

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
 v.) 3:18-CR-36
) JUDGE VARLAN
JOSEPH D. ROUSE)

INFORMATION FILED BY UNITED STATES ATTORNEY
TO ESTABLISH PRIOR CONVICTION

Comes now the United States of America by and through the United States Attorney for the Eastern District of Tennessee, pursuant to Title 21, United States Code, Section 851(a)(1), to file an information and give notice of the government's intention to seek increased punishment by reason of one or more prior convictions of the defendant for an offense relating to narcotic drugs, marijuana, or depressant or stimulant substances that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country, does state the following:

On January 22, 2008, in the Criminal/Circuit Court of Claiborne County, Tennessee, in case number 13,397, the defendant, Joseph Douglas Rouse, was convicted of the felony offense of Promotion of Meth Manufacture, in violation of T.C.A. §39-17-433.

Respectfully submitted, this the 2nd day of October 2018.

J. DOUGLAS OVERBEY
UNITED STATES ATTORNEY

By: s/ Caryn L. Hebets
CARYN L. HEBETS
ASSISTANT UNITED STATES ATTORNEY
800 MARKET STREET, SUITE 211
KNOXVILLE, TN 37902

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2018, the foregoing was filed electronically. Notice of this filing was sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. Counsel not indicated on the court's EFS will be served by regular U.S. Mail, postage prepaid.

s/ Caryn L. Hebets

Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
v.) 3:18-CR-36
) JUDGE VARLAN
JOSEPH D. ROUSE)

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Joseph D. Rouse, and the defendant's attorney, Wesley D. Stone, have agreed upon the following:

1. The defendant will plead guilty to the following count of the indictment:
 - a) Count One of the indictment, a conspiracy to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A).

3. The defendant has read the indictment, discussed the charges and possible defenses with defense counsel, and understands the crimes charged. The defendant is pleading guilty because the defendant is in fact guilty. In order to be guilty, the defendant agrees to the following:

a) As to Count One, each of the following elements of the crime must be proved beyond a reasonable doubt: (1) the defendant conspired or agreed with at least one other person to violate the federal drug law, specifically Title 21, United States Code, Section 841(a)(1); (2) the defendant knowingly and intentionally joined the conspiracy; and (3) the defendant participated in the conspiracy, that is a conspiracy to distribute 50 grams or more of actual methamphetamine.

4. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

a) Through the testimony of several witnesses, the United States would demonstrate, beyond a reasonable doubt, that between January of 2016 and June 6, 2018, in the Eastern District of Tennessee, and elsewhere, the defendant did knowingly, intentionally, and without authority, conspire with at least one other person to distribute at least 500 grams but less than 1.5 kilograms of actual methamphetamine, a Schedule II controlled substance.

b) The defendant admits that he obtained ounce quantities of methamphetamine from various co-defendants, including Leonard Brown, Derrick Seals, and Amber Shore, which the defendant then distributed to various individuals, including co-defendants. At times during the

conspiracy, the defendant obtained larger quantities of methamphetamine from Shore that he transported for her to Seals, Leonard Brown, Allison Barton, and others.

c) On August 4, 2016, Knox County Sheriff's went to serve an arrest warrant on Shore at the Super 8 Motel on East Emory Road in Knoxville, Tennessee. When officers knocked on the door and announced it was the sheriff's department, they heard the lock engage and movement from within the room. A hotel employee attempted to open the door with a key, but was unsuccessful. When officers finally made entry, the officers realized that the occupants of the room, the defendant, Shore, Eric Sharp, and three other individuals, had pushed a couch against the door to attempt to prevent entry. Officers secured the room and observed drug paraphernalia and a baggie containing pills on the floor. Officers ultimately obtained a search warrant for the motel room and located approximately 3.5 grams of methamphetamine packaged in five separate baggies, 11 Roxicodone pills, drug paraphernalia and U.S. Currency.

