilty or not
13 guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: I find that your plea was done knowingly,
16 intelligently and voluntarily. There is a factual basis to
17 accept your plea of guilty. I also find that there is a
18 sufficient quantum of information for you to waive your
19 appellate rights during sentencing, and therefore, will
20 recommend to Judge Bryan that he accept your plea of guilty.

21 I'm signing the report and recommendation.

22 Do we have a date for sentencing?

23 THE CLERK: It is March 31st at 9:30 before Judge Bryan.

24 THE COURT: And I'm also signing an order regarding the
25 sentencing procedure.

1 Now, this order sets out what's going to happen between
2 now and the time of sentencing. I'm sure that you and
3 Mr. Fieman will get together again to discuss what you wish
4 to present to Judge Bryan at the time of sentencing, as will
5 the U.S. Attorney's Office and Probation, which is a
6 separate arm of the Court. All of those reports will be
7 given to Judge Bryan for his consideration.

8 At the time of sentencing, you will also be given an
9 opportunity to address the Court yourself if you wish. You
10 don't need to address the Court. If you choose not to,
11 Judge Bryan won't hold it against you, but you should
12 understand you have that right.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Anything further for Mr. Hernandez at this
16 time?

17 MR. FIEMAN: No. Thank you, Your Honor.

18 MR. VELAMoor: Nothing from the Government, Your Honor.
19 Thank you.

20 THE COURT: Thank you. Good luck to you, sir.

21 THE CLERK: All rise. Court is in recess.

22 (Proceeding is adjourned)

23 ///

24 ///

25 ///