

APPENDIX A

Order Granting Government's Motion to Dismiss
United States v. Zamarripa
No. 19-51183 (5th Cir. July 23, 2020)

United States Court of Appeals for the Fifth Circuit

No. 19-51183

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHRISTOPHER ZAMARRIPA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:19-CR-349-1

Before WILLETT, HO, and DUNCAN, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is GRANTED.

IT IS FURTHER ORDERED that Appellee's alternative motion to file its brief out of time and to extend the time to file its brief for 30 days from the denial of its motion to dismiss is DENIED AS MOOT.



A True Copy
Certified order issued Jul 23, 2020

Lyfe W. Canyca
Clerk, U.S. Court of Appeals, Fifth Circuit

APPENDIX B

Order Denying Zamarripa's
Motion to Reconsider

United States v. Zamarripa

No. 19-51183 (5th Cir. Aug. 18, 2020)

United States Court of Appeals
for the Fifth Circuit

No. 19-51183

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHRISTOPHER ZAMARRIPA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:19-CR-349-1

Before WILLETT, HO, and DUNCAN, *Circuit Judges.*

PER CURIAM:

This panel previously GRANTED Appellee's motion to dismiss the appeal. The panel has considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

APPENDIX C

Transcript of Rearrangement/Plea Hearing
United States v. Zamarripa
No. 5:19-CR-00349-FB (W.D. Tex. Aug. 15, 2019)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)

v.)

CHRISTOPHER ZAMARRIPA,)

Defendant.)

Docket No. 5:19-cr-00349-FB-1

San Antonio, Texas

August 15, 2019

TRANSCRIPT OF REARRAIGNMENT/PLEA HEARING
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

Bettina J. Richardson
Assistant U.S. Attorney
601 NW Loop 410, Suite 600
San Antonio, TX 78206

FOR THE DEFENDANT:

Kurt Gene May - FPD
RETIRED Federal Public Defender
727 E. Cesar E. Chavez Blvd., Room B-207
San Antonio, TX 78206

COURT REPORTER:

Chris Poage, CRR, RMR
United States Court Reporter
655 East Cesar E. Chavez Blvd., Suite G-65
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Proceedings reported by stenotype, transcript produced by
computer-aided transcription.

1 (9:49 a.m.)

2 THE COURT: All right. That leaves Mr. Zamarripa for
3 the 9:00 docket. So we're a little bit behind, but we'll get
4 there. And this is in 19-CR-349 with Ms. Richardson and
5 Mr. May.

6 Mr. Zamarripa, raise your right hand.

7 (The oath was administered)

8 THE COURT: Are you the same Christopher Zamarripa,
9 represented by Mr. May, who's charged in Counts 1 -- I guess
10 1-11, Ms. Richardson, means Counts 1 through 11?

11 MS. RICHARDSON: Yes, Your Honor, to the superseding
12 information.

13 THE COURT: Okay. A superseding information
14 containing eleven counts, and then Counts 1 through 10 of cyber
15 stalking, and possession of child pornography in Count 11. Are
16 you that same person?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand the charges against you?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Have you had enough time to listen to the
21 advice of Mr. May in this case?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Have you made a voluntary decision to sign
24 this plea agreement and plead guilty?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And did you know that you were doing these
2 things when you were doing them?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Did you know that you had possession of
5 the child pornography?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Mr. May, are you satisfied that
8 Mr. Zamarripa is legally competent to go forward?

9 MR. MAY: I am, Your Honor.

10 THE COURT: Have you looked at the government's
11 evidence on each and every count and given him your
12 professional advice of whether you think the government can
13 prove any of these charges beyond a reasonable doubt?

14 MR. MAY: I have, Your Honor.

15 THE COURT: And, Mr. Zamarripa, have you had enough
16 time to listen to and think about that advice?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Now, the punishment for these
19 matters is -- Counts 1 through 10 of the cyber stalking is a
20 possible five years on each count, which could be stacked, for
21 50 years, because they're individual crimes; one year of
22 supervision on each count; \$250,000 financial fine on each
23 count. On all of these counts there's a hundred dollar
24 assessment for the Victim of Crime Fund.

