

No. _____

***IN THE
SUPREME COURT OF THE UNITED STATES***

CHICO JERMELL CARRAWAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari To
the United States Court of Appeals for the Third Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1467

UNITED STATES OF AMERICA

v.

CHICO JERMELL CARRAWAY,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 1:14-cr-00167-001)
District Judge: Honorable John E. Jones, III

Submitted Under Third Circuit LAR 34.1(a)
March 24, 2022

Before: BIBAS, MATEY, and PHIPPS, *Circuit Judges*.

(Filed: April 14, 2022)

OPINION*

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, does not constitute binding precedent.

MATEY, *Circuit Judge*.

Carraway says his attorney told him that he would receive a nine-year sentence for the crimes he acknowledged in his guilty plea. But the mandatory minimums for the charges sum to ten years, and he received a sentence of 160 months. Carraway claims that his counsel was ineffective but, finding no prejudice, we will affirm the denial of his motion.

I.

Carraway pleaded guilty to drug and firearms offenses. His plea agreement stated that he faced a mandatory minimum term of ten years' incarceration and that the court was free to impose any sentence up to the maximum penalties listed. At the plea hearing, the Government summarized these terms, again noting the mandatory minimum sentence. The Court called to Carraway's attention that the minimum sentences, at least, would be served consecutively. Yet Carraway's attorney asked for a nine-year sentence. The Court sentenced Carraway to 160 months' imprisonment.

Carraway later moved to set aside his sentence under 28 U.S.C. § 2255 arguing, among other things, that his counsel ineffectively assured him a nine-year sentence.¹ The District Court denied the motion and we granted a certificate of appealability as to whether an evidentiary hearing was necessary.²

¹ Because we find no prejudice, we do not decide whether Carraway's § 2255 motion was timely. *See Latham v. United States*, 527 F.3d 651, 653 (7th Cir. 2008).

² The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 2255. We have appellate jurisdiction under 28 U.S.C. §§ 1291, 2253(a), (c), and 2255(d).

II.

An evidentiary hearing is required “[u]nless the motion and the files and records of the case conclusively show[ed] that [Carraway was] entitled to no relief.” 28 U.S.C. § 2255(b). If a claim of ineffective assistance, taken as true, “clearly fails to demonstrate either deficiency of counsel’s performance or prejudice to the defendant, then the claim does not merit a hearing.” *United States v. Arrington*, 13 F.4th 331, 334 (3d Cir. 2021) (quoting *United States v. Dawson*, 857 F.2d 923, 928 (3d Cir. 1988)). To establish prejudice, Carraway needed to show “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty.” *United States v. Bui*, 795 F.3d 363, 367 (3d Cir. 2015) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

He has not. Carraway was advised, twice, of the mandatory minimums he faced, first in the plea agreement, then at the plea hearing. On each instance, he was also informed that he could be sentenced to more, up to the statutory maximum. Counsel’s alleged promise of a nine-year sentence could not reasonably have affected Carraway’s decision to plead guilty in exchange for a sentence that Carraway knew, at the time of pleading, would be ten years or more. *See United States v. Shedrick*, 493 F.3d 292, 299–300 (3d Cir. 2007).

III.

For these reasons, we will affirm the judgment of the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Criminal No. 1:14-cr-167
: Civil No. 1:18-cv-2381
v. :
: Hon. John E. Jones III
CHICO JERMELL CARRAWAY, :
Defendant. :

ORDER

February 6, 2020

In conformity with the Memorandum issued on today's date, it is hereby

ORDERED that:

1. The Motion Under 28 U.S.C. 2255 to Vacate, Set Aside, or Correct Sentence by Person in Federal Custody (**Doc. 139**) is **DENIED**.
2. The Defendant's *pro se* motions (Docs. 123 and 135) are **DISMISSED**.
3. No certificate of appealability shall issue.
4. The Clerk of Court shall **CLOSE** the civil action number associated with this §2255 Motion, 1:18-cv-2381.

s/ John E. Jones III
John E. Jones III
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Criminal No. 1:14-cr-167
: Civil No. 1:18-cv-2381
v. :
: Hon. John E. Jones III
CHICO JERMELL CARRAWAY, :
Defendant. :

MEMORANDUM

February 6, 2020

Before the Court is the counseled Motion Under 28 U.S.C. 2255 to Vacate, Set Aside, or Correct Sentence by Person in Federal Custody (**Doc. 139**) filed by Chico Jermell Carraway (“Carraway” or “Defendant”).¹ The Motion has been fully briefed by the parties (Docs. 140 and 142) and is therefore ripe for our review. For the reasons that follow, the Motion shall be denied, and no certificate of appealability shall issue.

¹ Carraway commenced these §2255 proceedings by filing a *pro se* motion to vacate with brief in support. (**Doc. 123** and 124). Upon our review of Carraway’s *pro se* submission, we appointed counsel to represent him in these proceedings. Thereafter, attorney Craig Kauzlarich filed an amended §2255 motion and brief in support on Carraway’s behalf. As such we shall dismiss Carraway’s *pro se* motions (Docs. 123 and 135) as moot.

I. BACKGROUND

On November 16, 2015, Defendant pled guilty to Counts One and Two of a 3-count Indictment charging him with distribution and possession with intent to distribute 500 grams and more of cocaine hydrochloride and 100 grams of heroin (Count 1) and possession of a firearm during and in relation to a drug trafficking crime (Count 2). (Doc. 1). The Defendant's guilty plea was made pursuant to a plea agreement, wherein it is specifically stated that Counts 1 and 2 *each* carry mandatory minimum terms of 5 years imprisonment. (Doc. 75).

Following the entry of the plea, the assigned United States Probation Officer rendered a Presentence Investigation Report ("PSR"). Following our rulings on several sentencing objections, Carraway's advisory sentencing guidelines were determined to be 100 to 125 months plus a mandatory 60 month consecutive term of imprisonment on the gun charge contained in Count 2. On April 17, 2017, we sentenced the Defendant to a term of 160 months, representing a term of 100 months on Count 1 and a consecutive 60 month term on Count 2.

Carraway filed a *pro se* notice of appeal to the United States Court of Appeals for The Third Circuit (Doc. 112) on May 2, 2017. The appeal was voluntarily dismissed on September 29, 2017. (Doc. 120).

II. DISCUSSION

Carraway raises a single ground for relief in his motion, namely that counsel was ineffective during plea negotiations. Specifically, Carraway contends that plea counsel, Christopher Ferro, Esq., assured him that he would receive a nine year sentence.

A. Ineffective Assistance of Counsel

Since Carraway's claim sounds in ineffective assistance of counsel, we begin with the well-established standard for such a claim under 28 U.S.C. § 2255. In order to successfully demonstrate ineffective assistance of counsel, a petitioner must establish that (1) the performance of counsel fell below an objective standard of reasonableness; and (2) the errors of counsel prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687-92, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The first prong of the *Strickland* test requires the defendant show that counsel's performance was actually deficient. *Jermyn v. Horn*, 266 F.3d 257, 282 (3d Cir. 2001). A court "deciding an actual ineffectiveness claim must judge the reasonableness of the counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland*, 466 U.S. at 690. Counsel's conduct presumptively "falls within the wide range of reasonable professional assistance," and the defendant "must overcome the presumption that,

under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689-90 (quoting *Michel v. Louisiana*, 350 U.S. 91, 93, 76 S. Ct. 158, 100 L. Ed. 83 (1955)).

The second prong of the *Strickland* test requires the defendant show that the deficient performance so prejudiced the defense as to raise doubt as to the accuracy of the outcome of the trial or sentence. *Strickland*, 466 U.S. at 693-94. The petitioner must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Jermyn*, 266 F.3d at 282 (quoting *Strickland*, 466 U.S. at 693). A "reasonable probability," for the purposes of establishing prejudice, is "a probability sufficient to undermine confidence in the outcome." *Id.*

B. Analysis

To review, Carraway claims that his counsel was ineffective when he "assured" him that he would receive no more than a 9 year sentence and therefore Carraway entered an involuntary guilty plea. A review of the transcript of the change of plea proceedings in this matter confirms that Carraway's claim is clearly frivolous and does not warrant a hearing. *See United States v. Booth*, 432 F.3d 542, 545 (3d Cir. 2005)(a defendant is not entitled to a hearing if his allegations are contradicted or "clearly frivolous based on the existing record."); *see also Page v. United States*, 462 F.2d 932, 933 (3d Cir. 1972); *Government of Virgin Islands v.*

Nicholas, 759 F.2d 1073, 1077 (1985)(it is appropriate for judges to draw upon personal knowledge and recollection in considering the facts).

During the change of plea proceeding, when the assistant United States Attorney summarized the contents of the plea agreement he stated that “[b]oth Counts 1 and 2 carry a mandatory period of imprisonment of five years each” (TR 7:22-23) and that “Count 2 of the plea agreement provides for a five year mandatory term that’s consecutive to the underlying offense.” (TR 9:8-9).

Carraway then confirmed that the Government had accurately summarized the plea agreement and that no one promised or offered him anything else to get him to plead guilty. (TR 9:15-21). The Court’s recollection is that Carraway was alert, focused and oriented during this proceeding. He was also unwavering in his responses, which clearly indicated that he understood the ramifications of the plea agreement and his pleas of guilty to Counts 1 and 2 of the Indictment. In short, at the change of plea proceeding, it was made plain that Carraway was facing a 10 year sentence *at minimum*. It defies credulity that Carraway’s experienced and able counsel would have “assured” him he was only going to receive a 9 year sentence and that neither Carraway or his counsel would have interjected during the change of plea proceeding to question the 10 year minimum term that was discussed by the Government counsel and the Court.

In any event, the law only requires that a defendant be informed of his exposure in pleading guilty, it does not require that he be given a reasonable best-guess as to what his actual sentence will be. *See United States v. Shedrick*, 493 F.3d 292 (3d Cir. 2007). Further, an erroneous sentencing prediction by counsel or failure to anticipate a guideline enhancement does not render a plea involuntary. *See Masciola v. United States*, 469 F.2d 1057, 1059 (3d Cir. 1972). Carraway attempts to distinguish his claim by asserting that Attorney Ferro “assured” him that his sentence would be nine years. Attorney Ferro has practiced before this Court for many years, and we harbor grave doubts that he would ever make such an assurance given the extant facts. But what is ultimately dispositive is that Caraway was clearly advised, and manifestly signaled, that he understood that his sentencing exposure exceeded nine years.

Accordingly, we find that Carraway’s ground for relief in the instant Motion is meritless, and his Motion shall be denied.

C. Certificate of Appealability

Based on the foregoing analysis, we do not find that Carraway has made a substantial showing of the denial of a constitutional right, and as such, no certificate of appealability shall issue. *See* 28 U.S.C. § 2253(c)(2).

An appropriate Order follows.

BLD-254

July 16, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 20-1467

UNITED STATES OF AMERICA

v.

CHICO JERMELL CARRAWAY, Appellant

(M.D. Pa. No. 1:14-cr-00167-001)

Present: AMBRO, GREENAWAY, JR., and BIBAS, Circuit Judges

Submitted is Appellant's application for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) [Dkt. No. 5] in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing application for a certificate of appealability is granted in part and denied in part. The application is granted as to the following issue only: Did the District Court err by denying Appellant's motion under 28 U.S.C. § 2255 without first conducting an evidentiary hearing on his ineffective-assistance-of-counsel claim, given the assertions in his motion and the affidavits which he included as an exhibit? See 28 U.S.C. § 2255(b); United States v. McCoy, 410 F.3d 124, 131 (3d Cir. 2005); see also 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). In addition to addressing the merits of the claim, the parties should address whether Appellant's § 2255 motion was timely filed. See 28 U.S.C. § 2255(f). In all other respects, the application for a certificate of appealability is denied. Appellant presents other claims in his application, but we decline to consider claims that are raised for the first time on appeal. See Jenkins v. Superintendent of Laurel Highlands, 705 F.3d 80, 89 n.12 (3d Cir. 2013). The Clerk will appoint counsel to represent Appellant in this appeal under Third Circuit I.O.P. 10.3.2.

By the Court,

s/Stephanos Bibas

Circuit Judge

Dated: May 13, 2021

CLW/cc: Kenneth Mishoe, Esq.

Daryl F. Bloom, Esq.

Mr. Chico Jermell Carraway

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	: 1:14-CR-00167
	:
v.	: (Judge Jones)
	:
CHICO JERMELL CARRAWAY	: (Electronically Filed)

**SECOND AMENDED
PETITION TO VACATE
PURSUANT TO 28 U.S.C. § 2255**

Petitioner, Chico Jermell Carraway, through undersigned counsel, Craig E. Kauzlarich, Esquire, respectfully files this Petition to Vacate pursuant to 28 U.S.C. § 2255.

Procedural and Factual Background

On November 16, 2015, Petitioner pleaded guilty to Count 1, Distribution and Possession with Intent to Distribute 500 grams and more of Cocaine Hydrochloride and 100 grams and more of Heroin, and Count 2, Possession of a Firearm in Furtherance of Drug Trafficking, in accordance with a plea agreement.

A Presentence Report was prepared. Mr. Carraway's sentencing guideline range was determined to be 100-125 plus 60 months at Count 2 based on a total offense level of 24 and a criminal history category of VI. (PSR Add.).

At time of sentencing on April 17, 2017, the Court adopted the Presentence Report and sentenced Mr. Carraway to 160 months. Mr. Carraway is now serving his sentence at FCI-Ray Brook.

Direct appeal was taken on May 2, 2017. (Doc. 112). The appeal was voluntarily dismissed on September 29, 2017. (Doc. 120).

On December 4, 2018, Mr. Carraway filed a *pro se* Motion to Vacate Under 28 U.S.C. 2255. (Doc. 123). After a thirty (30) day extension and Motion to Amend were granted, on March 11, 2019, Mr. Carraway, *pro se*, filed a Motion under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal and Memorandum of Law in Support.

On April 26, 2019, in recognition that the *pro se* Motion raises factual issues that will likely require a hearing, the Court appointed Undersigned Counsel to represent Petitioner for purposes of filing an Amended §2255 Petition, setting a deadline of July 1, 2019 for such filing.