d) On April 19, 2018, a confidential informant, working at the direction of law enforcement, purchased approximately one gram of methamphetamine from the defendant at the defendant's residence in Claiborne County, Tennessee.

e) Between May and October of 2017, at various times, a search warrant was obtained for the text messages of Leonard Brown. A review of these records showed that the defendant routinely contacted Leonard Brown and asked to come and see Leonard Brown.

f) Between December of 2017 and March of 2018, during court authorized wiretaps, the defendant was intercepted in wire and electronic conversations talking with various co-defendants, including Seals and Leonard Brown.

g) During some of these calls and text messages, the defendant and Seals talked about meeting to obtain methamphetamine, about paying money owed for drugs, and about Seals traveling to Knoxville and Georgia to obtain additional methamphetamine. In another call, the defendant said that he had been in an accident near Chattanooga with two ounces of methamphetamine in the car, but that he didn't call the police.

h) The defendant admits that he conspired to distribute at least 500 grams but less than 1.5 kilograms of actual methamphetamine.

i) The defendant further admits that he was convicted of the felony offense of Promotion of Meth Manufacture in the Criminal/Circuit Court of Claiborne County, Tennessee, in case number 13,397 on January 22, 2008.

5. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

- a) the right to plead not guilty;
- b) the right to a speedy and public trial by jury;
- c) the right to assistance of counsel at trial;
- d) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;
- e) the right to confront and cross-examine witnesses against the defendant;
- f) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and
- g) the right not to testify and to have that choice not used against the defendant.

6. The parties agree that the appropriate disposition of this case would be the following as to each count:

- a) The Court may impose any lawful terms of imprisonment, any lawful fines, and any lawful terms of supervised release up to the statutory maximums;
- b) The Court will impose special assessment fees as required by law; and
- c) The Court may order forfeiture as applicable and restitution as appropriate.

No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the defendant's guilty plea. The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

7. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make any statements that are inconsistent with accepting responsibility for the defendant's offense(s), including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw

such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

8. The defendant agrees to pay the special assessment in this case prior to sentencing.

9. **Financial Obligations.** The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it

directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

b) The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

10. The defendant acknowledges that the principal benefits to the United States of a plea agreement include the conservation of limited government resources and bringing a certain end to the case. Accordingly, in consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offenses committed, the defendant voluntarily, knowingly, and intentionally agrees to the following:

a) The defendant will not file a motion for downward departure or variance or a direct appeal of the defendant's convictions or sentence with one exception: The defendant retains the right to appeal a sentence imposed above the sentencing guideline range determined by the Court or above any mandatory minimum sentence deemed applicable by the Court, whichever is greater. The defendant also waives the right to appeal the Court's determination as to whether the defendant's sentence will be consecutive or partially concurrent to any other sentence.

b) The defendant will not file any motions or pleadings pursuant to 28 U.S.C. § 2255 or otherwise collaterally attack the defendant's conviction(s) or sentence, with two exceptions: The defendant retains the right to file a § 2255 motion as to (i) prosecutorial misconduct and (ii) ineffective assistance of counsel.

c) The defendant will not, whether directly or by a representative, request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. Section 552, or the Privacy Act of 1974, 5 U.S.C. Section 552a.

11. This agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement in any way (including but not limited to failing to enter guilty plea as agreed herein, moving to withdraw guilty plea after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial or double jeopardy defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea in this case.

12. The United States will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. If additional terms are included in the Supplement, they are hereby fully incorporated herein.

