

Appendix A

1 page

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-2066

Deon Anthony Romell Bailey

Debtor - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(2:18-cv-01034-LRR)

JUDGMENT

Before LOKEN, BENTON, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

The motion for appointment of counsel is denied as moot.

August 18, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix B

2 pages

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-2066

Deon Anthony Romell Bailey

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(2:18-cv-01034-LRR)

ORDER

The motion for appointment of counsel is denied. The motion for an extension of time to file a petition for rehearing is granted, and the petition is due September 30, 2020.

Electronically-filed petitions for rehearing must be received in the clerk's office on or before the due date.

The three-day mailing grace under Fed.R.App.P. 26(c) does not apply to petitions for rehearing.

September 02, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-2066

Deon Anthony Romell Bailey

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(2:18-cv-01034-LRR)

ORDER

The petition for rehearing by the panel is denied.

September 30, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix C

1 page

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

DEON ANTHONY BAILEY

Petitioner,

No. 18-CV-1034-LRR
15-CR-1017-LRR

vs.

UNITED STATES OF AMERICA,

Respondent.

JUDGMENT

DECISION BY COURT. This action came before the Court and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED pursuant to the Order filed on May 11, 2020 (docket number 9): The movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 is denied. A certificate of appealability will not issue.

DATED this 11th day of May 2020.

ROBERT L. PHELPS, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA



By: Deputy Clerk

Appendix D

5 pages



U. S. Department of Justice

*United States Attorney
Northern District of Iowa*

111 Seventh Avenue, SE 319-363-6333
Box 1 319-363-1990 (fax)
Cedar Rapids, IA 52401 319-286-9258 (tty)

November 11, 2015

The Honorable Linda R. Reade
Chief Judge
United States Courthouse
111 Seventh Avenue, SE
Cedar Rapids, IA 52401

Re: *United States v. Deon Anthony Romell Bailey*, 15-CR-1017

Dear Judge Reade:

I am writing in regard to the Rule 11 hearing scheduled to be held on November 12, 2015, at 8:30 a.m. The attorneys appearing at the hearing will be Special Assistant United States Attorney Erin R. Eldridge and defense counsel Raphael M. Scheetz.

The defendant intends to plead guilty to the lesser included offenses contained in Counts 1 and 2 of the Indictment filed on July 16, 2015. Counts 1 and 2 charge distribution of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, within 1,000 feet of the real property comprising a playground, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 860. Defendant will plead guilty to distribution of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C).

The parties have entered into a plea agreement, which has been forwarded separately to the Court.

STATUTE

Title 21, United States Code, Section 841(a)(1), provides:

[I]t shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with the intent to manufacture, distribute, or dispense a controlled substance.

The Honorable Linda R. Reade
Chief Judge
November 11, 2015
Page 2

ELEMENTS OF THE OFFENSE

Counts 1 and 2: The offense of distribution of a controlled substance, as charged in Counts 1 and 2, has the following two elements:

One, on or about the date alleged (March 12, 2015, or March 18, 2015), in the Northern District of Iowa, the defendant intentionally transferred cocaine base to another person; and

Two, at the time of the transfer, the defendant knew that the substance transferred was a controlled substance.

MAXIMUM AND MINIMUM PENALTIES

Counts 1 and 2 of the Indictment are each punishable by the following maximum penalties: (1) not more than 20 years' imprisonment without the possibility of parole; (2) a fine of not more than \$1 million; (3) a mandatory special assessment of \$100; and (4) a term of supervised release of at least 3 years to life.

OTHER CONSEQUENCES OF THE PLEA

As a felon, defendant will lose his right to vote, to serve on a jury, to hold public office, and to possess a firearm and ammunition.

FACTUAL BASIS FOR THE PLEA

On March 12, 2015, defendant knowingly and intentionally distributed .74 grams of a mixture or substance containing a detectable amount of cocaine base, also known as "crack cocaine," a Schedule II controlled substance, to another person. This distribution occurred in the garage at defendant's residence, located at XXXX Jackson Street, in Dubuque, Iowa.

On March 18, 2015, defendant knowingly and intentionally distributed .32 grams of a mixture or substance containing a detectable amount of cocaine base, also known as "crack cocaine," a Schedule II controlled substance, to another person. This distribution occurred at defendant's residence, located at XXXX Jackson Street, in Dubuque, Iowa.