On June 7, 2019, Undersigned Counsel met with Petitioner at FCI-Ray Brook. On June 25, 2019, the Court granted a sixty (60) day extension. Amended Petition is due no later than September 3, 2019.

This is Mr. Carraway's first petition under 28 U.S.C. § 2255.

Basis for 28 U.S.C. § 2255 Relief

A. Plea Counsel Provided Ineffective Assistance of Counsel, Causing Mr. Carraway to Enter a Guilty Plea Under the False Belief he Would Receive a Sentence of Nine (9) Years, a Sentence Which is Not Permitted by Law.

A federal prisoner may move to “vacate, set aside or correct” his sentence if it “was imposed in violation of the Constitution or laws of the United States...or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). Petitioner’s claim for relief is cognizable under the plain language of 18 U.S.C. §2255(a) because a denial of effective assistance of counsel is a violation of the Sixth Amendment right to counsel.

Petitioner seeks to withdraw his guilty plea on the basis of ineffective assistance of counsel, in that plea counsel, Christopher A. Ferro¹, Esquire, told Petitioner he would receive a sentence of nine (9) years. This statement induced Petitioner to plead guilty. Had Petitioner been correctly advised of the consequence of his plea, he would have proceeded to trial. The assurance was not an estimate, guess, or approximation; it was stated to be the sentence Mr. Carraway would receive. There were two witnesses to Attorney Ferro’s statement that Mr. Carraway would receive a sentence of nine (9) years: Petitioner’s mother Priscilla Carraway and his brother Tito Carraway. See Exhibits A and B, attached.

¹ American Bar Association Formal Ethics Opinion 10-456 specifically prohibits prior counsel from releasing otherwise privileged matters outside of a courtroom setting. See also, *Commonwealth v. King*, 2019 WL 3209430 (Pa. 2019); *Commonwealth v. Flor*, 635 Pa. 314, 136 A.3d 150 (2016). This is because an allegation of ineffective assistance of counsel serves as a waiver of attorney-client privilege only as to the issues raised in the petition and not wholesale as to all matters. For this reason, Undersigned Counsel has not interviewed attorney Ferro and a hearing is necessary.

A nine (9) year sentence was not imposed, and indeed, was not possible. Each of the two (2) counts carried a mandatory minimum of five (5) years, with Count 2 required to be consecutive pursuant to 18 U.S.C. § 924(c)(1)(A)(i). (PSR ¶ 82). Despite this, plea counsel nonetheless advocated for a sentence of nine (9) years (consisting of four (4) years at Count 1 and a mandatory consecutive five (5) years at Count 2) at time of sentencing (Doc. 119, Sentencing transcript, pg. 8-9) and in Sentencing Memorandum (Doc. 107, pg. 7).

Although a sentence of nine (9) years was not possible, Mr. Carraway was led to believe it was by his counsel, and was induced to plead guilty under the belief that such sentence was in fact agreed upon.

B. Mr. Carraway's Claim is Timely.

A motion to vacate, set aside or correct a sentence is subject to a one-year limitations period. 28 U.S.C. §2255(f)(1). A federal prisoner must file his motion within one year from the date on which (1) the judgment became final; (2) the government created impediment to filing the motion was removed; (3) the United States Supreme Court initially recognized the right asserted and made it retroactively applicable to cases on collateral review; or (4) the petitioner could have discovered, through due diligence the factual predicate for the motion.

Mr. Carraway was sentenced on April 17, 2017. A direct appeal was taken, but voluntarily dismissed on September 29, 2017. See Third Circuit Court of Appeals docket 17-2011. His sentence therefore became final for purposes of 28 U.S.C. §2255(f)(1) on December 29, 2018, upon the expiration of the ninety (90) day period in which to file Writ of Certiorari. See Kapral v. United States, 166 F.3d 565 (3d Cir. 1999).

Petitioner filed his initial *pro se* Motion to Vacate Under 28 U.S.C. §2255 on December 4, 2018, within one (1) year of when sentence became final. The subsequent *pro se* Amended filing and the instant Motion raise the same issue as the initial filing. Therefore, the instant filing relates back to the timely December 4, 2018 filing because “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading.” F.R.C.P. 15(c)(1)(B), *see also*, United States v. Thomas, 221 F.3d 430 (3d Cir. 2000).

C. A Hearing on this Motion is Necessary.

In the April 26, 2019 Order appointing counsel, the Court directed counsel to indicate whether a hearing is necessary. A hearing is necessary in order for Mr. Carraway to testify to the advice he was given prior to entering a guilty plea, and how

counsel's certainty regarding a nine (9) year sentence induced him to plead guilty. A hearing is also necessary for Mr. Carraway's two (2) witnesses to testify.

Additionally, because the Pennsylvania Rules of Ethics no longer permit prior defense counsel to discuss their representation outside of a courtroom setting, a hearing is necessary. Prior Counsel has not been questioned regarding his representation.

Conclusion

Mr. Carraway is entitled to relief under 28 U.S.C. § 2255 because his guilty plea and sentence were the product of ineffective assistance of counsel. This Court should grant Mr. Carraway withdrawal of his guilty plea

Respectfully submitted,

Date: 9/3/2019

_____/s/
Craig E. Kauzlarich, Esquire
PA Attorney I.D. # 208858
2 W. High Street,
Carlisle, PA 17013
(717)249-0900
FAX (717) 249-3344
CEK@AbomKutulakis.com
Attorney for Chico Jermell Carraway

CERTIFICATE OF SERVICE

I, Craig E. Kauzlarich, do hereby certify that the **Motion to Withdraw Guilty Plea Pursuant to 28 U.S.C. § 2255**, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing:

Daryl F. Bloom, Esquire
Assistant United States Attorney
Daryl.Bloom@USDOJ.GOV

Date: 9/3/2019

s/Craig E. Kauzlarich, Esquire
Craig E. Kauzlarich, Esquire

County of Bronx)
) ss:
State of New York)


AFFIDAVIT OF PRISCILLA CARRAWAY

I, Priscilla Carraway, being duly sworn depose and says:

1. I am over the age of eighteen, and am the mother of Chico Carraway.
2. That I was present in court for my son's trial in the U.S. District Court for the Middle District of Pennsylvania when he was represented by Mr. Christopher Ferro.
3. That on the day of trial my son entered a guilty plea at the suggestion of Mr. Ferro his attorney after me and my other son, Tito Carraway, was told by Mr. Ferro that Chico would get 9 years if he pled guilty.
4. Mr. Ferro said that Chico was reluctant to take the plea and asked me and Tito to tell Chico that he should take the plea deal he had worked out for him with the prosecutor.
5. When Chico was brought into the courtroom, me and Tito told him he should take the plea deal.
6. Chico accepted the plea deal instead of going to trial that day, because he thought, just as we did that he would only get 9 years as promised by Mr. Ferro.
7. I trusted Mr. Ferro on his word that my son would get only 9 years if he pled guilty instead of going to trial, but at his sentencing the judge gave him more time than Mr. Ferro promised he would get which I did not understand.
8. At the sentencing, Mr. Ferro mentioned the 9 years and when I spoke to him afterwards I asked him why the judge did not give my son the sentence he promised me he would get, and he told me that he did not understand why but he could appeal the sentence.
9. My son told me that Mr. Ferro refused to put in any appeal for him, and I tried to call Mr. Ferro but could not get in touch with him so my son said he put in the appeal papers himself.

I hereby declare that the foregoing is true and correct based on my knowledge and belief under penalty of perjury.

Dated: 3-28-19, 2019



NOTARY PUBLIC


Ms. Priscilla Carraway
Affiant

VALERIE LORI SLADE
Notary Public - State of New York
NO. 01SL6333852
Qualified in Bronx County
My Commission Expires Dec 31, 2021

EXHIBIT

A

21a

County of Bronx)
) ss:
State of New York)


AFFIDAVIT

I, Tito Carraway, first being duly sworn, depose and say:

1. I am older than the age of eighteen.
2. I make this affidavit on behalf of my brother, Chico Carraway, concerning matters that pertain to his federal criminal trial in Pennsylvania.
3. When Chico was scheduled to go to trial, I came to the trial to support him and met his lawyer, Mr. Christopher Ferro, who explain to me and my mother, Ms. Priscilla Carraway, that he had a plea deal for Chico with the prosecutor that if he copped out he would receive a sentence of nine (9) years.
4. Mr. Ferro said this was the best deal he could get for Chico since he did have some sales of drugs to the police informants which he couldn't beat, so copping out to the nine (9) years would be his best bet and me and my mother should encourage him to take the plea because he is insisting on going to trial.
5. When they brought Chico in the court, we mouthed to Chico that he should take the plea that his lawyer had got for him since it was only nine (9) years, and if he blew trial he could get up to 40 years according to Mr. Ferro.
6. I was happy when Chico took the plea because the lawyer said that on nine (9) years he would only do about seven (7) years and then be allowed to come home.
7. At sentencing, Chico did not get the nine (9) years that Mr. Ferro told us he would get and what caused me and and my mother to encourage Chico to accept the plea, which I personally never would have done if I knew that the lawyer was just telling me that to get Chico to accept the plea I would have never encourage him to take it.

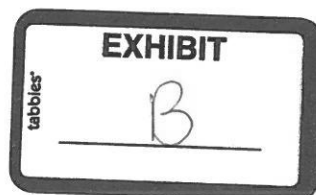
I hereby certify that the foregoing is true and correct based on my knowledge and belief, under penalty of perjury.


Dated: 3/28/19, 2019


Tito Carraway, Affiant

Sworn to Before me on this 28 day of March, 2019


NOTARY PUBLIC




BLANCA SANCHEZ
Notary Public - State of New York
No. 01SA6272861
Qualified In Bronx County
My Commission Expires Dec. 3, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	1:14-cr-167
	:	1:18-cv-2381
v.	:	
	:	Hon. John E. Jones III
CHICO JERMELL CARRAWAY,	:	
Defendant.	:	

ORDER

April 26, 2019

Based on the Court's preliminary review of the Defendant's Motion to Vacate under 28 U.S.C. § 2255, brief in support and amendment thereto (Docs. 123, 131 and 132), it is clear that the motion raises factual issues that will likely require a hearing. Consequently, we shall appoint counsel for the Defendant pursuant to 18 U.S.C. § 2255(g) to aid in the resolution of the motion.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Craig Kauzlarich, of the Court Justice Act Panel, is appointed to represent the Defendant in the above-captioned case pursuant to 18 U.S.C. § 3006A. His address is: Abom & Kutulakis, 2 West High Street, Carlisle, Pennsylvania, 17013. Phone Number: (717) 249-9000.
2. Defendant will be permitted to file, if necessary, an amended motion under 28 U.S.C. § 2255, and/or supplemental briefing by July 1, 2019.

3. Within the filing, the Defendant shall indicate whether a factual hearing is necessary.
4. The Government's Motion for Extension of Time (Doc. 133) is **GRANTED** to the extent that further briefing or a hearing shall be scheduled following the Court's receipt of the Defendant's submission.
5. The Clerk shall send a copy of this Order to the Defendant at his place of incarceration.

s/ John E. Jones III
John E. Jones III
United States District Judge

AMENDED §2255

Page 2

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Middle District of PA	
Name (under which you were convicted): Chico Carraway		Docket or Case No.: 1:14-Cr-00167	
Place of Confinement: F.C.I. Ray Brook		Prisoner No.: 72197-067	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) Chico Carraway	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court for the Middle District of PA
located at 228 Walnut Street, Harrisburg, PA 17101

FILED
HARRISBURG, PA

- (b) Criminal docket or case number (if you know): 1:14-Cr-00167

MAR 11 2019

2. (a) Date of the judgment of conviction (if you know):

Per
Deputy Clerk

- (b) Date of sentencing: April 17, 2017

3. Length of sentence: One Hundred Sixty (160) months

4. Nature of crime (all counts): Count One—Possession with the intent to distribute controlled substance(s) in violation of Title 21 U.S.C. §841(a) and Count Two—Use or carrying of a firearm in relation to a drug trafficking offense in violation of Title 18 U.S.C. §924(c)

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

Non-Applicable

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

Non-applicable

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: U.S. Court of Appeals for the Third Circuit
- (b) Docket or case number (if you know):
- (c) Result: Withdrawn at the advise of counsel
- (d) Date of result (if you know):
- (e) Citation to the case (if you know):
- (f) Grounds raised:

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): Non-Applicable
- (2) Result: Non-Applicable
- (3) Date of result (if you know): Non-Applicable
- (4) Citation to the case (if you know): Non-Applicable
- (5) Grounds raised: Non-Applicable

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Non-Applicable
- (2) Docket or case number (if you know): Non-Applicable
- (3) Date of filing (if you know): Non-Applicable

(4) Nature of the proceeding: Non-Applicable

(5) Grounds raised: Non-Applicable

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: Non-Applicable

(8) Date of result (if you know): Non-Applicable

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: Non-Applicable

(2) Docket or case number (if you know): Non-Applicable

(3) Date of filing (if you know): Non-Applicable

(4) Nature of the proceeding: Non-Applicable

(5) Grounds raised: Non-Applicable

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: Non-Applicable

(8) Date of result (if you know): Non-Applicable

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: **Non-Applicable**

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective assistance of counsel in violation of the Sixth Amendment to the U.S. Constitution

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's counsel Christopher Ferro was ineffective when he failed to investigate the law and facts of movant's case and induced him to plea guilty. (See Memorandum in Support of Collateral relief).

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: **Ineffective assistance of counsel claims are best raised on collateral review under 28 U.S.C. §2255**

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: **Non-Applicable**

Name and location of the court where the motion or petition was filed:

Non-Applicable

Docket or case number (if you know): Non-Applicable

Date of the court's decision: Non-Applicable

Result (attach a copy of the court's opinion or order, if available): Non-Applicable

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Non-applicable

Docket or case number (if you know): Non-Applicable

Date of the court's decision: Non-Applicable

Result (attach a copy of the court's opinion or order, if available): Non-Applicable

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Non-Applicable

GROUND TWO: Ineffective assistance of counsel in violation of the Sixth Amendment to the U.S. Constitution

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's counsel was ineffective when he had movant waive his right to appeal (preserving only the right to challenge the drug amount in the case) rendering it invalid. And, subsequently making appellate counsel ineffective due to the appeal waiver, and attorney Ferrol's failure to file for suppression of the evidence located during a search of the business studio of Anthony Spells. (See Memorandum in Support of Collateral relief).