13. This plea agreement constitutes the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charge, and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

J. DOUGLAS OVERBEY
UNITED STATES ATTORNEY

Oct 2, 2018
Date

By: Caryn L. Hebets
CARYN L. HEBETS
Assistant United States Attorney

9/29/18
Date

Joseph D. Rouse
JOSEPH D. ROUSE
Defendant

9-25-18
Date

Wesley D. Stone
WESLEY D. STONE
Attorney for the Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
 v.) 3:18-CR-36
) JUDGE VARLAN
JOSEPH D. ROUSE)

**AMENDED INFORMATION FILED BY UNITED STATES ATTORNEY
TO ESTABLISH PRIOR CONVICTION**

Comes now the United States of America by and through the United States Attorney for the Eastern District of Tennessee, pursuant to Title 21, United States Code, Section 851(a)(1), to file an amended information giving notice of the government's intention to seek increased punishment by reason of one or more prior convictions of the defendant for an offense relating to narcotic drugs, marijuana, or depressant or stimulant substances that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country, does state the following:

On October 2, 2018, the United States filed an Information to establish a prior conviction pursuant to Title 21 U.S.C. §851(a)(1). (R. 215) In that document, the United States cited to the defendant's 2008 conviction in case number 13,397. The United States hereby substitutes the following conviction in support of the Information:

On April 21, 2006, in the Criminal/Circuit Court of Claiborne County, Tennessee, in case number 12,886, the defendant, Joseph D. Rouse, was convicted of the felony offense of Possession of Schedule II (Meth), in violation of T.C.A. §39-17-417.

Respectfully submitted, this the 15th day of January, 2019.

J. DOUGLAS OVERBEY
UNITED STATES ATTORNEY

By: s/ Caryn L. Hebets
CARYN L. HEBETS
ASSISTANT UNITED STATES ATTORNEY
800 MARKET STREET, SUITE 211
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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2019, the foregoing was filed electronically. Notice of this filing was sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. Counsel not indicated on the court's EFS will be served by regular U.S. Mail, postage prepaid.

s/ Caryn L. Hebets

Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES

*

Plaintiff

*

*

v.

*

Case Number: 3:18-CR-36
JUDGE VARLAN

JOSEPH D. ROUSE

*

*

Defendant

*

*

**MOTION TO STRIKE AMENDED INFORMATION FILED BY UNITED STATES
ATTORNEY TO ESTABLISH PRIOR CONVICTION (Document 370)**

The Defendant, Joseph Rouse, by and through counsel, respectfully objects and moves to strike the Amended Information Filed by the United States Attorney to Establish Prior Conviction filed in this matter on January 15, 2019 (Document 370). In support of this Motion Mr. Rouse would show as follows:

On June 5, 2018, a federal grand jury sitting for the Eastern District of Tennessee at Knoxville returned a superseding indictment charging Mr. Rouse, along with others, with conspiracy to distribute 50 grams or more of methamphetamine (Document No. 24).

On October 2, 2018, Mr. Rouse and the United States of America filed a Plea Agreement. (Document No. 216). The Plea Agreement provided, in part, that “the defendant further admits that he was convicted of the felony offense of Promotion of Meth Manufacture in the Criminal/Circuit Court of Claiborne County, Tennessee, in case number 13,397 on January 22, 2008.” (Plea Agreement, Document 216, Page ID# 892, para. 4(i)).

On October 2, 2018, the United States filed an *Information filed by United States Attorney to Establish Prior Conviction* (Document No. 215) (hereinafter referred to as “Original Information”). In the Original Information, the United States relied upon Mr. Rouse’s January 22, 2018 conviction for promoting the manufacture of methamphetamine in the Claiborne County Criminal Court bearing the Docket Number 13,397 that is referenced in the Plea Agreement. On November 27, 2018, Mr. Rouse appeared before this Court and entered his plea wherein he pled guilty to Count I of the superseding indictment. (Document No. 269).

On January 15, 2019, the United States filed an *Amended Information filed by United States Attorney to Establish Prior Conviction* (Document No. 370) (hereinafter referred to as “Amended Information”). In the Amended Information, the United States, without explanation, alleged it desired to substitute Mr. Rouse’s April 21, 2006 felony conviction for felony possession of methamphetamine in the Claiborne County Criminal Court, docket number 12,886 in the place of the previously filed promoting the manufacturing of methamphetamine conviction referenced in both Mr. Rouse’s plea agreement (Document No. 216) and the Original Information filed by United States Attorney (Document No. 215).