The Honorable Linda R. Reade
Chief Judge
November 11, 2015
Page 3

DETENTION

The defendant is in custody.

Sincerely,

KEVIN W. TECHAU
United States Attorney

By, s/ Erin R. Eldridge

ERIN R. ELDRIDGE
Special Assistant United States Attorney

cc: Raphael M. Scheetz

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN (DUBUQUE) DIVISION

UNITED STATES OF AMERICA,) No. 15-CR-1017-LRR
Plaintiff,)
vs.) INDICTMENT
DEON ANTHONY BAILEY,)
Defendant.)
) Count 1
) 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C),
) 860: Distribution of Cocaine Base
) Near a Playground
)
) Count 2
) 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C),
) 860: Distribution of Cocaine Base
) Near a Playground

PRESENTED IN OPEN COURT
BY THE
FOREMAN OF THE GRAND JURY
And filed 7/16/2015
ROBERT L. PHELPS, CLERK

The Grand Jury charges:

Count 1
Distribution of Cocaine Base Near a Playground

On or about March 12, 2015, in the Northern District of Iowa, defendant DEON ANTHONY BAILEY, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine base, also known as "crack cocaine," a Schedule II controlled substance, within 1,000 feet of the real property comprising a playground, namely Orange Park, located on East 18th Street, in Dubuque, Iowa.

This was in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and 860.

Count 2
Distribution of Cocaine Base Near a Playground

On or about March 18, 2015, in the Northern District of Iowa, defendant DEON ANTHONY BAILEY, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine base, also known as "crack cocaine," a Schedule II controlled substance, within 1,000 feet of the real property comprising a playground, namely Orange Park, located on East 18th Street, in Dubuque, Iowa.

This was in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and 860.

A TRUE BILL
s/Foreperson

7/16/15

Grand Jury Foreperson

Date

KEVIN W. TECHAU
United States Attorney

By: 
ERIN R. ELDRIDGE
Special Assistant United States Attorney

DEFENDANT: **DEON ANTHONY ROMELL BAILEY**
CASE NUMBER: **0862 2:15CR01017-001**
DISTRICT: **Northern District of Iowa**

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A. The court adopts the presentence investigation report without change.
B. The court adopts the presentence investigation report with the following changes: (Use Section VII if necessary)
(Check all that apply and specify court determination, finding, or comment, referencing paragraph numbers in the presentence report)
1. Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics)

2. Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)

3. Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)

4. Additional Comments or Findings: (Include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)
C. The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.
Applicable Sentencing Guideline: (If more than one guideline applies, list the guideline producing the highest offense level)

II. COURT FINDINGS ON MANDATORY MINIMUM SENTENCE (Check all that apply)

A. One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
B. One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
 findings of fact in this case: (Specify) _____
 substantial assistance (18 U.S.C. § 3553(e))
 the statutory safety valve (18 U.S.C. § 3553(f))
C. No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: (BEFORE DEPARTURES OR VARIANCES)

Total Offense Level: 34

Criminal History Category: VI

Guideline Range: (after application of §5G1.1 and §5G1.2) 262 to 327 months

Supervised Release Range: 3 years

Fine Range: \$ 17,500 to \$ 2,000,000

Fine waived or below the guideline range because of inability to pay.

DEFENDANT: **DEON ANTHONY ROMELL BAILEY**
CASE NUMBER: **0862 2:15CR01017-001**
DISTRICT: **Northern District of Iowa**

STATEMENT OF REASONS

IV. GUIDELINE SENTENCING DETERMINATION (Check all that apply)

- A. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: (Use Section VIII if necessary)
The sentence was imposed after considering all the factors set forth in 18 U.S.C. § 3553(a) as dictated into the record at the time of sentencing.
- C. The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. (Also complete Section IV)
- D. The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). (Also complete Section VII)

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL (If applicable)

- A. The sentence imposed departs: (Check only one)
 - above the guideline range
 - below the guideline range

- B. Motion for departure before the court pursuant to: (Check all that apply and specify reason(s) in sections C and D)

- 1. Plea Agreement
 - binding plea agreement for departure accepted by the court
 - plea agreement for departure, which the court finds to be reasonable
 - plea agreement that states that the government will not oppose a defense departure motion
- 2. Motion Not Addressed in a Plea Agreement
 - government motion for departure
 - defense motion for departure to which the government did not object
 - defense motion for departure to which the government objected
 - joint motion by both parties
- 3. Other
 - Other than a plea agreement or motion by the parties for departure