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance claims are best raised
on collateral review

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Non-Applicable

Name and location of the court where the motion or petition was filed:

Non-Applicable

Docket or case number (if you know): Non-Applicable

Date of the court's decision: non-Applicable

Result (attach a copy of the court's opinion or order, if available):

Non-Applicable

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state: Non-Applicable

Name and location of the court where the appeal was filed:

Non-Applicable

Docket or case number (if you know): Non-Applicable

Date of the court's decision: Non-Applicable

Result (attach a copy of the court's opinion or order, if available):

Non-Applicable

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Non-Applicable

GROUND THREE: Ineffective assistance of counsel in violation of the Sixth Amendment of U.S. Constitution

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's counsel was ineffective rendering movant's guilty/unintelligent and involuntarily when counsel mislead movant into pleading guilty by telling him that he would receive a sentence that the law did not permit. (See Memorandum in Support of Collateral relief).

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Non-Applicable

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: Non-Applicable

Type of motion or petition: Non-Applicable

Name and location of the court where the motion or petition was filed:

Non-Applicable

Docket or case number (if you know): Non-Applicable

Date of the court's decision: Non-Applicable

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Non-Applicable

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: The grounds raised are based on the ineffective assistance of counsel and are generally only cognizable in collateral motions under 28 U.S.C. §2255

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

Non-Applicable

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Non-Applicable

(b) At arraignment and plea: Mr. L. Rex Bickey, Esq. 41 Central View Road—Dillsburg, Pennsylvania 17019
Mr. Thomas A. Thornton, Esq. 100 Chestnut Street—Harrisburg, Pennsylvania 17101
~~XXXXXXXX~~

(d) At ~~arraignment~~ Guilty Plea/Sentencing: Mr. Christopher Ferro, Esq. 160 East Market Street—York, Pennsylvania 17401

(e) On appeal:

(f) In any post-conviction proceeding: Non-Applicable

(g) On appeal from any ruling against you in a post-conviction proceeding:

Non-Applicable

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

Non-Applicable

(b) Give the date the other sentence was imposed: Non-Applicable

(c) Give the length of the other sentence: Non-Applicable

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Movant's motion is filed within the one-year period of his conviction/sentence becoming final

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

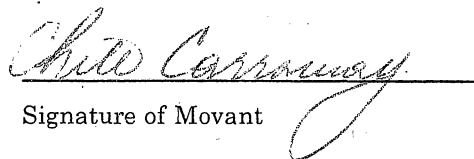
Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 09-14-18 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

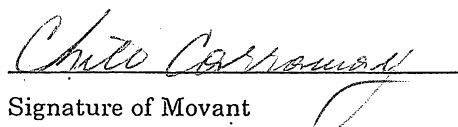
Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 3-7-19 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Mr. Chico Carraway
Reg. No. 72197-067
F.C.I. Ray Brook
Post Office Box 900
Ray Brook, New York 12977

March 7, 2019

Office of the Clerk
United States District Court
Middle District of Pennsylvania
228 Walnut Street
Harrisburg, Pennsylvania 17101

Re: Chico Carraway v. United States, No. 18-Cv-2381 (JEJ)

Dear Sir/Madam:

Please find enclosed one (1) original and two (2) copies each of the undersigned Pro se Movant's Amended §2255 Motion and Memorandum in Support of same.

I have enclosed the extra copies of each so that they can be file-stamped by your office in order to be returned to me in the self addressed stamped envelope provided herein for my personal records, and to acknowledge receipt of the same.

Thank you for your time and attention to this very important matter, and I look forward to hearing from your office soon.

Very truly yours,



Mr. Chico Carraway
Pro se Movant

enc.

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Chico Carraway,
Petitioner,

Criminal Case No.:
#1:14-CR-00167

FILED
HARRISBURG, PA

Civil No.: _____

DEC 04 2018

Hon. John E. Jones III

v.

United States of America,
Respondent./

Per

Deputy Clerk

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE PURSUANT TO
28 U.S.C. § 2255

COMES NOW, Chico Carraway, [hereinafter, Petitioner] by and through himself, pro se, hereby moves this Honorable Court for an order vacating, setting aside, or correcting his sentence pursuant to the provision of 28 U.S.C. § 2255. In support of this request, this separate Memorandum of Law is presented: Petitioner Carraway alleges that he received ineffective assistance of counsel during plea negotiations because his attorney failed to inform him of the options and benefits of entering an open plea; failed to inform him of the mandatory minimum sentence Petitioner faced due to the drug quantity charged in the indictment; and that his plea was involuntary and unknowing. Petitioner also alleges his waiver was invalid due to ineffective assistance of counsel.

LESS STRINGENT STANDARD

A pro se pleading is held to less stringent standards than formal pleadings drafted by lawyers. See, Estelle v. Gamble, 429 U.S. 97 (1976); Haines v. Kerner, 404 U.S. 519 (1972). Thus, a pro se habeas petition should be construed liberally and within a measure of tolerance; Lewis v. Attorney General, 878 F.2d 714, because Petitioner is proceeding pro se in his application for habeas relief, the court will accord his petition in the liberal construction intended for pro se litigants.

APPOINTMENT OF COUNSEL

18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of a habeas case when ever the court determines that the "interest of justice so require." 18 U.S.C. § 3006A(a)(2)(B). A due process violation may occur in the absence of counsel if the issue involved are too complex for the Petitioner. Petitioner in this case is requesting appointment of counsel for the purpose of determining the availability of relief from the Court's judgment.

Given the nature of Petitioner Carraway's request, Petitioner finds it necessary to include his affidavit, letters, and court documents. See (ATTACHMENTS).

PREAMBLE

Title 28 U.S.C. § 2255 provides a post conviction remedy for federal prisoners similar to the historic writ of habeas corpus. Pursuant to § 2255, a federal prisoner in custody "may move the court which imposed the sentence to vacate, set aside, or correct the sentence" on the basis that the sentence was imposed in violation of the laws of the United States, or that the sentence was in excess to the maximum authorized by law, or is otherwise open to collateral attack...28 U.S.C. § 2255.

While it is understood even in today's pro se litigation circles that "[A] motion under § 2255 is not a substitute for a direct appeal," if the claim has not been presented on direct review, any procedural bar may be waived if the Petitioner can show (1) "cause" for the so called waiver, and actual "prejudice" from the alleged violation(s) or (2) "actual innocence" Bousley v. United States, 523 U.S. 614, 622, 118 S.Ct. 1604, 1611, 140 L.Ed. 2d 828 (1998); Rovario v. United States, 164 F.3d 729, 732 (2d cir. 1998); Smith v. Murray, 477 U.S. 527, 537, 106 S.Ct. 2639, 2643-44, 91 L.Ed. 2d 397 (1968); Wainwright v. Sykes, 433 U.S. 72, 87, 97 S.Ct. 2947, 2506-07, 53 L. Ed. 2d 594 (1977); Douglas v. United States, 13 F.3d 43, 46 (2d cir. 1993).

Further, the procedural default rule generally does not apply to ineffective assistance of counsel claims. Massaro v. United States, 538 U.S. 500, 123 S.Ct. 1690, 155 L.Ed. 2d 714 (2003). In Massaro, supra, the Supreme Court held that ineffective assistance of counsel claims are appropriately litigated in the context of a collateral challenge in the district court and not on direct appeal. Id at 504-05, 123 S.Ct. 1690; Accord United States v. Dominguez-Benitez, 542 U.S. 74, 83, n.9, 124 S.Ct. 2333, 159 L.Ed. 2d 157 (2004). This is said to be so because the trial record is not developed precisely for the object of litigating ineffective assistance of counsel claims, but

instead is devoted to issues of guilt or lack thereof. Massaro, 538 U.S. at 504-05, 123 S.Ct. 1690, 155 L.Ed. 2d 714. The significance of the above discussion here, is that Petitioner will demonstrate by proof positive he in fact suffered constitutionally deficient performance by counsel, as well as fifth and sixth amendment due process violation(s) which clearly warrant section 2255 relief.

The Petitioner will also bring forth issues that fall squarely within the "otherwise subject to collateral attack" clause of cognizable claims discussed in the preamble.

BRIEF HISTORY OF THE CASE

This case culminated before this court as a result of a three-count indictment returned by a grand jury on July 9, 2014. Petitioner was charged in the Middle District of Pennsylvania with Distribution and Possession with intent to Distribute 100 grams and more of Heroin, 500 grams and more of cocaine hydrochloride, and 28 grams and more of cocaine base, from on or about April 2013 through on or about July 2014, in violation of 21 U.S.C. § 841(a)(1)(Count 1); Possession of a Firearm in furtherance of Drug Trafficking, in violation of 18 U.S.C. § 924(c)(1)(A) (Count 2); and Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1) (Count 3).

On November 16, 2015, Petitioner Carraway pled guilty to Count 1 and 2 of the indictment, pursuant to a written plea agreement. The plea agreement contained a 2-level reduction in Carraway's offense level for acceptance of responsibility, and a limited appeal waiver.

Following Petitioner Carraway's plea, a Presentence Investigation Report was prepared by the assigned United States Probation Officer. The PSR categorized Carraway as a Career Offender. Petitioner interposed an objection to his Career Offender classification, which was sustained by the court via

order filed on August 11, 2016 (Doc. 93). Petitioner also lodged the following factual objections to the PSR. An evidentiary hearing was granted by the Court on September 26, 2016 base upon these objections. First, Petitioner objected to 928 of the PSR, which assigned him a base offense level of 30 based on the probation officer determination that Petitioner was responsible for 994 grams of heroin, 601.76 grams of coaine, 105 grams of cocaine base, 75.75 grams of marijuana and 5250 milligrams of Oxycodone. These objections was substantiated by the court via order filed on January 25, 2017. Petitioner was sentenced to 100 months on Count 1 of the indictment and a consecutive 60 months for count 2, On April 17, 2017, Petitioner Carraway filed a Notice of Appeal on May 2, 2017.

STRICKLAND-

For obvious reasons the standard set by Strickland for showing ineffective assistance is high, for if there were a lower benchmark, this court, as well as others, would be inundated with claims by defendants claiming that their attorney rendered ineffective assistance. Nevertheless, the responsibility that any defense attorney undertakes when he/or she accepts a case is still worthy of every effort humanly possible to defend his or her client, and as with many standards our society may have, at one time, held to a higher principle, today we have grown accustomed to accepting a lesser quality of workmanship.

It has become customary to find excuses why it is tolerable to allow these lower standards into every aspect of our life. It is the cumulative effect of defense counsel's lack of engagement in his defense of Petitioner that has rendered his overall legal representations as ineffective within the standards set forth by Strickland. This inaction on the part of Attorney

Ferro is the graveman of Petitioner's claims.

"of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other right he may have." Schaffer, Federalism and State Criminal Procedure, 70 Harv. L. Rev. 1, 8 (1956). "It has long been recognized that the right to counsel is the right to the effective assistance of counsel," and that the accused is entitled to "a reasonable competent attorney." McMann v. Richardson, 397 U.S. 759, 771 n.14 and 770, 25 L.Ed. 2d 763, 90 S. Ct. 1441 (1970). "The entitlement to effective assistance does not end when the sentence is imposed but extends to one's first appeal of right." Evitts v. Lucey, 469 U.S. 387, 394, 83 L.Ed. 2d 821, 105 S.Ct. 830 (1985).

To prove prejudice from the deficient performance of Attorney Ferro, Petitioner must demonstrate that "there is a reasonable probability that, but for Attorney Ferro's unprofessional errors, the result of the proceedings would have been different." Strickland, 466 U.S. at 694. A reasonable probability is that which renders the proceedings unfair or unreliable, i.e. undermines the confidence in its outcome. Green v. Johnson, 160 F.3d 1029, 1043 (5th cir. 1998).

DISCUSSION

The Supreme Court's recent decision in Class v. United States, 138 S.Ct. 798 (2018) and Lee v. United States, 137 S.Ct. 1958 (2017), made clear that the rights afforded by the Sixth Amendment, also applies to facts when counsel's deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself." In Lafler v. Cooper, 132 S.Ct. 1376, "The question [was] not the fairness or reliability of the trial, but the fairness and reliability of the process that proceeded it. During plea negotiations, the defendant's decision whether to plead guilty involves assessing the respective consequences of a conviction after trial and by plea. However, when a defendant alleges his Counsel's deficient performance led him to accept a guilty plea rather than go to trial, courts consider whether the defendant was prejudiced by the denial of the entire judicial proceeding to which he had a right. When a defendant claims that his counsel's deficient performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Assessing the effect of some type of attorney errors on defendant's decision-making involves predictions of the outcome at a possible trial: where an attorney error allegedly affects how a trial would have played out, courts analyze that error's effects on a defendant's decision-making by making a prediction of the likely trial outcome. But such predictions will not always be necessary. Such a prediction is neither necessary nor appropriate where the error is one that is not alleged to be pertinent to a trial outcome, but instead alleged to have affected a defendant's understanding of the consequences of his guilty plea."

SUMMARY OF ARGUMENTA.) Failure To Provide Adequate Representation During Plea Negotiations-

Petitioner Carraway contends that he received ineffective assistance of counsel during plea negotiations leading up to trial. In support of this argument, Petitioner relies on Lee v. United States, 137 S.Ct. 1958, 198 L.Ed. 2d 476 (2017)(stating the Supreme Court made clear that the rights afforded by the Sixth Amendment, also applies to facts when counsel's deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself."). Because the plea process is separate from a trial and had counsel informed Petitioner Carraway of the option and benefits of an open plea, and that plea was accepted there would have been an entirely different result than that ensuing after the plea agreement Petitioner entered into.