Mr. Rouse objects to the substitution requested by the United States Attorney in its Amended Information Filed By United States Attorney To Establish Prior Conviction (Document No. 370) and hereby moves to strike the Amended Information.

Timeliness

Both the Amended Information and the government’s reliance upon the conviction contained in it are untimely. 21 U.S.C. § 851 provides that “no person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or *before entry of a plea of guilty*, the United States Attorney files

an information with the court . . . stating in writing the previous convictions to be relied upon. . . .” 21 U.S.C. § 851(a)(1) (2012) (emphasis added). Therefore, before this Court can lawfully enhance Mr. Rouse’s sentence, the information referencing the specific conviction the government relies upon was required to be filed before Mr. Rouse entered his plea of guilty.

“The requirements delineated in § 851 are mandatory, and a district court cannot enhance a defendant’s sentence based upon a prior conviction unless the government satisfies them.” U.S. v. King, 127 F.3d 483, 487 (6th Cir. 1997) (citations omitted). “However, in order to avail itself of [the enhanced penalties under 21 U.S.C. § 841(b)(1)], the government must file an information with the court and serve the defendant, stating in writing the previous convictions on which it intends to rely, and it must do so before trial or before a guilty plea is entered.” U.S. v. Pritchett, 496 F.3d 537, 541 (6th Cir. 2007). “Therefore, the proper inquiry is whether the government’s information provided the defendant ‘reasonable notice of [its] intent to rely *on a particular conviction* and a meaningful opportunity to be heard.’” King, 127 F.3d at 488-89 (emphasis added) (alteration in original).

Based upon the procedural facts referenced above, the government’s intent to rely upon the particular conviction referenced in the Amended Information was expressed by its filing of the Amended information after Mr. Rouse entered his plea and is contrary to 21 U.S.C. § 851’s requirement to express that intent prior to the time Mr. Rouse entered his guilty plea. Therefore, the government’s Amended Information is untimely and this Court should not use the conviction contained therein to increase Mr. Rouse’s mandatory minimum sentence.

Absence of Clerical Mistake

The Amended Information is not saved by the clerical mistake provision of 21 U.S.C. § 851(a)(1). Specifically, 21 U.S.C. § 851(a)(1) provides that “[c]lerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.” The government’s Amended Information merely provides that it desires to substitute the entire, separate and distinct conviction contained in it for the conviction contained in both the Plea Agreement and Original Information. Therefore, the government did not move or otherwise request this change as a clerical mistake.

The requested substitution contained in the Amended Information is not a clerical mistake contemplated by 21 U.S.C. 851(a)(1). In a case of first impression, the Sixth Circuit concluded that the government’s inclusion of the wrong date of conviction in its original information that was corrected later was the “type of error that § 851’s clerical mistake provision was designed to alleviate.” King, 127 F.3d at 489. In King, the government timely filed its information before voir dire regarding co-defendant Kewin King’s trial. Id. at 488. During voir dire, the government’s attorney received an actual copy of the conviction and realized it had incorrectly listed the date of conviction. Id. The government then filed a second information during the voir dire process which corrected the date of conviction. Id. The district court refused to enhance Mr. Kewin King’s sentence based upon its opinion that the clerical mistake provision was not applicable and the second information was untimely. Id. In concluding that the district court erred by not applying the clerical mistake provision, the Sixth Circuit noted both that Mr. Kewin King had only one prior drug trafficking conviction and the drafter of the initial information incorrectly transposed the date of arrest for the date of conviction. Id. at 489.