25 On counts -- on Count 11, the child pornography count, it

1 could be 20 years in prison, a lifetime of supervised release,
2 with a minimum of five years, a \$250,000 fine, a \$100
3 assessment, a \$5,000 assessment for the JVTIA statute, a
4 mandatory monetary assessment under offenses which predate the
5 Amy, Vicky and Andy law, and mandatory restitution of \$3,000
6 per identified victim.

7 Now, I think maybe there was something left out because
8 there's no punishment information on Counts 1 -- wait a minute.

9 MS. RICHARDSON: Counts 1 through 10 is the top chart.

10 THE COURT: Right.

11 MS. RICHARDSON: And Count 11 is the second chart.

12 THE COURT: Oh, I see. Okay. So there's not a 1
13 through 11 and a 1 through 10. Okay. I get it. Okay. All
14 right.

15 And then your actual punishment will be decided several
16 months from now, after we get a report. Do you understand that
17 part of the process?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Within the plea agreement, starting on
20 Page 4, there's a synopsis of what the government says it could
21 prove beginning in 2014 until you were taken into custody in
22 2017, about altered photographs, engaging in pornographic
23 sexual activities which you uploaded into pornographic
24 websites, and also unaltered images of two child victims.

25 And the majority of the victims in this case know you as

1 the -- as an individual within their small community within the
2 Western District of Texas. And four of these people are public
3 figures, being news and media professionals. And then it goes
4 on to list the initials of the victims. And those folks
5 identified unaltered images of themselves to the agents which
6 was on your digital device. And then she identified -- or each
7 of the victims, pictures of themselves where their face was put
8 on the body of an unknown female engaged in sexual activity,
9 and sent that to a pornographic website.

10 And then on August the 8th of 2017 you voluntarily went
11 with a law enforcement person regarding complaints related to
12 your creation of these images. And you provided voluntary
13 information about doing these things, and that you stated you'd
14 been doing this for five years and done this sort of thing to
15 maybe 10 or 15 women; that you would obtain photographs of
16 women from their Facebook account and Twitter. You used a
17 fictitious name; that you used these various web --
18 pornographic websites that are listed here. Then it goes on to
19 list your cellphone extraction information from various
20 cellphones.

21 And then there was an execution of a federal warrant by the
22 FBI. That's on Page 6. And then it goes -- that's all having
23 to do with Counts 1 through 10.

24 Then we get to Count 11, when the federal agents looked at
25 the laptop and they observed in plain view what appeared to be

1 images of child pornography. And then it goes on, on Page 7,
2 to summarize the title, I guess. I don't know what that is --
3 the address. Anyway. And then it summarizes what was shown on
4 those images involving these children.

5 And then down at the bottom of Page 7 you made a statement,
6 when you were arrested on May the 17th of 2019 -- that you were
7 voluntarily interviewed by a special agent of the FBI;
8 explained that you organized your pornographic thing in
9 specific directories and subdirectories. And then it talks
10 about the conclusion, on Page 8, that you stipulate to these
11 things that were happening during August of 2014 to May of
12 2019.

13 Have you gone over all of those facts with Mr. May?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And to the extent you were involved in
16 those activities, are those facts true and correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Now, even though you've told the Court
19 those facts are true, that doesn't make you legally guilty. If
20 you want to plead guilty, you can, but no one will force you to
21 do that.

22 If you do plead guilty, you're giving up your rights under
23 the plea agreement to have a trial by jury, to have the
24 witnesses against you lose their anonymity. They would have to
25 come in and testify. Mr. May, as your lawyer, would

1 cross-examine those witnesses against you. The government
2 would have the burden of proof to prove -- to prove one or more
3 of these charges beyond a reasonable doubt.

4 You always have the right to remain silent. And you also
5 would be giving up, generally, virtually all of your
6 appellate -- direct and habeas corpus appellate rights,
7 although you would retain some limited appellate rights if it
8 were found -- of any professional misconduct by the lawyers or
9 if the Court did something it wasn't supposed to do. But
10 assuming we do our jobs right, then you are giving up virtually
11 all of your rights. You will still have Mr. May to be your
12 lawyer.

13 Do you understand those rights that you have?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Has anyone forced you, threatened you or
16 paid you money to make you give up your rights?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: All right. You were born one month before
19 I graduated from law school. Very interesting.