Petitioner also contends that he did receive information from Attorney Ferro about the potential penalty facing him should he enter into a plea agreement with the government. Petitioner contends that Attorney Ferro incorrectly advised him that the only way Petitioner could plea guilty was by plea agreement with the government, and that said plea agreement carried no mandatory minimum sentence for count one. Petitioner avers that had counsel not misadvised him, that he would have proceeded to trial on Count two of the indictment. See [Exhibit 1, Petitioner Carraway's Affidavit]. Attorney Ferro's mistake foreclosed Petitioner from taking advantage of exercising his right to a fair trial, thereby causing Petitioner to forfeit a proceeding he had a right to. See Lee v. United States, 137 S.Ct. 1958, 198 L.Ed. 2d 476 (2017).

The Third Circuit has provided the following guidance in dealing with ineffective assistance claims arising out of the plea negotiations stage:

The Court has [] emphasized that "[d]efendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. "Lafler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376, 1384, 182 L.Ed. 2d 398 [] (2002), when addressing a guilty plea, counsel is required to give a defendant information "to make a reasonably informed decision whether to accept a plea offer." Shotts v. Wetzel, 724 F.3d 354, 376 (3d cir. 2013) (quoting United States v. Day, 969 F.2d 39, 43 (3d cir. 1992)), cert. denied, U.S., 134 S.Ct. 1340, 188 L.Ed. 2d 346 []

In Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985) the Supreme Court held that the Strickland test applies to advice given by counsel in the context of guilty discussions. See id at 58...

"a defendant has the right to make a reasonably informed decision whether to accept a plea offer" because "knowledge of the comparative sentence exposure between standing trial and accepting a plea offer will often be crucial to the decision whether to plead guilty." United States v. Day, 969 F.2d 39, 44 (3d cir. 1992)(quoting Hill, 474 U.S. at 56-57)...

(stating that "the Strickland v. Washington, test applies to challenges to guilty pleas based on ineffective assistance of counsel"). An "open" guilty plea is a plea made by the defendant without the benefit of a plea agreement entered into with the government. See, e.g. United States v. Casiano, 113 F.3d 420, 423 (3d cir. 1997).

The court accepts the truth of defendant's allegations when reviewing a section 2255 motion unless those allegations are "clearly frivolous based on the existing record." United States v. Booth, 432 F.3d 542, 545 (3d cir. 2005). A court is required to hold an evidentiary hearing when the motion "allege[s] any facts warranting § 2255 relief that are not clearly resolved by the record." United States v. Tolliver, 800 F.3d 138, 141 (3d cir. 2015) (quoting Booth, 432 F.3d at 546).

To effectively assist their clients in the plea bargaining process, counsel must provide defendants facing a potential guilty plea "enough information to make a reasonably informed decision whether to accept a plea offer." United States v. Bui, 795 F.3d 363, 367 (3d cir. 2015)(quoting Shotts v. Wetzel, 724 F.3d 364, 376 (3d cir. 2013)).

This obligates counsel not only to communicate the statutory maximums and minimums, but also requires counsel "to know the guidelines." Bui, 795 F.3d at 367 (quoting United States v. Smack, 347 F.3d 533, 538 (3d cir. 2003))

LEGAL STANDARDS- 28 U.S.C. § 2255

28 U.S.C. § 2255(b) states: "unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto."

I.) PETITIONER CARRAWAY'S ATTORNEY CHRISTOPHER A. FERRO WAS INEFFECTIVE DURING PLEA NEGOTIATIONS FOR MISADVISING PETITIONER-

Petitioner Carraway contends that Attorney Ferro's assistance during plea negotiations process was deficient and prejudicial under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). For the reasons detailed below, the record demonstrates that the point of "errors" purportedly committed by Attorney Ferro prejudiced Petitioner in a manner which entitles him to habeas relief.

a.) Standard Governing Petitioner's Ineffective Assistance Of Counsel Claim-

Claims of ineffective assistance of counsel are governed by the two prong test set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). To make such a claim under Strickland, Petitioner Carraway first "must show that counsel's performance was deficient. This requires [The Petitioner to show] that Attorney Ferro made errors so serious that counsel was not functioning as the 'counsel' gauranteed by the Sixth Amendment," Id at 687; see also United States v. Shedrick, 493 F.3d 292, 299 (3d cir. 2007). Second, Petitioner Carraway must additionally demonstrate that Attorney Ferro's deficient performance prejudiced his defense such that the Petitioner was "de-
rive[d] of a fair trial...whose result is reliable." Strickland, 466 U.S. at 687; Shedrick, 493 F.3d at 299.

As Petitioner Carraway aptly points out, in order to obtain an evidentiary hearing a Petitioner must "raise [] sufficient allegations that his counsel's advice in helping to make that decision was so insufficient that it undermined [The Petitioner's] ability to make an intelligent decision about" plea decision. United States v. Booth, 432 F.3d 542, 549 (3d cir. 2005). In Booth, like the present situation trial counsel had not advised the defendant that he

could have entered an open plea to all counts of his indictment, in order to earn a reduction in his offense level for acceptance of responsibility.

Petitioner Carraway first contends that Attorney Ferro provided ineffective assistance by "fail[ing] to conduct any kind of a reasonable independent pretrial investigation." Id. He contends that Attorney Ferro "failed to investigate the facts of his case." Attorney Ferro failed to adequately advise Petitioner as to the consequences of accepting the plea agreement. He contends that there is a reasonable probability he would have proceeded to trial or opted to plead to the indictment without a plea agreement to preserve his right to appeal had he been properly informed by Attorney Ferro that both counts 1 and 2 carry a mandatory period of imprisonment of five years each.

Attorney Ferro "expressly failed to correctly familiarize [Petitioner] with the relevant facts of the case, case law, applicable mandatory minimum and potential consequences of a conviction in his case. Attorney Ferro failed to properly inform Petitioner of all these matters...[h]ad Attorney Ferro done so, Petitioner would have been properly advised of his actual correct options available "it is clear, and obvious that Petitioner did not have a complete understanding of the relevant circumstances and likely consequences of pleading guilty to the government's plea agreement.

Petitioner's primary argument is that he received ineffective assistance of counsel because Attorney Ferro did not fully explain to him that counts 1 and 2 both carried a mandatory minimum period of imprisonment of five years each. Petitioner Carraway contends that Attorney Ferro advised him to plead guilty because, he will receive a nine year sentence for both counts 1 and 2. Attorney Ferro specifically stated: "You will receive four years for Count 1; and 5 years for Count 2." See [Exhibit 1, Petitioner Carraway's Affidavit]

Attorney Ferro was ineffective because he induced Petitioner to enter a guilty plea by advising Petitioner that he will receive a sentence of four years for count one, and five years on count two, the firearm count. The court subsequently imposed a sentence of 100 months on count one and 60 months on count two, to be served consecutively for a total term of 160 months imprisonment. Petitioner Carraway's contention is directly supported by Attorney Ferro's statements at sentencing. Petitioner has produced evidence of the record to show that counsel acted improperly during plea negotiations.

Mr. Ferro: and we're asking the court, as we did in our Sentencing Memorandum, to impose a sentence of four years on Count 1, with the mandatory minimum consecutive sentence of five years on Count 2. That will be a total term of incarceration of nine years.

See [Sentencing Hearing Transcripts, Dated: April 17, 2017, P- 8 & 9]

Petitioner contends that he was "completely unaware that he could not receive four years for Count one, because it carried a five years mandatory minimum. Attorney Ferro was ineffective for advising him that he would receive a sentence of four years on count one, which advice was allegedly incorrect. According to Petitioner's motion, Attorney Ferro failed to inform him that, absent the filing of any motion by the government, his sentencing exposure would not be lower-than the five year mandatory minimum sentence. As the basis for his motion, Petitioner believed that he could have received a four year sentence for Count one.

It is undisputed that Attorney Ferro incorrectly advised Petitioner that he could receive a four year sentence for Count one. Specifically, Petitioner believed that he could receive four years. With respect to the first prong under Strickland, the court should conclude that "Petitioner was seriously misled a

misled about his sentence exposure when the likelihood of his conviction on Count one, he faced a mandatory five years;" this fact alone is sufficient to show that Attorney Ferro's performance was deficient." (Day, 969 F.2d at 44).

Relying in part on the Third Circuit's decision in Day, the Court noted,

[K]nowledge of the comparative sentence exposure between standing trial and accepting a plea offer will often be crucial to the decision whether to plead guilty. It is the comparative sentence exposure of course, that makes the difference, and in that sense, it is not dispositive whether a defendant's sentencing exposure is higher or lower than he believes- because either way that belief may cause him to make a decision he would not have made otherwise that ultimately places him in a worse position than the alternatives. Id. (internal citations and quotations omitted).

In this case, it is undisputed that Attorney Ferro initially misadvised Petitioner that he could receive a sentence of four years on Count one. In order to provide necessary advice Attorney Ferro is required "to know the guidelines and the relevant circuit precedent."...United States v. Smack, 347 F.3d 533, 538 (3d cir. 2003); United States v. Bui, 795 F.3d 363,367 (3rd cir. 2015).

Petitioner points out to the court that at the time of sentencing when Attorney Ferro was asking the court to sentence Petitioner to four years on Count one, Attorney Ferro was not aware of the mandatory minimum sentence Count one carried. Petitioner entered a plea of guilty under the notion that he would be receiving a nine year sentence. Petitioner ultimately received a 13 year sentence in total.

The burden of proof in a case like this is quite low. Petitioner does not have to show that it is more likely than not he would not have pleaded guilty but for Attorney Ferro's deficient performance. He only has to show that there is a reasonable probability that, with competent advice from counsel, he would not have accepted the plea offer. Together with the disparity between the sentence Petitioner received (13 years) and the sentence Attorney Ferro advised Petitioner he would receive (9 years), establish that there is at least a reasonable probability that Petitioner would not have accepted the plea offer.

b.) Inadequate Plea Advice-

Petitioner also contends that his plea was not knowing and voluntary because the firearm he was convicted of possessing was not found at his immediate disposal and was not possessed in furtherance of the drug transactions he was charged with. The evidence as it relates to the firearm possession count[s], was less than overwhelming, Petitioner related to Attorney Ferro that he will plead guilty to Count one, and proceed to trial on Count two, the firearm count. Petitioner Carraway continually objected to pleading guilty to Count two of the indictment, Attorney Ferro should have advised Petitioner of a third option of entering an open plea. Instead, Attorney Ferro incorrectly advised Petitioner that he could not plead guilty to Count one, and proceed to trial on Count two, the firearm charge.

If Petitioner was aware of an open plea, he would've accepted responsibility for Count one, the drugs charge and proceeded to trial for the firearm count but Attorney Ferro informed him that he was going to receive a nine year sentence for both counts 1 and 2, so Petitioner accepted the guilty plea.

Petitioner Carraway contends that he specifically informed his counsel, Attorney Ferro, that he wished to plead guilty to Count 1, but not Count 2, of the charges against him. Attorney Ferro knew that Petitioner wanted to proceed to trial on Count 2. According to Petitioner, Attorney Ferro advised him that a plea to Count 1, and proceeding to trial on Count 2 was "out of the question." See [Exhibit 1, Petitioner Carraway's Affidavit].

Attorney Ferro erroneously told Petitioner to plead guilty to Count 1 and 2 because "he had a good chance of receiving a nine year sentence". In determining whether a reasonable probability exists that Petitioner Carraway would have insisted on going to trial, the court should consider the totality of the circumstances surrounding the plea. In the instant case, the plea hearing transcripts reveals that Petitioner pleaded guilty on the morning of the first day of trial:

The Court: Be seated, please. All right, we're assembled in the matter of the United States versus Chico Carraway. This case was called for trial this morning. The court was notified by counsel that at the eleventh hour there were discussions between Mr. Carraway and the government that resulted in a plea agreement.

See [Plea Hearing Transcripts, Dated: November 16, 2015, P-2, Lines 2-7]

"[W]hen a defendant claims that his counsel's performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a 'reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'"

"when a defendant alleges that his counsel's deficient performance led him to accept a guilty plea rather than go to trial, we do not ask whether, had he gone to trial, the result of that trial 'would have been different' than the result of the plea bargain." Lee v. United States, 137 S.Ct. 1958, 1965, 198 L.Ed. 2d 476 (2017). Instead, the court considers "whether the defendant was prejudiced by the denial of the entire judicial proceeding to which he had a right." *Id.* (quotation omitted). Thus, a defendant who "claims that his counsel's deficient performance deprived him of a trial by causing him to accept a plea,...can show prejudice by demonstrating a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* (quotation omitted).

Petitioner Carraway contends he was prejudiced by the denial of the entire judicial proceeding to which he had a right. Petitioner only accepted the plea agreement because his counsel misled him as to the duration of his sentencing resulting from the plea deal are supported by the evidence in the record. The record supports that Petitioner insisted on going to trial.

II.) PETITIONER CARRAWAY'S WAIVER OF THE RIGHT TO APPEAL IS INVALID-

It is well-settled that "[C]riminal defendants may waive both constitutional and statutory rights, provided they do so voluntarily and with knowledge of the nature and consequences of the waiver." United States v. Mabry 536 F.3d 231, 236 (3d cir. 2008)(citations omitted), such waivers can include the waiver of the right to file a direct appeal and/or a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 in a plea agreement with the government. Id. at 236, 241; see also United States v. Fazio, 795 F.3d 421, 425 (3d cir. 2015)(holding "we will enforce appellate or collateral-attack waivers when they are entered into knowingly and voluntarily and their enforcement does not work a miscarriage of justice.")

In determining the validity of such waiver, a district court must examine "the (1) knowing and voluntary nature, based on what occurred and what Petitioner contends, and (2) whether enforcement would work a miscarriage of justice." Mabry, 536 F.3d at 237. A criminal defendant has the initial burden "of presenting an argument that would render his waiver unknown or involuntary." Id. at 237-38. The district court has "an affirmative duty both to examine the knowing and voluntary nature of the waiver and to assure itself that its enforcement works no miscarriage of justice, based on the record evidence before it." Id.

Here, like in Mabry, Petitioner Carraway's argues that his waiver of collateral review was not knowing and voluntary, Petitioner's signed plea agreement, which provided for the waiver, was not entered into knowingly and voluntarily. The Third Circuit Court of Appeals has articulated a non-exhaustive list of factors for determining whether such enforcement would result in a miscarriage of justice. Id. at 243-44. Those factors include, inter alia, the existence of error, the severity and character of error, the effect of error on the defendant, the effect of rectifying error on

the government, and the degree to which the defendant assented to error. Id (citing United States v. Teeter, 257 F.3d 14, 25-26 (1st cir. 2001)).