“Section 851 does not define the phrase ‘clerical mistake.’” Id. at 488. Although the Sixth Circuit has not defined “clerical mistake”, the Eighth Circuit has defined it as “one where the government’s initial information still gave the defendant ‘reasonable notice of the Government’s intent to rely on a *particular* conviction.’” United States v. Sturdivant, 513 F.3d 795, 804 (8th Cir. 2008) (quoting U.S. v. Curiale, 390 F.3d 1075, 1076 (8th Cir. 2004) (per curiam) (emphasis in the original)). In the instant case, the government seeks to entirely substitute an April 21, 2006 conviction of Possession of Schedule II (Meth) in docket number 12,886 for a January 22, 2008, conviction of Promotion of Meth Manufacture in docket number 13,397. The government specifically relied upon one conviction in both the Plea Agreement and its Original Information that it now seeks to substitute with an entirely different conviction in the Amended Information filed after Mr. Rouse entered his plea. This is not a clerical mistake.

To uphold what has occurred in this case would render the requirements of § 851 a nullity because it would permit the government to include the same conviction in both a plea agreement and initial information, permit the defendant to then enter his plea, and then substitute one conviction for another after the time has passed to file the information. Furthermore, to permit the government to use the conviction it seeks to substitute after Mr. Rouse entered his plea would simply require the government to merely state in a timely filed notice that it will seek enhancement based upon a conviction that will be determined after the defendant has entered his plea.

PREMISES CONSIDERED, Mr. Rouse objects to the Amended Information Filed By United States Attorney to Establish Prior Conviction (Document 370), moves to strike the Amended Information Filed by United States Attorney to Establish Prior Conviction (Document 370), and requests this Court to not consider the contents of the Amended Information Filed By United States Attorney to Establish Prior Conviction (Document 370) for purposes of enhancement

of the mandatory minimum sentence in this matter. Should this Court grant Mr. Rouse's Motion to Strike, Mr. Rouse avers that his mandatory minimum sentence is ten (10) years pursuant to 21 U.S.C. 841(b)(1)(A).

Respectfully submitted,

Hodges, Doughty & Carson, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

Hodges, Doughty & Carson, PLLC

By: /s/ Wesley D. Stone
Wesley D. Stone

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
v.) Case No. 3:18-CR-36
JOSEPH D. ROUSE) JUDGE VARLAN

**UNITED STATES' RESPONSE TO DEFENDANT'S
MOTION TO STRIKE AMENDED INFORMATION**

NOW COMES the United States of America, by and through J. Douglas Overbey, United States Attorney for the Eastern District of Tennessee, and, in response to defendant's Motion to Strike the Amended Information filed by the United States to Establish Prior Conviction (R. 453), states as follows:

The defendant contends that the amended notice filed by the United States was improper because it did not comply with the requirements of 21 U.S.C. §851, in that it was not filed before the defendant's change of plea hearing. (*Id.* at pp. 2-3) The defendant further suggests that the amended notice did not reflect a clerical mistake and therefore, it should be stricken.

The Sixth Circuit has traditionally “emphasized the ‘importance of interpreting §851’s notice requirements so as to avoid elevating form over substance.’” *United States v. Layne*, 192 F.3d 556, 576 (6th Cir. 1999) (quoting *United States v. King*, 127 F.3d 483, 489 (6th Cir. 1997)). The question for the Court is whether or not the defendant had the benefit of this “substance.” *King*, 127 F.3d at 488-489. It is sufficient that the defendant had reasonable notice of the United States’ intent to enhance the defendant’s sentence and an opportunity to contest the enhancement. *See, e.g., United States v. Kelsor*, 665 F.3d 684, 699-700 (6th Cir. 2011) (holding that errors in the §851 information did not deprive the defendant “of reasonable notice or a