C. Reasons for departure: (Check all that apply)

<input type="checkbox"/> 4AI.3 Criminal History Inadequacy	<input type="checkbox"/> SK2.1 Death	<input type="checkbox"/> SK2.12 Coercion and Duress
<input type="checkbox"/> SH1.1 Age	<input type="checkbox"/> SK2.2 Physical Injury	<input type="checkbox"/> SK2.13 Diminished Capacity
<input type="checkbox"/> SH1.2 Education and Vocational Skills	<input type="checkbox"/> SK2.3 Extreme Psychological Injury	<input type="checkbox"/> SK2.14 Public Welfare
Injury		
<input type="checkbox"/> SH1.3 Mental and Emotional Condition	<input type="checkbox"/> SK2.4 Abduction or Unlawful Restraint	<input type="checkbox"/> SK2.16 Voluntary Disclosure of Offense
<input type="checkbox"/> SH1.4 Physical Condition	<input type="checkbox"/> SK2.5 Property Damage or Loss	<input type="checkbox"/> SK2.17 High-Capacity Semiautomatic Weapon
<input type="checkbox"/> SH1.5 Employment Record	<input type="checkbox"/> SK2.6 Weapon	<input type="checkbox"/> SK2.18 Violent Street Gang
<input type="checkbox"/> SH1.6 Family Ties and Responsibilities	<input type="checkbox"/> SK2.7 Disruption of Government Function	<input type="checkbox"/> SK2.20 Aberrant Behavior
<input type="checkbox"/> SH1.11 Military Service	<input type="checkbox"/> SK2.8 Extreme Conduct	<input type="checkbox"/> SK2.21 Dismissed and Uncharged Conduct
<input type="checkbox"/> SH1.11 Charitable Service/Good Works	<input type="checkbox"/> SK2.9 Criminal Purpose	<input type="checkbox"/> SK2.22 Sex Offender Characteristics
<input type="checkbox"/> SK1.1 Substantial Assistance	<input type="checkbox"/> SK2.10 Victim's Conduct	<input type="checkbox"/> SK2.23 Discharged Terms of Imprisonment
<input type="checkbox"/> SK2.0 Aggravating/Mitigating Circumstances	<input type="checkbox"/> SK2.11 Lesser Harm	<input type="checkbox"/> SK2.24 Unauthorized Insignia
<input type="checkbox"/> Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the <u>Guidelines Manual</u> : (See "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)		

- D. State the basis for the departure. (Use Section VIII if necessary)

DEFENDANT: DEON ANTHONY ROMELL BAILEY
CASE NUMBER: 0862 2:15CR01017-001
DISTRICT: Northern District of Iowa

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE (If applicable)

A. The sentence imposed is: (Check only one)

- above the guideline range
- below the guideline range

B. Motion for a variance before the court pursuant to: (Check all that apply and specify reason(s) in sections C and D)

1. Plea Agreement

- binding plea agreement for a variance accepted by the court
- plea agreement for a variance, which the court finds to be reasonable
- plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- government motion for a variance
- defense motion for a variance to which the government did not object
- defense motion for a variance to which the government objected
- joint motion by both parties

3. Other

- Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance (Check all that apply)

The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1):

<input type="checkbox"/> Mens Rea	<input type="checkbox"/> Extreme Conduct	<input type="checkbox"/> Dismissed/Uncharged Conduct
<input type="checkbox"/> Role in the Offense	<input type="checkbox"/> Victim Impact	
<input type="checkbox"/> General Aggravating or Mitigating Factors: (Specify)		

The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1):

<input type="checkbox"/> Aberrant Behavior	<input type="checkbox"/> Lack of Youthful Guidance
<input type="checkbox"/> Age	<input type="checkbox"/> Mental and Emotional Condition
<input type="checkbox"/> Charitable Service/Good Works	<input type="checkbox"/> Military Service
<input type="checkbox"/> Community Ties	<input type="checkbox"/> Non-Violent Offender
<input type="checkbox"/> Diminished Capacity	<input type="checkbox"/> Physical Condition
<input type="checkbox"/> Drug or Alcohol Dependence	<input type="checkbox"/> Pre-sentence Rehabilitation
<input type="checkbox"/> Employment Record	<input type="checkbox"/> Remorse/Lack of Remorse
<input type="checkbox"/> Family Ties and Responsibilities	<input type="checkbox"/> Other: (Specify) _____