The appeal waiver cannot bar Petitioner Carraway from challenging his attorney's effectiveness in advising him to plead guilty and thus be subject to the waiver in the first instance. "This claim survives the appeal waiver because, by focusing on the advise [Petitioner Carraway] received from his attorney [Christopher A. Ferrol], it connects the alleged ineffectiveness of [the] attorney with the voluntary nature of his plea." See United States v. Henderson, 72 F.3d 463, 465 (5th cir. 1995)(defendant cannot validly waive right to appeal from a denial of the claim that the plea agreement was entered into with ineffective assistance of counsel).

In deciding whether to enforce an individual's waiver of a right, court ask whether the right implicates institutional and societal values that transcend the individual's interests. The Supreme Court has held that, even as to evidentiary rulings, a defendant may be deemed incapable of waiving a right that has an overriding impact on public interests.

A threshold question is whether Petitioner Carraway has waived his right to appeal his conviction and sentence, and whether that waiver is unenforceable as a result of ineffective assistance of counsel. However, this circuit recognize an exception to the presumptive enforcement of appellate waivers: a waiver in a plea agreement "does not...act as a waiver against an appeal on the basis that the plea itself, including the waiver, was not intelligent or voluntary." In seeking this exception through an ineffective assistance of counsel claim "the [defendant] must show that the plea agreement was not knowing and voluntary...because the advice he received from counsel was not within acceptable standards.

III.) PETITIONER CARRAWAY'S GUILTY PLEA WAS UNKNOWING AND INVOLUNTARILY AND WITHOUT EFFECTIVE ASSISTANCE OF COUNSEL-

Petitioner Carraway contends that his guilty plea was coerced by his attorney, Christopher A. Ferro's false assurance that his sentence for Count one will be four years and his total term of imprisonment for Count one and Count two will be nine years of incarceration. In fact, Petitioner puts forth facts to support his allegations that he was promised or assured of a specific sentence, and he does challenge the adequacy of his guilty plea colloquy.

The critical question before the court is whether Petitioner Carraway made a knowing and voluntary plea where Attorney Ferro failed to adequately inform him of the mandatory minimum five years for a conviction on Count one that he faced. The significant error regarding the mandatory minimum Petitioner faced under Count one. In this case, Attorney Ferro misinformed Petitioner of the applicable mandatory minimum. Here, Petitioner faced a mandatory minimum of five years on Count one.

A.) Unknowning and Involuntary Guilty Plea-

Petitioner contends that his guilty plea was unknowing and involuntary because:

[H]e was wrongfully induced and coerced to take a guilty plea when he was promised a lesser sentence on Count one.

Attorney Ferro did a poor or incomplete job of explaining the consequences of the plea agreement to Petitioner before his change-of-plea. Based on Attorney Ferros' statements during the sentencing hearing, the court can find that Petitioner entered his guilty plea without an adequate understanding of the consequences of his plea based on Attorney's failure to investigate the facts of Count one.

Mr. Ferro: as we did in our sentencing memorandum, to impose a sentence of four years on Count 1, with the mandatory minimum consecutive sentence of five years on Count 2.

See [Sentencing Hearing Transcripts, Dated: April 17, 2017, P-8]

Petitioner Carraway contends that Attorney Ferro told him to tell Judge Jones during the guilty plea colloquy that no one had promised him anything and that Attorney Ferro would later "take care of the deal." [Petitioner] contends that, when Judge Jones asked him at the guilty plea colloquy whether anything was promised to him, and [Petitioner] answered "no", [Petitioner] had lied. His attorney promised him that he would serve no more than four years on Count one; and a total of nine years for both Count 1 and 2 if he plead guilty. Petitioner received 100 months on Count one. To warrant even an evidentiary hearing, such claims require more than vague allegations:

A Petitioner challenging the voluntary nature of a facially valid guilty plea on the basis of unfilled promises or representation by counsel must advance specific and credible allegations detailing the nature and circumstances of these statements. A collateral challenge to a guilty plea may be summarily dismissed 'when [the Petitioner's] allegations of an unkept promise are inconsistent with the bulk of his conduct and when he offers no detailed and specific facts surrounding the agreement. Lesko v. Lehman, 925 F.2d 1527, 1537-38 (3d cir.)(citations omitted)(alterations in original), cert. denied, 502 U.S. 898, 116 L.Ed. 2d 226, 112 S.Ct. 273 (1991); accord Blackledge v. Allison, 431 U.S. 63, 74, 52 L. Ed. 2d 136, 97 S.Ct. 1621 (1977)(stating that "Summary dismissal" warranted where defendant offers only "conclusory allegations" to contradict previous declaration made in open court).

It is undisputed that Attorney Ferro incorrectly advised Petitioner that he could receive a four year sentence for Count one and five year sentence for Count two, for a total imprisonment term of nine years. Specifically, Petitioner believed that he could receive four years on Count one. With respect to the first prong under Strickland, the court should conclude that "Petitioner was seriously misled about his sentence exposure when the likelihood of his conviction, he faced a mandatory five years," this fact alone is sufficient to show that counsel's performance was deficient." (Day, 969 F.2d at 44).

Relying in part on the Third Circuit's decision in Day, the Court noted,

[K]nowledge of the comparative sentence exposure between standing trial and accepting a plea offer will often be crucial to the decision whether to plead guilty. It is the comparative sentence exposure, of course, that makes the difference, and in that sense, it is not dispositive whether a defendant's sentencing exposure is higher or lower than he believes-because either way that belief may cause him to make a decision he would not have made otherwise that ultimately places him in a worse position than the alternatives. Id. (internal citations and quotations omitted).

Petitioner contends that his guilty plea he entered before this court was involuntary. Specifically, he alleges that Attorney Ferro's failure to advise him of the full facts of the government's case against him and the consequences of entering a guilty plea rendered his plea involuntary. As a result, Petitioner contends that he has suffered a violation of his right to due process under the Fifth Amendment.

Due process mandates that a plea be both voluntary and knowing. Boykin v. Alabama, 395 U.S. 238, 244, 23 L.Ed. 2d 274, 89 S.Ct. 1709 (1969). A plea that is entered on the advice of counsel is voluntary where counsel's advice is "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 88 L.Ed. 2d 203, 106 S.Ct. 366 (1985)(quoting McMann v. Richardson, 397 U.S. 759, 771, 25 L.Ed. 2d 763, 90 S.Ct. 1441 (1970)). Thus, because the record indicates that Petitioner was duly represented at the time he entered the guilty plea, the success of Petitioner's due process claim will turn on the merits of his claim of ineffective assistance of counsel.

Within the context of the plea process, prejudiced is established where a Petitioner demonstrated that had counsel not given the erroneous advice, he would have elected to proceed to trial. Hill, 474, U.S. at 58. Petitioner has provided specific allegations in his petition to overcome the "strong presumption of verity" attributed to the "solemn declarations [that he made] in open court with specific information, his allegations of involuntariness provide basis for granting his motion to vacate the sentence.

Ultimately, a guilty plea is knowing and voluntary if it satisfies the three concerns underlying Rule 11, which are that: (1) the guilty plea must be free from coercion; (2) the defendant must understand the nature of the charges; and (3) the defendant must know and understand the consequences of his guilty plea.

The "face of the record" show that Petitioner received ineffective assistance of counsel. In this case, the court cannot be satisfied that Petitioner's attorney thoroughly researched the facts of his case.

CONCLUSION

An evidentiary hearing is appropriate where a Petitioner "has pled facts that, if established, entitle him to relief, and there is a material dispute regarding those facts." Here, Petitioner Carraway's ineffective assistance of counsel claim rests entirely on a credibility determination.

Petitioner Carraway would have proceeded to trial on Count 2 the firearm count if his attorney did not incorrectly advised him that he could not plead guilty to Count one and proceed to trial on Count two. Petitioner's fingerprints were not found on the firearm; when the firearm was located Petitioner was not present at the scene but was called to the scene by an individual who was being apprehended by the local Task Force who raided the residence which wasn't Petitioner's place of residence. Based on these facts, Petitioner wanted to proceed to trial because he never held, used, or seen the firearm. The firearm was in a area accessible to all parties that was present and there were no locks on the doors to the residence.

The record at sentencing supports Petitioner's argument that Attorney Ferro advised Petitioner that he could receive four years on Count one, this was also incorrect advice because Count one carried a mandatory minimum of five years.

Dated: November 18, 2018

Respectfully submitted,

Chico Carraway
Chico Carraway #12197-067
F.C.I. Ray Brook
P.O. Box 900
Ray Brook, New York. 12977

CERTIFICATE OF SERVICE

I, Chico Carraway, the Petitioner, hereby certify that under the perjury, I have submitted a true and correct copy of the foregoing document(s):

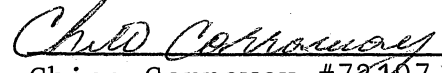
"MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE
PURSUANT TO 28 U.S.C. § 2255"

By placing said document(s) in the institutional legal mailbox located at F.C.I. Ray Brook with the proper prepaid postage addressed to the Clerk of Court, U.S. Courthouse & Federal Building, 228 Walnut Street, Harrisburg, PA. 17101, to be file and electronically file to the below parties(s):

Daryl Ford Bloom, Esq., AUSA
U.S. Attorney's Office
Federal Building, 2nd Floor
228 Walnut Street
Harrisburg, PA. 17108

Dated: November 18, 2018

Respectfully submitted,


Chico Carraway #72197-067
F.C.I. Ray Brook
P.O. Box 900
Ray Brook, New York. 12977

[EXHIBIT ONE]

Petitioner Chico Carraway's Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

Chico Carraway,
Petitioner,

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Criminal Case No.:
1:14-CR-00167-01-JA

v.

Honorable Judge
John E. Jones, III

United States of America,
Respondent./

AFFIDAVIT

AFFIDAVIT

Essex County)
)
State of New York)

Chico Carraway, being duly sworn, and under the penalty of perjury
deposes and says:


- (1) I am the Petitioner in the above mention matter and familiar with
the facts and circumstances;
- (2) Attorney Christopher A. Ferro was assigned to represent me;
- (3) Attorney Christopher A. Ferro represented me during plea negotiations
and at sentencing;
- (4) Attorney Christopher A. Ferro induced me into pleading guilty by
promising me that I will receive a nine year sentence;
- (5) Attorney Christopher A. Ferro advised me that I will receive a four
year sentence on Count 1;
- (6) Attorney Christopher A. Ferro advised me that I will receive five
years on Count 2;

- (7) On or about, January 24, 2017, I had a meeting with Attorney Ferro concerning the plea offer, which I refused because of the firearm. I informed Attorney Ferro that I will plead guilty to Count 1, but not Count 2, the firearm charge. I informed Attorney Ferro that I wanted to proceed to trial on Count 2, the firearm charge;
- (8) Attorney Ferro advised me that I could not plead guilty to Count 1, and proceed to trial on Count 2, the firearm charge without the drug charge;
- (9) On or about, February 14, 2017, Attorney Ferro followed up to see if things had changed with me pleading guilty to my indictment and I told him that I am going to trial on the firearm charge; Attorney Ferro informed me that I have to go to trial for both counts. Count 1, the drug charge as well as Count 2, the firearm charge;
- (10) On or about March 16, 2017, Attorney Ferro informed me and my family members that he can get me a nine year sentence on both counts of my indictment if I accepted the government's plea;
- (11) Attorney Christopher A. Ferro informed me that I will receive four years for Count 1 and Count 2 carries a consecutive sentence of a mandatory five years;
- (12) Based on this information provided by Attorney Christopher A. Ferro, I decided not to proceed to trial and accept the government's plea offer;
- (13) On or about April 17, 2017, at my jury selection, Attorney Christopher A. Ferro assisted me on picking the jury but before the jury was scheduled to take place, we had a conference talk and he told me that this will be the last time to accept the government's offer which I decided to accept because of Attorney Ferro's advice to me that he worked out the nine year deal with the prosecutor and judge;

- (14) I would have proceeded to trial on Count 2, the firearm charge if Attorney Christopher A. Ferro did not incorrectly advised me that I could not plead guilty to Count 1, and proceed to trial on Count 2.
- (15) Attorney Christopher A. Ferro failed to advise me that I could have plead guilty to an open plea.

Sworn to before me this

23rd day, of November 2018.


NOTARY PUBLIC

BRITTNEY M. ALEXANDER

Notary Public, State of New York

Franklin County No 01AL6312126

Commission Expires Sept. 22, 2022

Respectfully submitted,



Chico Carraway #72197-067

F.C.I. Ray Brook

P.O. Box 900

Ray Brook, New York. 12977

[EXHIBIT TWO]

Transcript of Change of Plea Hearing

Dated: November 16, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

UNITED STATES OF AMERICA,) CASE NO.
Plaintiff) 1:14-CR-00167-01-JEJ
vs.)
CHICO CARRAWAY,)
Defendant)

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE JOHN E. JONES, III
UNITED STATES DISTRICT JUDGE
16 NOVEMBER 2015 - 9:49 A.M.

APPEARANCES:

For the Government:

Daryl Ford Bloom, Esq., AUSA
U.S. Attorney's Office
Federal Building, 2nd Floor
228 Walnut Street
Harrisburg, PA 17108
(717) 221-4482

For the Defendant:

Christopher A. Ferro, Esq.
The Law Offices of Christopher A. Ferro, L.L.C.
160 East Market Street
York, PA 17401
(717) 668-8159

Court Reporter:

Wesley J. Armstrong, RMR
Official Court Reporter
U.S. Courthouse & Federal Building
228 Walnut Street
Harrisburg, PA 17101
(717) 542-5569

Proceedings recorded by machine shorthand; transcript
produced by computer aided transcription.