meaningful opportunity to be heard,” and noting that the defendant did not contest the validity of the predicate conviction itself); *United States v. Boudreau*, 564 F.3d 431, 436-438 (6th Cir. 2009) (holding that the government’s failure to docket a §851 information did not demand resentencing where the defendant received actual notice that he was subject to an enhanced penalty); *United States v. Pritchett*, 496 F.3d 537, 548 (6th Cir 2007) (holding that the government’s failure to file a §851 information before the guilty plea did not require resentencing where the defendant did not “dispute that he had notice” of a possible enhancement or “that he had an opportunity to challenge the validity of his prior convictions”). Similarly, in this case, the defendant has received ample notice that he faced an enhanced penalty. The original information was filed on October 2, 2018 (R. 215) as was his plea agreement, which included the enhanced penalty language (R. 216). The United States filed an amended information on January 15, 2019, identifying a separate conviction for purposes of the enhanced sentence (R. 370). The amended information does not change the enhanced penalty, nor does it create a change in the defendant’s situation, that is, that he faced an enhanced penalty when he signed his plea agreement and entered his guilty plea. The defendant still has an opportunity to contest the validity of the prior conviction, as sentencing has not yet occurred.¹ The defendant was provided with judgments of both convictions underlying the United States’ original §851 information and the amended §851 information on June 19, 2018. In short, the substitution of convictions for §851 purposes does not eliminate the defendant’s notice of the enhanced penalty and his opportunity to contest the validity of that conviction.

¹ The United States notes that the defendant makes no claim that the conviction referenced in the amended information is false or not accurate.

The defendant has set forth no cause for this court to strike the amended information.

The United States accordingly respectfully submits that the Motion should be denied.

Respectfully submitted, this the 25th day of February, 2019.

J. DOUGLAS OVERBEY
UNITED STATES ATTORNEY

By: /s/ Caryn L. Hebets
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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2019, foregoing response was filed electronically. Notice of this filing was sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. Counsel not indicated on the court's EFS will be served by regular U.S. Mail, postage prepaid.

/s/ Caryn L. Hebets
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No.: 3:18-CR-36-TAV-DCP-9
)
 JOSEPH D. ROUSE,)
)
 Defendant.)

ORDER

Defendant's sentencing is pending, after he pleaded guilty to conspiring to distribute 50 grams or more of methamphetamine [Doc. 269]. Prior to that guilty plea, the government filed a notice of information to establish a prior conviction, for the purposes of a sentencing enhancement under 21 U.S.C. § 851 [Doc. 215]. After defendant entered his guilty plea, the government filed an amended prior-conviction information, which relied upon a different felony conviction as grounds for the same enhancement [Doc. 370]. Defendant has now moved to strike the amended information, asserting that the government did not comply with § 851's requirement that the information be filed "before entry of a plea of guilty" [Doc. 453].

Defendant's motion to strike will be denied. Although defendant's reading of the statute appears to be correct, the Sixth Circuit has "emphasized the 'importance of interpreting §851's notice requirements so as to avoid elevating form over substance.'" *United States v. Layne*, 192 F.3d 556, 576 (6th Cir. 1999) (quoting *United States v. King*, 127 F.3d 483, 489 (6th Cir. 1997)). Defendant was put on actual notice of the government's intent to seek the § 851 enhancement by the first information, which is enough to comply with the requirements

of the statute. *See, e.g., United States v. Kelsor*, 665 F.3d 684, 699-700 (6th Cir. 2011) (holding that errors in the §851 information did not deprive the defendant “of reasonable notice or a meaningful opportunity to be heard,” and noting that the defendant did not contest the validity of the predicate conviction itself); *United States v. Boudreau*, 564 F.3d 431, 436-438 (6th Cir. 2009) (holding that the government’s failure to docket a §851 information did not demand resentencing where the defendant received actual notice that he was subject to an enhanced penalty); *United States v. Pritchett*, 496 F.3d 537, 548 (6th Cir 2007) (holding that the government’s failure to file a §851 information before the guilty plea did not require resentencing where the defendant did not “dispute that he had notice” of a possible enhancement or “that he had an opportunity to challenge the validity of his prior convictions”).