20 At this time the Court makes the findings of legal
21 competency, effective assistance of counsel, knowledge of the
22 charges and punishment possibilities. There's a factual basis
23 to support each of the counts in the indictment. There's an
24 arm's length negotiated plea agreement which contains the
25 factual basis and also contains a written and orally-confirmed

1 waiver of constitutional rights.

2 Ms. Richardson, do you wish the Court to admonish further?

3 MS. RICHARDSON: Nothing further, Your Honor.

4 THE COURT: Mr. May?

5 MR. MAY: No, Your Honor.

6 THE COURT: Mr. Zamarripa --

7 THE DEFENDANT: Yes.

8 THE COURT: -- to the federal felony charges against
9 you in Counts 1 through 10 of cyber stalking, do you plead
10 guilty or not guilty?

11 THE DEFENDANT: I plead guilty, Your Honor.

12 THE COURT: To the federal felony charge of possession
13 of child pornography in Count 11 do you plead guilty or not
14 guilty?

15 THE DEFENDANT: I plead guilty, Your Honor.

16 THE COURT: I accept Mr. Zamarripa's pleas of guilty,
17 find him guilty of Counts 1 through 11. And we'll set the
18 punishment date for December the 19th at 9:30.

19 Mr. Zamarripa, is this your first federal case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you ever been in jail before?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: For what?

24 THE DEFENDANT: For online impersonation, Your Honor.

25 THE COURT: Okay. All right. And that was in state

1 court?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. All right. Well, the probation
4 officers will retrieve your state information. They will
5 prepare -- and come and visit with you, prepare a full federal
6 probation report. And you will go over that with Mr. May.
7 Then we'll see you back here on December the 19th.

8 Ms. Richardson, anything further on this matter?

9 MS. RICHARDSON: Nothing further, Your Honor.

10 THE COURT: Mr. May?

11 MR. MAY: Your Honor, just one matter. We do have a
12 waiver of indictment, which was signed today in court, if the
13 Court needs that.

14 THE COURT: Oh, yes. Thank you.

15 Mr. Zamarripa, do you understand, by signing that document,
16 that you're giving up your right to have these matters
17 presented to the grand jury first?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Did anyone force you or threaten you to
20 make you sign that document here in open court?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: And do you have any questions?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: All right. Good luck, sir. You may go
25 with the marshals.

1 Thank you, Counsel.

2 MS. RICHARDSON: Thank you, Your Honor --

3 * * *

4 (10:02 a.m.)

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2 I certify that the foregoing is a correct transcript from
3 the record of proceedings in the above-entitled matter.

4
5 Date: 1/30/2020 /s/ Chris Poage
6 United States Court Reporter
7 655 East Cesar E. Chavez Blvd., Rm. G-65
8 San Antonio, TX 78206
9 Telephone: (210) 244-5036
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APPENDIX D

18 U.S.C. § 3742

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 235. Appeal (Refs & Annos)

18 U.S.C.A. § 3742

§ 3742. Review of a sentence

Effective: April 30, 2003

[Currentness](#)

(a) Appeal by a defendant.--A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence--

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
- (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under [section 3563\(b\)\(6\)](#) or [\(b\)\(11\)](#) than the maximum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

(b) Appeal by the Government.--The Government may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence--

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines;
- (3) is less than the sentence specified in the applicable guideline range to the extent that the sentence includes a lesser fine or term of imprisonment, probation, or supervised release than the minimum established in the guideline range, or includes a less limiting condition of probation or supervised release under [section 3563\(b\)\(6\)](#) or [\(b\)\(11\)](#) than the minimum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.

(c) Plea agreements.--In the case of a plea agreement that includes a specific sentence under [rule 11\(e\)\(1\)\(C\) of the Federal Rules of Criminal Procedure](#)--

- (1) a defendant may not file a notice of appeal under paragraph (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence set forth in such agreement; and
- (2) the Government may not file a notice of appeal under paragraph (3) or (4) of subsection (b) unless the sentence imposed is less than the sentence set forth in such agreement.

(d) Record on review.--If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals--

- (1) that portion of the record in the case that is designated as pertinent by either of the parties;
- (2) the presentence report; and
- (3) the information submitted during the sentencing proceeding.