P R O C E E D I N G S

1
2 THE COURT: Be seated, please. All right, we're
3 assembled in the matter of United States versus Chico Carraway.
4 This case was called for trial this morning. The court was
09:50AM 5 notified by counsel that at the eleventh hour there were
6 discussions between Mr. Carraway and the government that
7 resulted in a plea agreement. We were presented with a plea
8 agreement and it has been represented to the court that both
9 the government and Mr. Carraway have executed the plea
09:50AM 10 agreement. We'll note the appearances of Daryl Bloom,
11 assistant United States attorney, on behalf of the government,
12 and Christopher Ferro, Esquire on behalf of the defendant
13 Mr. Carraway. Would you swear in Mr. Carraway, please, Liz?

14 (The defendant was sworn by the courtroom deputy.)

09:50AM 15 EXAMINATION BY THE COURT:

16 Q. Mr. Carraway, you were scheduled to go to trial this
17 morning. I'm now advised that you desire to enter a plea
18 pursuant to a plea agreement that I've been presented with.
19 Is that correct, sir?

09:50AM 20 A. Yes, sir.

21 Q. All right. Now, let me give you some preliminary
22 instructions. We're going to go through a number of questions
23 and answers this morning so that I can satisfy myself that you
24 understand the rights that you give up when you enter a plea of
09:51AM 25 guilty. I want you to listen carefully to me. If you don't

1 understand any of the questions that I've put to you, then I'm
2 going to rely on you to tell me that and I'll restate them or
3 rephrase them.

4 If you want to conference with Mr. Ferro at any time
09:51AM 5 privately during these proceedings you should signal me and
6 we'll take a break so that you can do that. In addition to
7 that it's important that you tell the truth in answer to all my
8 questions. If you don't do that and it's determined that you
9 haven't, you can expose yourself to additional charges for
09:51AM 10 making false statements or for perjury. Do you understand all
11 these preliminary instructions?

12 A. Yes, sir.

13 Q. All right. Can you read, write, and speak in English?

14 A. Yes, sir.

09:51AM 15 Q. How old are you?

16 A. Thirty-six.

17 Q. How far did you go in school?

18 A. I attended college.

19 Q. All right. You didn't graduate from college but have some
09:51AM 20 college?

21 A. Credit, yes, sir.

22 Q. Some credit, all right. And have you ever been treated
23 for a drug or alcohol problem or for any kind of mental
24 illness?

09:52AM 25 A. No, sir.

1 Q. Are you taking any prescription medication today?

2 A. No, sir.

3 Q. Have you consumed any drugs or alcohol in the last
4 twenty-four hours?

52AM 5 A. No, sir.

6 Q. Do you understand why you're here today?

7 A. Yes, sir.

8 Q. Now, Mr. Ferro has represented you in this matter. Are
9 you satisfied with his representation?

9:52AM 10 A. Yes, sir.

11 Q. And have you had enough time to discuss all of these
12 charges with Mr. Ferro, including your determination to plead
13 guilty today?

14 A. Yes, sir.

9:52AM 15 THE COURT: And, Mr. Ferro, you waive a formal reading
16 of the indictment?

17 MR. FERRO: I do, Your Honor.

18 BY THE COURT:

19 Q. All right. Now, you know, Mr. Carraway, I believe, but I
09:52AM 20 want to confirm this, that you have a right to a trial by a
21 jury in this matter. You're aware of that?

22 A. Yes, sir.

23 Q. You understand that if I accept your plea today there
24 won't be a trial?

09:52AM 25 A. Yes, sir.

1 Q. And you will have given up that constitutional right, do
2 you understand that?

3 A. Yes, sir.

4 Q. I want to explain to you, and again I'm sure that you know
5 this, but I want to make absolutely certain of it, what would
6 have taken place had the case proceeded to trial today, you
7 would have selected a jury through Mr. Ferro's assistance.
8 That jury would consist of twelve people. You would be
9 innocent until proven guilty.

10 To prove you guilty the government would have the
11 burden of proving each and every element of the crimes with
12 which you're charged beyond a reasonable doubt. The government
13 would have to do that to the satisfaction of a unanimous jury.
14 That is, all twelve jurors would have to agree to establish
15 your guilt.

16 The government would, or to attempt to establish your
17 guilt the government would present witnesses. You'd have the
18 right in turn to cross examine those witnesses after the
19 government proceeded with direct examination. In addition to
20 that the government would have other evidence that it could and
21 would present, documentary evidence and other things. You would
22 have the right following that to present your own case,
23 including your own testimony should you choose if you had
24 chosen to do that.

25 However, you couldn't be compelled to testify or to

1 present a case, and if you opted not to do that that fact could
2 not be used against you at the time of trial. You'd have the
3 right to have me decide any pretrial motions before the trial
4 would commence, and in addition to that you would have the
5 right to present any legal or factual defenses at the time of
6 trial that you felt that you wanted to assert. But again to
7 repeat, if I accept your plea of guilty today there will be no
8 trial in this case and you will have given up that right. Is
9 it your desire to do that?

10 A. Yes, sir.

11 Q. There is a written plea agreement in this case, and it's
12 been represented to the court that you have agreed to it.
13 And did you go over that plea agreement today with your lawyer
14 before this proceeding?

15 A. Yes, sir.

16 Q. The plea agreement has affixed to it I believe, I don't
17 have a signed copy but I think counsel has a signed copy, did
18 you sign it on page 23? Mr. Ferro is showing you the signature
19 page. Is that your signature?

20 A. Yes, sir.

21 Q. And are you telling me that you're in agreement with all
22 thirty-two paragraphs?

23 A. Yes, sir.

24 Q. Did Mr. Ferro explain the legal ramifications of this
25 agreement before you signed it?

1 A. Yes, sir.

2 Q. Did he answer any questions that you had about the legal
3 ramifications of it?

4 A. Yes, sir.

5 THE COURT: All right. Mr. Bloom, if you would
6 summarize the plea agreement for the court, please?

7 MR. BLOOM: Certainly, Your Honor. Count 1 of the
8 indictment provides that the defendant agrees to plead guilty
9 to Counts 1 and 2 of the indictment, Count 1 charging a
10 violation of Title 21 United States Code, Section 841(a)(1),
11 which is the distribution and possession with intent to
12 distribute in excess of 28 grams of cocaine base, also known as
13 crack, in excess of 100 grams of heroin, in excess of 500 grams
14 of cocaine hydrochloride, also referred to as powder.

15 The maximum penalty for Count 1 is forty years
16 imprisonment, a five million dollar fine, a term of supervised
17 release, as well as a special assessment in the amount of \$100.
18 Paragraph 1 also provides that the defendant agrees to plead
19 guilty to Count 2 of the indictment, which charges a violation
20 of Title 18, United States Code, Section 924(c), which is
21 possession of a firearm in furtherance of a drug trafficking
22 crime. Both Counts 1 and 2 carry a mandatory period of
23 imprisonment of five years each.

24 Count 4, or paragraph 4 of the plea agreement
25 provides that the maximum penalty possible then would be life

1 imprisonment, a \$5,250,000 fine, a term of supervised release,
2 as well as a special assessment in the amount of \$100. If I
3 neglected to note, Count 2 carries a period of imprisonment of
4 no less than five, and up to life imprisonment, and a \$250,000
56AM 5 fine, a term of supervised release, as well as a special
6 assessment in the amount of \$100.

7 Paragraph 2 provides a two-level reduction in offense
8 level for acceptance of responsibility provided that the
9 defendant accept responsibility as contemplated by the
57AM 10 sentencing guidelines. Paragraph 13 provides that the United
11 States will make an appropriate sentencing recommendation at
12 the time of sentencing based on the nature and circumstances of
13 the offense.

14 Paragraph 15 of the plea agreement provides for a
57AM 15 destruction order wherein the defendant agrees to the
16 destruction of any items seized during the course of
17 investigation. That would be with or without a court order.
18 Paragraph 21 of the plea agreement provides that the court is
19 not a party to the plea agreement and is therefore free to
57AM 20 impose any sentence up to the maximum sentence under the
21 statute.

22 Paragraph 26 provides for a limited appellate waiver
23 wherein the defendant waives appeal, but reserves the right to
24 appeal any calculation in excess of the mandatory discharged in
57AM 25 the indictment that are found by the court. And, as indicated

1 just a few moments ago, page 23 of the plea agreement, which
2 bears the defendant's signature, above that signature it
3 indicates that the defendant has read the agreement, that the
4 defendant has reviewed the agreement with counsel, that he
5 understands the terms of the agreement, and that he voluntarily
6 agrees to those terms.

7 And one other thing if I neglected to mention, that
8 Count 2 of the plea agreement provides for a five year
9 mandatory term that's consecutive to the underlying offense.
10 Those are the essential terms of the plea agreement, Your
11 Honor.

12 THE COURT: All right. I thought that that was the
13 case, that it's consecutive under the terms of the Count 2.

14 BY THE COURT:

15 Q. Mr. Carraway, did Mr. Bloom accurately summarize the plea
16 agreement that you signed?

17 A. Yes, sir.

18 Q. And other than the terms and conditions that are in the
19 plea agreement did anyone promise or offer you anything else to
20 get you to plead guilty this morning?

21 A. No, sir.

22 Q. Did anybody make any threats or use force or violence
23 against you or any member of your family or any other person
24 that caused you to either come here today to plead guilty or to
25 sign the plea agreement?

1 A. No, sir.

2 Q. Are you a citizen of the United States?

3 A. Yes, sir.

4 Q. Now, within the plea agreement, as Mr. Bloom carefully
5 read, there are certain maximum penalties that you're exposed
6 to, and in addition to that there are minimum penalties of five
7 years each on Counts 1 and 2 that have to be served
8 consecutively. Do you understand all that?

9 A. Yes, sir.

10 Q. And do you understand that I can sentence you up to the
11 maximum penalties provided by law? It doesn't mean that I
12 will, but I can, and even if you're dissatisfied with the
13 sentence it won't give you the right to withdraw your plea of
14 guilty. Do you fully understand that?

15 A. Yes, sir.

16 Q. Do you understand that there's no parole under the federal
17 system, and that means that you have to serve all of any term
18 of imprisonment that I sentence you to, less any good time that
19 you earn when you're in prison?

20 A. Yes, sir.

21 Q. And do you understand also that if I sentence you to a
22 term of imprisonment, there will be a term of supervised
23 release after you get out of prison, and that if you're on
24 supervised release on my order and you violate that order, I
25 could put you back in prison. Do you understand that?

1 A. Yes, sir.

2 Q. Have you discussed with Mr. Ferro that there are certain
3 advisory sentencing guidelines that I have to consider when I
4 sentence you?

DOAM 5 A. Yes, sir.

6 Q. And do you understand that what we're going to do is have
7 a presentence report prepared by the assigned probation officer
8 in this case. The probation officer will, among other things,
9 determine what he or she believes the advisory sentencing
DOAM 10 guideline range to be. You will have the right to object if
11 you believe that the probation officer has stated that
12 incorrectly from your standpoint after you have consulted with
13 Mr. Ferro.

14 You'll also have the right to object to any other
OIAM 15 material portion of the presentence report, and that will then
16 trigger a situation where I'll have to make the call as to what
17 your guidelines are or any other, resolve any other objections,
18 but here's what you need to understand. If you don't agree with
19 anything that I have done in resolving any of your objections,
OIAM 20 that disagreement won't give you the right to withdraw your
21 plea of guilty. Do you fully understand that?

22 A. Yes, sir.

23 Q. And in addition to that under the sentencing guidelines
24 you're going to be able to ask me to vary out of the advisory
OIAM 25 guidelines once we find them and also to depart under certain

1 circumstances from the guidelines based on provisions of the
2 sentencing code. Again, however, I don't have to do what
3 you've asked me to do in any of those motions or requests to
4 either depart or to vary, and if you disagree with how I have
5 handled any of your motions or requests, that disagreement
6 won't then trigger a right on your part to withdraw your plea
7 of guilty. Do you understand that?

8 A. Yes, sir.

9 Q. You are pleading guilty to a felony, and in the event that
10 I accept your plea you may lose valuable civil rights such as
11 the right to vote, to hold public office, to serve on a jury,
12 to possess a firearm, or to hold a professional license. Do
13 you fully understand that?

14 A. Yes, sir.

15 THE COURT: And in addition to that -- is there any
16 restitution in this case?

17 MR. BLOOM: No, Your Honor.

18 THE COURT: All right. And you agree with that?

19 MR. FERRO: I do, Your Honor.

20 BY THE COURT:

21 Q. You understand that in the, I want to get into this
22 particularly, in the presentence report that's going to be
23 prepared do you understand that there's going to be the
24 probation officer's determination as to what he or she believes
25 the drug weight, drug weights to be. Do you fully understand

1 that?

2 A. Yes, sir.

3 Q. And you'll have the right to object if you think those
4 drug weights are incorrect, which means that we will very
02AM 5 likely then have a hearing, at which time I will determine
6 the drug weights. Do you understand that?

7 A. Yes, sir.

8 Q. Do you understand that if you haven't done so already
9 you're going to have to give up a DNA sample as a result of
03AM 10 this plea?

11 A. Yes, sir.

12 Q. In paragraph 26, which you've already told me that you
13 agreed to the entirety of the plea agreement, but I want to
14 highlight this, that is the limited waiver of appeal as
03AM 15 summarized by Mr. Bloom. What that indicates is that you have
16 waived or given up your right to a direct appeal to the next
17 highest court of the sentence that I give you in this case,
18 except in this narrow circumstance. The narrow circumstance
19 would be with respect to drug weights. If you disagree with
03AM 20 the drug weight that I have come up with and you think I've
21 erred in that, you have the right to appeal that to the next
22 highest court. Do you understand that?

23 A. Yes, sir.

24 Q. In addition to that you also have a narrow appeal path if
03AM 25 enforcing this waiver would trigger what's called a miscarriage

1 of justice, which is a very, very narrow path. So you've left
2 yourself that out, although it's a very narrow one. Do you
3 understand that?

4 A. Yes, sir.

04AM 5 Q. You've preserved for yourself the right to what's called
6 an indirect or a habeas corpus proceeding to challenge any
7 sentence. You've not waived that. Do you understand that?

8 A. Yes, sir.

9 Q. And the government has the right to appeal anything that I
04AM 10 do by way of the sentence. Do you understand that?