Here, the amended information does not change the enhanced penalty, nor does it create a change in the defendant’s circumstances: he now faces exactly the same enhanced penalty as when he signed his plea agreement and entered his guilty plea. Especially where, as here, defendant does not contest the validity of the prior conviction—as he has had, and still does have, the opportunity to do—interpreting the statute like defendant suggests would run contrary to the purpose of § 851, which is just to ensure that a defendant has notice of a potential enhanced penalty. Defendant assuredly did.

Defendant’s motion is therefore **DENIED** [Doc. 453].

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE KNOXVILLE DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE
 (For Offenses committed on or after November 1, 1987)

v.

JOSEPH D ROUSE
 USM#53309-074

Case Number: **3:18-CR-00036-TAV-DCP(9)**

Wesley D Stone
 Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s): 1 of the Superseding Indictment
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense	Date Violation Concluded	Count
21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A), and 21 U.S.C. § 851(a)(1) - Conspiracy to Distribute 50 Grams or More of Methamphetamine	06/06/2018	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- The defendant has been found not guilty on count(s).
- All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

April 4, 2019

Date of Imposition of Judgment

s/ Thomas A. Varlan
 Signature of Judicial Officer

Thomas A Varlan, United States District Judge
 Name & Title of Judicial Officer

April 9, 2019

Date

DEFENDANT: JOSEPH D ROUSE
CASE NUMBER: 3:18-CR-00036-TAV-DCP(9)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **178 months and 5 days**. This sentence has been reduced by 55 days as the defendant has served 55 days in Knox County General Sessions Court Docket Number @1159677, which is relevant conduct to the instant offense. This sentence is reduced pursuant to USG §5G1.3(b), for a period of imprisonment that will not be credited by the Bureau of Prisons.

- The court makes the following recommendations to the Bureau of Prisons: that the defendant receive 500 hours of substance abuse treatment from the Bureau of Prisons' Institution Residential Drug Abuse Treatment Program and that the defendant be designated to a facility as geographically close to the Eastern District of Tennessee as possible.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at a.m. p.m. on
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on

to ,
at ,
with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSEPH D ROUSE
CASE NUMBER: 3:18-CR-00036-TAV-DCP(9)

Judgment - Page 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **ten (10) years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentencing of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JOSEPH D ROUSE
 CASE NUMBER: 3:18-CR-00036-TAV-DCP(9)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the mandatory, standard, and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: JOSEPH D ROUSE
CASE NUMBER: 3:18-CR-00036-TAV-DCP(9)

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SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as you are released from the program by the probation officer.
2. You must submit your person, property, house, residence, vehicle, papers, [computers (as defined in Title 18 U.S.C. § 1030(e)(1), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States probation officer or designee. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: JOSEPH D ROUSE
 CASE NUMBER: 3:18-CR-00036-TAV-DCP(9)

Judgment - Page 6 of 7

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.*
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSEPH D ROUSE
CASE NUMBER: 3:18-CR-00036-TAV-DCP(9)

Judgment - Page 7 of 7

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **U.S. District Court, 800 Market Street, Suite 130, Howard H. Baker, Jr. United States Courthouse, Knoxville, TN, 37902**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
 See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

United States District Court for the Eastern District of Tennessee

District of _____

United States of America

Plaintiff,

vs.

Case No. 3:18-CR-00036-09

Joseph D. Rouse

Defendant.

NOTICE OF APPEALNotice is hereby given that Joseph D. Rouse,
Name all parties taking the appeal

hereby appeal to the United States Court of Appeals for the Sixth Circuit from

Judgment in a Criminal Case & Order [Denying Motion to Strike Amended 851 Notice]
The final judgment, from an order describing itentered in this action on the 9 & 4 day of April, 2019.(s) Wesley D. Stone, BPR 21043Address: 617 W. Main StreetP.O. Box 869Knoxville, TN 37901-0869Attorney for Joseph Rouse, indigent**Note to inmate filers:** If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.cc: Opposing Counsel
Court of Appeals 6CA-3
11/16

No. 19-5400

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.) ORDE R
)
 JOSEPH D. ROUSE,)
)
 Defendant-Appellant.)