Issues with Criminal History: (Specify) _____

To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))

To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))

To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (Specify in section D)

To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

Acceptance of Responsibility Conduct Pre-trial/On Bond Cooperation Without Government Motion for Departure

Early Plea Agreement Global Plea Agreement

Time Served (not counted in sentence) Waiver of Indictment Waiver of Appeal

Policy Disagreement with the Guidelines (*Kimbrough v. U.S.*, 552 U.S. 85 (2007)): (Specify) _____

Other: (Specify) _____

D. State the basis for a variance. (Use Section VIII if necessary)

DEFENDANT: **DEON ANTHONY ROMELL BAILEY**
CASE NUMBER: **0862 2:15CR01017-001**
DISTRICT: **Northern District of Iowa**

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. Restitution not applicable.

B. Total amount of restitution: \$ _____

C. Restitution not ordered: (Check only one)

1. For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)'s losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. Restitution is not ordered for other reasons: (Explain) _____

D. Partial restitution is ordered for these reasons: (18 U.S.C. § 3663(c)) _____

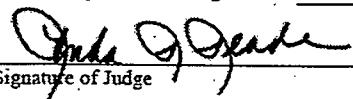
VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE (If applicable)

Defendant's Soc. Sec. No.: 338-70-9988

Date of Imposition of Judgment: June 21, 2016

Defendant's Date of Birth: June 15, 1981

Signature of Judge


Linda R. Reade

Chief U.S. District Court Judge

Name and Title of Judge

Date: June 22, 2016

Defendant's Mailing
Address: In custody

Appendix F

10 pages

1 I'm fine. If you are not ready to plead guilty and you
2 don't want to plead guilty, that's fine with me. I don't
3 care, because I'm ready. I've been preparing for this
4 case. I've got the instructions ready. We've ruled on
5 all the motions. The witnesses are ready.

6 THE DEFENDANT: Okay, because I just -- like I
7 say, I just basically want to make sure everything is --
8 I don't want to do something that I don't know really
9 what's going on, because the plea agreement I signed
10 yesterday, it really doesn't have no offense level on
11 there. I don't even know which offense level I'm even
12 at.

13 THE COURT: It's not a matter of offense level.
14 You would be pleading to distribution -- two counts, two
15 separate events, wherein the grand jury said you
16 distributed crack cocaine within a thousand feet of a
17 protected location, that would be the trial. That would
18 be what we would go to trial on. If you take the plea
19 agreement, the government has agreed to let you plead to
20 a lesser offense, which is just distribution without the
21 protected location. So I don't even know what offense
22 level -- are you talking about guidelines?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. Well, guidelines depend upon
25 the amount of the crack cocaine, and that would be one

All Keys P
Law Suit P

level base offense
wait determine
streets your time

1 thing that the Court would determine at sentencing. And
2 if you did not agree with the Court's determination at
3 sentencing, then you could appeal my findings to a higher
4 court, the United States Court of Appeals for the Eighth
5 Circuit.

6 In the factual basis for the plea, the allegation is
7 that on March 12, 2015, the distribution was .74 grams of
8 a mixture or substance containing crack cocaine. And the
9 factual basis for the second count is that on March 18th
10 of 2015 you distributed .32 grams of a mixture or
11 substance containing a detectible amount of cocaine base.

12 I would just say -- and I am confident that
13 Mr. Scheetz has talked to you about this -- at this stage
14 of the proceeding, it's impossible for me to predict what
15 your sentence will be. All I can tell you about your
16 sentence is that it would not exceed 20 years on each
17 count of conviction, so your total exposure is 40 years.
18 Your sentence is determined not only on the amount of
19 drugs, but also on your criminal history and how that is
20 scored under the guidelines. And that takes lawyers and
21 probation officers and judges a lot of time to figure
22 out, and we do that after conviction by either a plea or
23 by jury.

24 So I can't answer and neither could Mr. Scheetz or
25 the government answer what your sentence would be or what

not clear
or vague

1 the consequences of pleading guilty and, thus, becoming a
2 felon, a federal felon?

3 THE DEFENDANT: I don't understand all the
4 consequences, but maybe the basics, the ones you just
5 went through.

6 THE COURT: Okay. You understand those that I
7 went through?

8 THE DEFENDANT: Is there more than that?

9 THE COURT: No. It's the loss of the right to
10 vote, inability to serve on a jury, hold public office,
11 possess firearms or ammunition.