11 A. Yes, sir.

12 Q. All right. In Count 1 of the indictment you are charged
13 with distribution and possession with intent to distribute
14 cocaine hydrochloride, cocaine base, and heroin, that in
04AM 15 violation of 21 United States Code, Sections 841(a)(1) and
16 (B)(1), capital B(i), (2), and (3), one, two, and three, I'm
17 sorry, subsections. The government would have the obligation,
18 the duty in order to find you guilty to prove each and every
19 element of that charge beyond a reasonable doubt to the
05AM 20 satisfaction of a unanimous jury, and those elements, so that
21 you understand them, are as follows, that you knowingly and
22 intentionally distributed or possessed with intent to
23 distribute a mixture or substance containing a controlled
24 substance that had 100 grams or more of a mixture or substance
05AM 25 containing heroin, 500 grams or more of a mixture or a

1 substance containing cocaine, its salts, optical and geometric
2 isomers; 3.28 grams or more of a mixture or substance
3 containing cocaine base.

4 In Count 2 of the indictment you're charged with
05AM 5 possession of a firearm during and in relation to a drug
6 trafficking crime, that in violation of 18 United States Code
7 Section 924. The elements of that offense are you that you
8 committed the crime of distribution and possession with intent
9 to distribute cocaine hydrochloride, cocaine base, and/or
06AM 10 heroin as charged in Count 1 of the indictment, and that you
11 knowingly possessed a firearm in furtherance of that crime.
12 Do you understand the element of both Counts 1 and 2, the
13 counts you're intending to plead guilty to?

14 A. Yes, sir.

06AM 15 Q. I'm going to ask Mr. Bloom to give the facts of this case.
16 Mr. Carraway, I want you to listen carefully to what he has to
17 say, because I'm going to come back to you then and ask if
18 you're in agreement with the facts as the prosecutor has stated
19 them. Do you understand that?

06AM 20 A. Yes, sir.

21 THE COURT: You may proceed.

22 MR. BLOOM: Your Honor, had this matter proceeded to
23 trial the evidence would establish that on October 7, 2013 a
24 controlled buy was made from the defendant Chico Carraway for
06AM 25 1.95 grams of heroin for \$200. The transaction was recorded

1 with surveillance. On November 20th, 2013 again a controlled
2 buy was made from the defendant, and this amount was 1.81 grams
3 of heroin for \$180. Again there was surveillance confirmed
4 that as well.

07AM 5 On December 9, 2013 another controlled buy was
6 conducted from the defendant, this time for 5.45 grams of
7 heroin for \$900 dollars. Again the surveillance team captured
8 the images of the transaction. Thereafter a search warrant was
9 conducted on December 11, 2013 at 147 West Philadelphia Street.

07AM 10 In the room where the defendant slept a number of items were
11 located. Specifically items during the course of the search
12 that were located were 28.74 grams of heroin, 71.98 grams of
13 cocaine hydrochloride, and 101.25 grams of cocaine base.

14 On May 31st, 2014 the defendant's vehicle was stopped
08AM 15 in New Jersey. The defendant was a passenger in the front seat.
16 The individual in the rear was, had an internal body cavity
17 that contained 297.767 grams of cocaine hydrochloride. The
18 individual indicated that she was instructed to hide the drugs
19 per the request of the defendant Mr. Chico Carraway.

08AM 20 A controlled buy was conducted on July 2nd, 2014,
21 this time for cocaine base which weighed 1.15 grams and was
22 purchased for \$200. I should also mention that at the time of
23 the defendant's arrest on December 12th, 2013, after he was
24 taken into the York County prison the prison had located 3.36
09AM 25 grams of crack cocaine on the defendant as well as a hundred

1 oxycodone pills and .44 grams of marijuana.

10:09AM

2 The evidence would further establish that no less
3 than three witnesses would testify that the defendant possessed
4 firearms and no less than two of those witnesses would testify
5 that the defendant carried a firearm during drug transactions.
6 I would note that during the course of the search a firearm was
7 located at that time in a black garbage bag approximately three
8 feet from the bed where the defendant was laying, and
9 specifically that firearm and the make of that firearm are
10 indicated in the indictment, and more specifically indicates
11 that it's an FEG model PMK 380-caliber semiautomatic pistol,
12 serial number N-23248, which was manufactured in Hungary. Your
13 Honor, those would be the facts had this matter proceeded to
14 trial.

10:10AM

15 THE COURT: All right. Thank you, Mr. Bloom.

16 BY THE COURT:

17 Q. Mr. Carraway, are they the correct facts in this case?

18 A. Yes, sir.

19 THE COURT: One minute, please. Liz?

10:10AM

20 (Brief pause.)

21 MR. BLOOM: Your Honor? I'm sorry, I have something as
22 well, too. I should probably just mention that, you know,
23 without adding it all up and going through that in some of the
24 evidence in this matter would establish that the weight of the
25 controlled substance is consistent with the indictment charged.

1 That's in excess of 28 grams of cocaine base, in excess of 100
2 grams of heroin, and in excess of 500 grams of cocaine
3 hydrochloride.

4 BY THE COURT:

10:10AM 5 Q. Do you agree with that, Mr. Carraway?

6 A. Yes, sir.

7 Q. Understanding that there will be a finding by the
8 probation officer based on all the evidence, and then you'll
9 have the right to object, as I said, and then we'll have a
10:11AM 10 hearing, if necessary, to determine the drug weights. Is that,
11 your understanding?

12 A. Yes, sir.

13 Q. All right. Based on everything that I've said to you this
14 morning and all the questions I've put to you do you now wish
10:11AM 15 to enter a plea of guilty to Counts 1 and 2 of the indictment?

16 A. Yes, sir.

17 Q. We have the written plea that memorializes what
18 Mr. Carraway just told me, and it also contains a motion to
19 withdraw the previously entered pleas of not guilty to Counts 1
10:11AM 20 and 2. We'll grant that motion by our order of today. We'll
21 make that a part of the record. As we do we find that
22 Mr. Carraway is fully alert, competent, and capable of entering
23 an informed plea, that he is aware of and understands the
24 consequences of the plea, which is knowing and voluntary, and
10:11AM 25 is supported by an independent basis in fact demonstrating each

1 of the elements of the offenses charged in Counts 1 and 2.

2 I adjudicate the defendant guilty as charged in
3 Counts 1 and 2. Again I will order a presentence report. Liz,
4 you'll have to contact probation on that, and we will schedule
10:12AM 5 a presentence conference for March 21st, obviously that's 2016,
6 at 9:30 a.m. That's March 21st, 2016 at 9:30 a.m. in chambers,
7 and again, Mr. Carraway, Mr. Ferro will go over the presentence
8 report that will have been produced by that time with you and
9 we will determine based on your input and the government's

10:12AM 10 input how we're going to handle any disputes that may arise
11 based on the presentence report. We may have to have a hearing
12 before we have a sentencing, but the idea is that you'll be
13 sentenced at some point after March the 21st of next year. Do
14 you understand that?

10:12AM 15 A. Yes, sir.

16 Q. Do you have any questions?

17 A. No, sir.

18 THE COURT: Mr. Bloom, anything further from the
19 government?

10:13AM 20 MR. BLOOM: Nothing from the United States, Your
21 Honor.

22 MR. FERRO: Nothing from the defense, Your Honor.

23 THE COURT: All right. I thank counsel. At this time
24 given the plea, obvious plea, and the facts and circumstances,
10:13AM 25 including the sentencing exposure, we'll remand Mr. Carraway to

1 the custody of the marshals pending further proceedings and
2 orders of this court and set all this down by order, by
3 separate order. That's all we have. All right? Thank you.

4 (Hearing concluded at 10:13 a.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

USA vs. Chico Carraway

1:14-CR-00167-01-JEJ

Change of Plea Hearing

16 November 2015

I, Wesley J. Armstrong, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of June 2017

/s/ Wesley J. Armstrong

Wesley J. Armstrong

Registered Merit Reporter

[EXHIBIT THREE]

Transcript of Sentencing Proceedings

Dated: April 17, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

UNITED STATES OF AMERICA,) CASE NO.
Plaintiff) 1:14-CR-00167-01-JEJ
vs.)
CHICO CARRAWAY,)
Defendant)

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE JOHN E. JONES, III
UNITED STATES DISTRICT JUDGE
17 APRIL 2017 - 9:46 A.M.

APPEARANCES:

For the Government:

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Court Reporter:

Wesley J. Armstrong, RMR
Official Court Reporter
U.S. Courthouse & Federal Building
228 Walnut Street
Harrisburg, PA 17101
(717) 542-5569

Proceedings recorded by machine shorthand; transcript
produced by computer aided transcription.

P R O C E E D I N G S

1
2 THE COURT: Be seated, please. All right, we're
3 assembled this morning in the case of United States versus
4 Chico Carraway. This is a sentencing as previously set by the
09:46AM 5 court. Let's have counsel enter their appearances, starting
6 with counsel for the United States.

7 MR. BLOOM: Daryl Bloom on behalf of the United
8 States, Your Honor.

9 MR. FERRO: Chris Ferro on behalf of the defendant.

09:46AM 10 THE COURT: Good morning to you. We'll note the
11 appearance of Mr. Carraway as well. Would you swear him in,
12 please, Liz?

13 (The defendant was sworn by the courtroom deputy.)

14 THE COURT: All right, Mr. Carraway, I want to ask you
09:47AM 15 first, have you had an opportunity to go over the presentence
16 report, and then there was an addendum to the presentence
17 report which reset your advisory guideline range, have you gone
18 over those documents with Mr. Ferro?

19 THE DEFENDANT: Yes.

09:47AM 20 THE COURT: You've had an opportunity to discuss it
21 with him, is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Ferro, you can confirm that, is that
24 correct?

09:47AM 25 MR. FERRO: That's correct, Your Honor.

1 THE COURT: We will start with the always appropriate
2 starting point as mandated by the Third Circuit, which is the
3 advisory guideline range in this case. We will note that as
4 according to our directions Ms. Bard rendered a February 10,
5 2017 addendum to the presentence report that indicated that the
6 advisory guideline imprisonment range on Count 1 is 100 to
7 125 months, and then Count 2 it is noted, and that was changed
8 as a result of pretrial, or presentencing litigation, which the
9 government then and the defense is well aware of.

10 And then Count 2 carries a mandatory minimum sixty
11 month term of imprisonment that the law requires be served
12 consecutively, as we know, to any sentence in Count 1. The
13 fine range is \$10,000, to the extent it's relevant, to
14 five million dollars. Do I have the advisory guidelines
15 correct from the government's standpoint, Mr. Bloom?

16 MR. BLOOM: Yes, Your Honor.

17 THE COURT: And, Mr. Ferro, from the defense's
18 standpoint are they correct?

19 MR. FERRO: Yes, Your Honor.

20 THE COURT: All right. Again we have thoroughly
21 litigated a number of objections that interposed by the defense
22 in this case, and there have been several presentence rulings
23 by the court. It would appear to me that we have disposed of
24 all objections that the defense had. Is that correct,
25 Mr. Ferro?

1 MR. FERRO: Yes, Your Honor.

2 THE COURT: And any objections, I don't see any, I
3 don't think there were any from the government. Is that
4 correct, Mr. Bloom?

5 MR. BLOOM: That's correct, Your Honor.

6 THE COURT: And then there are no outstanding
7 departure motions either from the court's standpoint. Is
8 that correct, Mr. Ferro?

9 MR. FERRO: That's correct, Your Honor.

10 THE COURT: Same question, Mr. Bloom.

11 MR. BLOOM: That's correct, Your Honor.

12 THE COURT: All right. So we remain unaltered at the
13 same stated advisory guideline range at this point. We will
14 note before we go to Mr. Ferro that Mr. Ferro has extensively
15 and well represented the defendant in this matter, above and
16 beyond the call of duty in terms of looking at every possible
17 avenue to give Mr. Carraway some relief, a number of which he
18 successfully exercised on behalf of Mr. Carraway, and we have a
19 very comprehensive sentencing memorandum that was filed last
20 week, actually on April the 12th, that we have had an
21 opportunity to read that makes an argument for a variance among
22 other things and has attached to it several character letters
23 that have been collected on behalf of the defendant.

24 So with that I believe that I have a pretty good grip
25 on the defense's position in this matter requesting a variance.

1 But, Mr. Ferro, anything that you want to add or summarize at
2 this point? You're certainly free to do so.

3 MR. FERRO: Thank you, Your Honor. May it please the
4 court, again the court is very familiar with this case based
51AM 5 upon pretrial litigation, based upon extensive post plea
6 litigation, and so I won't certainly belabor the facts. I
7 believe the court is familiar with the government's evidence,
8 familiar with the defendant's objections, and has ruled
9 favorably with respect to several of our arguments.

51AM 10 So we are sort in a position now where we are asking
11 for a variance from the guidelines for several specific
12 reasons. We agree that the sentencing guidelines in this case
13 are 100 to 125 months on Count 1, and a mandatory minimum five
14 years consecutive on the 924(c) case. And so the question
51AM 15 becomes how much is enough, and that's obviously not a bright
16 line, it's a difficult determination, but it's our assertion
17 that the guidelines in this case are simply a starting point
18 simply start too far, too high, and that the court can impose a
19 sentence which would be respected outside of this courtroom for
52AM 20 the conduct committed by Mr. Carraway.

21 It would certainly give Mr. Carraway time to think
22 about his actions and to rehabilitate himself, but a sentence
23 significantly below the guidelines would also give him the
24 ability not just to be punished, but to have a glimmer of hope
52AM 25 of returning to his family and returning to his daughter and

1 giving him a second shot.

2 Mr. Carraway is a young man. He is 37 years old. He
3 has a young daughter who is seven. So the court has the
4 ability to with its sentence today to again punish
5 significantly, but also allow Mr. Carraway the ability to
6 emerge from prison while still young, still healthy, and most
7 importantly to emerge from prison to still have an effect, a
8 positive one, on his daughter and be part of her life.