(e) Consideration.--Upon review of the record, the court of appeals shall determine whether the sentence--

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines;
- (3) is outside the applicable guideline range, and
 - (A) the district court failed to provide the written statement of reasons required by [section 3553\(c\)](#);
 - (B) the sentence departs from the applicable guideline range based on a factor that--
 - (i) does not advance the objectives set forth in [section 3553\(a\)\(2\)](#); or
 - (ii) is not authorized under [section 3553\(b\)](#); or
 - (iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in [section 3553\(a\)](#) of this title and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of [section 3553\(c\)](#); or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) Decision and disposition.--If the court of appeals determines that--

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and--

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

(g) Sentencing upon remand.--A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with [section 3553](#) and with such instructions as may have been given by the court of appeals, except that--

(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to [section 994\(a\)\(1\) of title 28, United States Code](#), and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that--

(A) was specifically and affirmatively included in the written statement of reasons required by [section 3553\(c\)](#) in connection with the previous sentencing of the defendant prior to the appeal; and

(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.

(h) Application to a sentence by a magistrate judge.--An appeal of an otherwise final sentence imposed by a United States magistrate judge may be taken to a judge of the district court, and this section shall apply (except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal) as though the appeal were to a court of appeals from a sentence imposed by a district court.

(i) Guideline not expressed as a range.--For the purpose of this section, the term “guideline range” includes a guideline range having the same upper and lower limits.

(j) Definitions.--For purposes of this section--

(1) a factor is a “permissible” ground of departure if it--

(A) advances the objectives set forth in [section 3553\(a\)\(2\)](#); and

(B) is authorized under [section 3553\(b\)](#); and

(C) is justified by the facts of the case; and

(2) a factor is an “impermissible” ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).

CREDIT(S)

(Added [Pub.L. 98-473, Title II, § 213\(a\)](#), Oct. 12, 1984, 98 Stat. 2011; amended [Pub.L. 99-646, § 73\(a\)](#), Nov. 10, 1986, 100 Stat. 3617; [Pub.L. 100-182, §§ 4 to 6](#), Dec. 7, 1987, 101 Stat. 1266, 1267; [Pub.L. 100-690, Title VII, § 7103\(a\)](#), Nov. 18, 1988, 102 Stat. 4416, 4417; [Pub.L. 101-647, Title XXXV, §§ 3501, 3503](#), Nov. 29, 1990, 104 Stat. 4921; [Pub.L. 101-650, Title III, § 321](#), Dec. 1, 1990, 104 Stat. 5117; [Pub.L. 103-322, Title XXXIII, § 330002\(k\)](#), Sept. 13, 1994, 108 Stat. 2140; [Pub.L. 108-21, Title IV, § 401\(d\)](#) to (f), Apr. 30, 2003, 117 Stat. 670, 671.)

VALIDITY

<Mandatory aspect of subsec. (e) of this section held unconstitutional by [United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 \(2005\)](#). >

<Subsection (g)(2) of this section is no longer valid after United States v. Booker, see [Pepper v. U.S.](#), U.S.2011, 562 U.S. 476, 131 S.Ct. 1229, 179 L.Ed.2d 196. >

[Notes of Decisions \(423\)](#)

18 U.S.C.A. § 3742, 18 USCA § 3742

Current through P.L. 116-214.

End of Document

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APPENDIX E

Federal Rule of Criminal Procedure 11

United States Code Annotated

Federal Rules of Criminal Procedure for the United States District Courts (Refs & Annos)

Title IV. Arraignment and Preparation for Trial

Federal Rules of Criminal Procedure, Rule 11

Rule 11. Pleas

Currentness

(a) Entering a Plea.

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under [18 U.S.C. § 3553\(a\)](#);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by [Federal Rule of Evidence 410](#).

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

CREDIT(S)

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, [Pub.L. 94-64](#), § 3(5)-(10), 89 Stat. 371, 372; Apr. 30, 1979, eff. Aug. 1, 1979, and Dec. 1, 1980; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Nov. 18, 1988, [Pub.L. 100-690, Title VII, § 7076](#), 102 Stat. 4406; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec. 1, 2013.)

Fed. Rules Cr. Proc. Rule 11, 18 U.S.C.A., FRCRP Rule 11
Including Amendments Received Through 12-1-20

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