12 THE DEFENDANT: All right.

13 THE COURT: And I'm sure there are other
14 collateral consequences of being a felon. I know it
15 affects other things in your life, but I'm just talking
16 about these basic ones this morning. You understand
17 that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. The penalties for this
20 offense, I know you've gone through this before, but
21 Counts 1 and 2 of the indictment are each punishable by
22 the following maximum penalties:

23 Not more than 20 years in prison; and, of course, we
24 don't have parole in the federal system. You could be
25 fined no more than a million dollars on each count of

1 impose does not create unwarranted disparities between
2 you and other people who may have committed similar
3 crimes and have a similar criminal history. I have to
4 make sure, among other things, that the sentence I impose
5 reflects the seriousness of the offense, is a just
6 punishment, is a deterrent, protects the public, and, of
7 course, I have to make sure that you are provided
8 services -- a variety of services that are warranted
9 given your particular facts and circumstances.

10 Do you understand, basically, how the -- what kinds
11 of things the Court will determine and think about in
12 deciding what sentence to impose?

13 ~~THE DEFENDANT:~~ I don't -- I understand a
14 little bit. I just don't understand -- I mean, I know
15 it's basically saying I can get 20 to 40 years. That's
16 what it's basically saying.

17 THE COURT: That would be the absolute maximum.
18 I don't know enough about your criminal history to make
19 any absolute determination of where you are in the
20 guidelines. And I -- sometimes I hesitate to even ask
21 the lawyers if they have tried to calculate it, because
22 then, sometime later, the defendant says, "Well, Judge,
23 you told me this is what my sentence is going to be." I
24 can't do that because I don't know enough about you, your
25 criminal history, the drug deal. I can't do it today. I

1 accurate, but let's say -- let's use base offense level
2 32 as an example. Let's say your base offense level
3 scores you at 32, and then I don't know what your
4 criminal history score would be. That guideline range --
5 and I have no idea what it would be, but let's say the
6 range was 100 to 120 months, and that's probably low
7 based on what you told me. That is -- the range, the
8 Court has the power to go above that range and below that
9 range. You are pleading to a crime -- or crimes that do
10 not have a mandatory prison term, so that gives me more
11 flexibility as to what sentence to impose, either in the
12 guideline range, above the guideline range, or below the
13 guideline range.

14 THE DEFENDANT: Okay.

15 THE COURT: Does that make sense to you?

16 THE DEFENDANT: Yes.

17 THE COURT: Does that make sense?

18 THE DEFENDANT: Yes.

19 THE COURT: And the maximum I could ever
20 sentence you to would be 40 years in prison, but we
21 already talked about that, right? 20 years on each
22 count. That would be the worst case scenario.

23 THE DEFENDANT: Yeah.

24 THE COURT: Are you ready for me to go on, or
25 would you like to ask me questions?

Case W&J 32
for poster

1 THE DEFENDANT: You can continue.

2 THE COURT: Okay. If you plead guilty today,
3 in most instances, you can't come back an hour from now
4 or two months from now or a week from now and change your
5 mind and try to withdraw your plea of guilty. And even
6 if we get to sentencing and the guideline range is --
7 gives you a higher sentence exposure, time in prison,
8 than you were anticipating, you still can't withdraw your
9 plea of guilty. Once you plead guilty, you are stuck
10 with it. Do you know that?

11 THE DEFENDANT: Yeah, and that's kind of where
12 I didn't -- we really didn't go over that part of the
13 agreement.

14 THE COURT: Okay. Which part of the agreement?

15 THE DEFENDANT: The -- just like an estimated
16 balance of where it's going to be determined of where I'm
17 going to be at.

18 THE COURT: All right. And again, there's no
19 way that the attorneys can predict that or I can predict
20 it. The only thing that is for sure is that I could
21 never send you to prison for longer than 40 years. So
22 there are no promises as to what the sentence is going to
23 be, because nobody knows. Not even me. See what I am
24 saying?

25 THE DEFENDANT: Yeah.

1 THE COURT: Has anybody promised you what your
2 sentence will be?

3 THE DEFENDANT: Not at this present moment.

4 THE COURT: Has anybody threatened you, forced,
5 or pressured you into pleading guilty? Now, I know the
6 threat of trial is out there. I understand that. But
7 has anybody said, "If you don't plead guilty, this is,"
8 you know -- "we're going to do something to you," blah,
9 blah, blah? Something like that.