Before: GUY, GRIFFIN, and KETHLEDGE, Circuit Judges.

Joseph D. Rouse appeals the sentence imposed following his guilty plea to conspiracy to distribute 50 grams or more of methamphetamine. The government moves to dismiss the appeal based on an appellate-waiver provision in Rouse's plea agreement. Rouse opposes dismissal, arguing that he did not knowingly and voluntarily waive his right to appeal because, after he pleaded guilty, the government filed an untimely, amended 21 U.S.C. § 851 notice of enhancement substituting the conviction listed in its original § 851 information. *See* 21 U.S.C. § 851(a)(1).

"It is well settled that a defendant in a criminal case may waive any right, even a constitutional right, by means of a plea agreement." *United States v. Griffin*, 854 F.3d 911, 914 (6th Cir. 2017) (quoting *United States v. Fleming*, 239 F.3d 761, 763–64 (6th Cir. 2001)). Although mandatory, the requirements of § 851 are not jurisdictional and can also be waived. *See United States v. Pritchett*, 496 F.3d 537, 546 (6th Cir. 2007). "A knowing and voluntary

No. 19-5400

-2-

waiver of the right to appeal precludes appellate review.” *Griffin*, 854 F.3d at 914. Before accepting a guilty plea, the district court must verify the defendant’s understanding of “the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.” Fed. R. Crim. P. 11(b)(1)(N).

Rouse identifies no fault in the district court’s Rule 11 colloquy. He instead argues that he could not have knowingly and voluntarily waived the right to appeal a sentencing issue that had not yet arisen, and which he had no reason to anticipate. But this court routinely enforces appellate waivers that foreclose appeals from future sentencing errors. *See, e.g., United States v. Beals*, 698 F.3d 248, 255–56 (6th Cir. 2012). Based on this precedent, Rouse’s appellate waiver was neither unknowing nor involuntary.

Rouse’s valid appellate waiver precludes him from appealing his sentence unless it exceeds the sentencing guidelines range or the statutory maximum determined by the district court. Rouse’s sentence does not. His challenge to the enhancement of his mandatory minimum sentence is therefore precluded by his appellate waiver.

The motion to dismiss is **GRANTED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 20-_____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH D. ROUSE

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

WESLEY D. STONE
Hodges, Doughty and Carson, PLLC
617 Main Street West
Knoxville, Tennessee 37901

Attorney for Petitioner, Joseph D. Rouse

QUESTIONS PRESENTED

Does the express language of 21 U.S.C. § 851 requiring prior written notice of the particular conviction the government seeks to use to enhance a mandatory minimum sentence grant the government an implicit right to change the particular conviction post-plea and without the defendant's consent

Is appellate review of the above question precluded by an appeal waiver which exclusively provides "the defendant retains the right to appeal a sentence imposed above the sentencing guideline range determined by the Court or above any mandatory minimum sentence deemed applicable by the Court, whichever is greater"

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED CASES

(1) *United States v. Joseph D. Rouse*, No. 3:18-cr-36, District Court for the Eastern District of Tennessee. Judgment entered April 9, 2019. When referring to the record in the District Court, Mr. Rouse will use the following format (Document Name, Document Number)

(2) *United States v. Joseph D. Rouse*, No. 19-5400, U.S. Court of Appeals for the Sixth Circuit. Order entered January 31, 2020. When referring to the record in the Sixth Circuit Court of Appeals, Mr. Rouse will use the following format (19-5400, Document Name, Document Number)

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Supreme Court Rule 29.6, Joseph Rouse makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

No

2. Is there a publicly owned corporation, not a party to the appeal that has a financial interest in the outcome? No

s/ Wesley D. Stone
Wesley D. Stone

June 4, 2020
Date

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