10 THE DEFENDANT: Well, I kind of feel that way a
11 little bit, but --

12 THE COURT: And I think I know what you are
13 talking about, because the government says "If you don't
14 take this plea agreement to the lesser, we're going to
15 prove the greater crimes, and then you'll be facing more
16 time." Is that kind of what you are feeling?

17 THE DEFENDANT: Yeah, I definitely feel that.

18 THE COURT: Okay. Any other pressure or
19 threats that you are under that we haven't talked about?

20 THE DEFENDANT: No.

21 THE COURT: Is your decision to plead guilty
22 your own voluntary decision?

23 THE DEFENDANT: Not really, but, like, I don't
24 have a choice. If I go to trial, they're going to give
25 me the maximum time.

1 THE COURT: Okay. If you are convicted.

2 THE DEFENDANT: The maximum time -- if I go to
3 trial, you're going to give me 40 years.

4 THE COURT: I would not say that. I have no
5 idea what I would give you if you went to trial, just
6 like I have no idea what I will give you if you plead
7 guilty. Because I don't have enough information. But
8 there's no doubt about it, this plea agreement is in your
9 best interests in terms of it reduces your exposure; you
10 don't have any mandatory time on this plea.

11 THE DEFENDANT: Okay.

12 THE COURT: All right. So, you know, did you
13 enter into this voluntarily?

14 THE DEFENDANT: Yes.

15 THE COURT: I know you talked to Mr. Scheetz,
16 you got his best judgment, and that is totally
17 appropriate. That's his job, to tell you what he thinks,
18 to put forward the pros and the cons. But in the end,
19 did you use your own judgment as to whether or not you
20 wanted to plead guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Ms. Eldridge, any other questions
23 that you want me to ask before I ask Mr. Bailey to enter
24 the plea?

25 MS. ELDRIDGE: No, Your Honor.

1 THE COURT: Mr. Scheetz?

2 MR. SCHEETZ: No, Your Honor.

3 THE COURT: Then, Mr. Bailey, now I'm going to
4 ask you to enter your plea. How do you plead to the
5 lesser included offense of Count 1, distribution of
6 cocaine base?

7 THE DEFENDANT: One last question.

8 THE COURT: Okay.

9 THE DEFENDANT: I asked you already, but I just
10 want to get it clarified.

11 THE COURT: Okay.

12 THE DEFENDANT: This plea agreement I'm
13 entering into, is it -- like I said before, these two
14 charges are going to be one charge together?

15 THE COURT: For purposes of computing the
16 guidelines, they're considered together. But as you and
17 I talked about -- let's say that the guideline turns out
18 to be more than 20 years. Then, in order to impose the
19 sentence, if it's more than 20 years, part of the time on
20 Count 2 has to run consecutively.

21 Can I give you an example? And I'm just making this
22 up. I'm not saying this is your case. But on Count 1,
23 the maximum term of imprisonment is 20 years. On Count
24 2, the maximum term of imprisonment is 20 years. So that
25 totals 40 years, correct?

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1 on March 18, 2015?

2 THE DEFENDANT: Guilty.

3 THE COURT: All right. The Court accepts
4 Mr. Bailey's pleas of guilty to Counts 1 and 2, the
5 lesser included crimes in Counts 1 and 2, and I make the
6 following findings as to both Count 1 and Count 2.

7 Mr. Bailey is fully competent. He's capable of entering
8 an informed plea. His plea [sic] to plead guilty was
9 voluntary, knowing, and not the result of any force,
10 threats, or promises, except those contained in the plea
11 agreement. He understands the charges against him.

12 There is a factual basis for defendant's plea to both

→ 13 counts. Mr. Bailey knows the maximum punishment that
14 could be imposed on the charges. Mr. Bailey knows of his
15 rights to a trial by jury and has voluntarily and
16 knowingly waived those rights.

17 I order the United States Probation Office to
18 prepare a presentence investigation report. I encourage
19 the parties to pay careful attention to the deadlines.

20 Mr. Bailey, I strongly urge you to carefully read
21 the draft report and advise Mr. Scheetz of anything in
22 there that you don't think is correct, because he's going
23 to be depending on you for some of that information so
24 that he can convey it to me. So you'll get a draft
25 report before I even see it, and you can go through it