9 I know from talking to Mr. Carraway, you know,
10 there's a sea change that has occurred in the life, and his
11 criminal history was largely committed before he had a child,
12 or certainly when his child was not a part of his life, and I
13 think being incarcerated over these past several years while
14 we're awaiting today's date has given him the ability to
15 determine what he wants in life, and it's not to deal drugs,
16 it's not to commit crime, it's to somehow, some way be a part
17 of this girl's life, and I think that a sentence of,
18 significantly below the suggested guideline range would allow
19 him to do that.

20 By way of the offense conduct, Your Honor, the
21 government has certainly presented a case in which Mr. Carraway
22 was a significant drug trafficker in the York area. In my
23 estimation, and I think it's somewhat supported by the court's
24 ruling as it relates to the objections, is that the legs have
25 been cut out of that argument to some degree, and what I think

1 we're left with that we can feel very strongly about with
2 little contradiction is that Mr. Carraway engaged in small
3 sales of heroin on three occasions in a controlled fashion,
4 and he engaged in a small sale of crack cocaine in a controlled
5 fashion.

6 We don't dispute that that is not it, and there's no
7 argument to say that well, you caught him the only four times
8 he ever dealt drugs. Mr. Carraway acknowledged by his plea
9 that he was engaged that type of behavior. But the assertion
10 that he was a kingpin, the assertion that he was making large
11 amounts of money, the assertion that he was involved in
12 kilograms of whatever substance, has simply just not been
13 supported by any credible evidence.

14 So I think you come down to on the scale of what you
15 deal with, Your Honor, on a daily basis in federal court, if
16 we're looking at a one to ten that shades towards the very
17 garden variety to almost arguably a de minimus type of drug
18 trafficking offense which is usually dealt with in the state
19 court.

20 We acknowledge we're here, we acknowledge we're
21 appropriately here, but I think there's an ability to say that
22 this is not the type of case that the government proffered
23 initially and that there's room here to say that the sentencing
24 guidelines, although a good starting point, are not necessary
25 to achieve justice in this case. As the court sees, there are

1 multiple members of my client's family here, too many to count,
2 over a dozen. Many letters of support have been provided to
3 the court by certain members. I think their show here is
4 significant. It tells the court that once Mr. Carraway emerges
9:55AM 5 not only with his focus on his daughter, he has tons of support
6 out in the community, tons of people who care about him and
7 love him, and that obviously is a significant benefit towards
8 lack of recidivism.

9 When you emerge from prison and have nobody or go
9:55AM 10 into prison and have nobody it's a lonely place. He has a lot
11 of people here, a lot of people who care about him, and I
12 submit to the court that that's not just blood and that's
13 because he's a good person and he's a caring family member, a
14 caring brother, a caring son, a caring cousin, and so that's
9:55AM 15 why all those people have trekked here, most, Your Honor, at
16 least from four hours away to be here and to support him today
17 before the court.

18 We understand that a sentence of incarceration will
19 be necessary. We're asking the court to recommend to the
9:56AM 20 Bureau of Prisons that my client be incarcerated as close as
21 possible to the Bronx, New York so he can be near these people
22 and his daughter, and we're asking the court, as we did in our
23 sentencing memorandum, to impose a sentence of four years on
24 Count 1, with the mandatory minimum consecutive sentence of
9:56AM 25 five years on Count 2. That will be a total term of

1 incarceration of nine years, which we acknowledge is well below
2 the suggested guideline range, but is still a tremendous amount
3 of incarceration and certainly enough time for Mr. Carraway to
4 be significantly punished, but also rehabilitated, and the
5 ability again to return to his community while still in his
6 late forties and while his daughter is still in her teenage
7 years.

8 THE COURT: All right. Thank you, Mr. Ferro.
9 Appreciate it. Mr. Carraway, what do you have to say?

10 THE DEFENDANT: I truly apologize to the community
11 that I have indulged in illegal activities, to the families
12 that I have destroyed. I'm ashamedful as a parent, as a son, as
13 a citizen, but sitting under the word has taught me to not
14 indulge in things that are going to take me from my family,
15 from my friends, and from all them that love me, everybody that
16 that I have done good for. I just ask Your Honor to have
17 leniency on me and to know that I'm a changed man here today
18 sitting in front of you. That's it.

19 THE COURT: All right. Thank you, Mr. Carraway.
20 Mr. Bloom?

21 MR. BLOOM: Your Honor, everyone's a changed man when
22 they come before the court and they're getting sentenced.
23 That's not what the evidence bears in this case. First I want
24 to address Mr. Ferro's indication that this is not a federal
25 case. I have to respectfully disagree. This case involved

1 substantial quantities of drugs, and I know the court had
2 determined drug weights substantially less than what the
3 government believes they are, but nonetheless I would note just
4 one of the individuals, Jennifer Keller, who had in a body
5 cavity who was bringing drugs back, she had no reason to lie.
6 There were no charges, there was nothing, her case was
7 completely finished at that time, she attributed the drugs to
8 the defendant.

9 I would note that another of the individuals who were
10 obtaining, who admittedly are drug dealers, those individuals
11 were also obtaining drugs from the defendant. So this isn't
12 just somebody who's selling small quantities of controlled
13 substances. We have the most dangerous, in fact in this case
14 we have the most dangerous of factors. We have someone who's
15 distributing large quantities of drugs, and maybe in small
16 amounts, but nonetheless large quantities.

17 We know that because we can even see the drugs that
18 were found and recovered during the search warrant. So we have
19 that with the combination of the guns, the most dangerous of
20 combinations. In fact, the defendant was really, he was a
21 pharmacist of drugs. He had heroin. He had crack cocaine. He
22 had cocaine hydrochloride. He had oxycodone. He had
23 marijuana. Literally a little bit of everything.

24 I would note that as it relates to the guidelines,
25 and if you look at the guidelines, the range for that

1 particular offense level, the 26, goes from 400 to 700. He is
2 well above half of that, so there's no reason that that should
3 be varied from there. In fact, he was almost 600 kilograms of
4 marijuana or marijuana equivalency. So that's another reason
5 that the government would suggest that he should be sentenced
6 at the high end of that.

7 I would note that the defendant has not really worked
8 consistently since 2010. I know there were a couple of times
9 he was in prison, which I'll address in just a moment, but I
10 would note that the defendant preyed on other's weaknesses. We
11 have seen and this court has seen a number of individuals who
12 come in here and that are selling drugs to support their heroin
13 addiction, their cocaine addiction, their crack addiction.

14 The defendant doesn't have that. His was based upon
15 solely greed. He's a marijuana, and based upon the presentence
16 report he's a marijuana user. So the heroin, the crack, the
17 cocaine, the oxycodone, these are all drugs that he's preying
18 on other people's weaknesses, preying on that weakness, which
19 is the weakness of addiction. I would suggest to the court in
20 fact the recommended by the defense as to a sentence would be
21 providing disparate treatment from everybody that were
22 similarly situated from the defendant.

23 I would note that his criminal history also reflects
24 someone who should have a significant sentence in this
25 particular case. This is someone who there are seven

1 convictions that he has that are not even pointed. He was
2 borderline and ultimately determined not to be a career
3 offender. He's had other weapons convictions that date back to
4 the age of 19. It's not his first delivery conviction. And
10:01AM 5 even look at the example what he's done after he's released and
6 he's been, has had his parole revoked.

7 On all those factors, Your Honor, and I would note,
8 and I'm not going to -- I don't really want to address the drug
9 weights. The court made a decision on that and the court made
10:01AM 10 a decision on role in the offense, but if the court can
11 consider those factors for 3553(a), I would note that the court
12 was very conservative in determining the drug weights and the
13 court was very conservative in not giving him any adjustment
14 for role in the offense specifically as it relates to the
10:01AM 15 cocaine that was being brought back from New York.

16 We know he was getting it from there. We also know
17 that he was in the vehicle with three other females bringing
18 drugs back. We know that he was doing others. I think there
19 were ten individuals that were in some way involved with the
10:01AM 20 defendant and the trafficking of controlled substance. And
21 therefore on all those factors the United States would actually
22 ask Your Honor to find that the defendant actually should be
23 sentenced at the top of the guideline range of 125 months based
24 upon all those factors.

10:02AM 25 THE COURT: Thank you, Mr. Bloom. Having heard from

1 counsel, having viewed the submissions of the parties, having
2 been utterly familiar with this case for quite some time, as I
3 alluded to earlier, let me state as follows as we pass sentence
4 on Mr. Carraway. First of all, we'll note importantly that we
5 consider, as we must, the guidelines to be advisory to us.

6 We have considered this case and we will sentence
7 with a view towards examining it through the lens containing
8 all seven factors under Section 3553(a). I want to note areas
9 that I think are particularly pertinent that speak to these
10 factors and are I think responsive to and touch on the areas
11 that both counsel have raised.

12 As to the first factor, the nature and circumstances
13 of the offense and the history and characteristics of
14 Mr. Carraway, I will note that this offense, as we know, is
15 the, involves the distribution and possession with intent to
16 distribute a significant amount of cocaine hydrochloride and
17 heroin.

18 Moreover, as Mr. Bloom just noted, there's a firearm
19 involved in this case, and that is a very troubling combination
20 and there's no question that what I have before me is
21 unfortunately for you, Mr. Carraway, you're an armed drug
22 dealer. You have a significant criminal history. There is at
23 least one instance of delivery of cocaine.

24 What's troublesome about your criminal history is
25 that it shows a disrespect for the law, a consistent

1 disrespect. As Mr. Ferro said, you're not of advanced age, but
2 you're old enough to know better and you just keep coming back
3 to the well. It's also important to note that you escaped
4 being a career offender, as the expression goes, by the skin of
5 your teeth through good work by Mr. Ferro to aggressively
6 litigate a drug weight. I know it's an area that the
7 government is not particularly happy with, but I erred on the
8 side of caution in determining drug weights.

9 So break after break, erring on the side of caution
10 have gone your way up to this point. Your exposure at the
11 beginning of this case was in excess of thirty years as this
12 thing scored out, and so you find yourself, you're in a
13 significantly lower advisory guideline range because of frankly
14 the court erring on the side of caution, as I said, in a way
15 that I know the government is not particularly thrilled about,
16 but we do what we have to do in these cases.

17 That said, I'm not blind to the facts and
18 circumstances that are before me. This is not my first case
19 involving an armed drug dealer, and I've attributed to you what
20 I believe that I can, but it's clear to me that for an
21 extensive period of time you were a drug dealer. You show no
22 consistency in full employment, as Mr. Bloom said, and that's
23 troubling to me.

24 You haven't been legit for a long time. Now, you
25 come before me saying you're a changed man, and again Mr. Ferro

1 has done an excellent job for you, but Mr. Bloom has the better
2 argument. Everybody has conversions when they go in front of a
3 judge to be sentenced. I'm not so sure about you, Mr. Carraway.
4 I don't know, I don't know if you're where you need to be or
5 not. You're going to have some time to work on that.

6 An extended period of incarceration is necessary in
7 this case. The guidelines do mean something, and in this case
8 we find ourselves in an area that I think is just and fair
9 under the circumstances. I think a deterrent aspect of this is
10 worth noting because we have an epidemic across the country,
11 and it's particularly true in the Middle District of
12 Pennsylvania, not just cocaine, but heroin, which is a scourge
13 and it's killing people day after day after day, and you tell
14 me that you're sorry for this, for the poison that you spread
15 across the countryside, but it's a little late now, and we
16 don't know the damage it did.

17 We don't, we can take a guess, but that would be
18 impermissible under the circumstances, but we just do know that
19 it is a public health hazard right now, and that's why the laws
20 mean something as they relate to particularly heroin
21 distribution. I don't think that you were -- I agree with
22 Mr. Ferro that you weren't the kingpin of the operation, but I
23 think you were in up to your eyeballs, and I think that you had
24 a substantial part in what took place day after day and I have
25 no question that you'd still be out there doing this if you

1 hadn't been caught, you won't give it up, the money was too
2 good under the circumstances.

3 I have to sentence, as I look at the sixth factor, in
4 a way that is consistent with not creating disparities, and
5 while Mr. Ferro makes a very eloquent argument on your behalf,
6 the fact of the matter is to reach down to the place that he's
7 advocating for me to go is to create an enormous sentencing
8 disparity that I cannot and will not do in this case.

9 So that's just not possible without filing the sixth
10 factor under 3553(a). It's too bad that it's come to this
11 because I think that there were, I think that you have family
12 needs and I think that you have attributes that could have
13 directed you better, but for whatever reason you just kept
14 coming back to the same behavior time after time.

15 So the upshot is that you bought yourself a far
16 longer sentence than you would have liked. Finally, as I have
17 said very frequently, you found yourself in state court
18 repeatedly, but you didn't find yourself in federal court.
19 Federal court, as Mr. Ferro knows and Mr. Bloom knows, this is
20 the big leagues of the criminal law, and you get hit in federal
21 court and it's a whole different situation than what happens in
22 state court, and you kept, you kept at it time after time after
23 time until you finally got on the radar of the feds, and that's
24 why you're here.

25 This is not an inappropriate prosecution. You put

1 yourself on the radar of the federal government, and this is
2 what happens. Pursuant to the Sentencing Reform Act of 1984
3 it's the judgment of the court that the defendant Chico Jermell
4 Carraway is hereby committed to the custody of the Bureau of
5 Prisons to be imprisoned for a term of 160 months. The
6 sentence consists of 100 months on Count 1 and 60 months on
7 Count 2, to be served consecutively. I will recommend --
8 Mr. Bloom, you have no objection to a place of incarceration
9 close to the Bronx, do you?

10 MR. BLOOM: I do not, Your Honor.

11 THE COURT: I will recommend that the defendant be
12 lodged in a federal institution that is close to New York City,
13 understanding that ultimately the final decision is with the
14 federal Bureau of Prisons. I find that the defendant does not
15 have the ability to pay a fine. However, I will order that the
16 special assessment in the amount of \$100 is payable immediately
17 to the clerk of this court, that's on each count, for a total
18 of \$200.

19 Upon release from imprisonment the defendant will be
20 placed on supervised release for a term of four years on each
21 count, to be served concurrently. Within 72 hours of his
22 release the defendant shall report in person to the probation
23 office in the district to which he is released. While on
24 supervised release Mr. Carraway shall not commit any federal,
25 state, or local crimes, he'll not possess a dangerous weapon,

1 and he'll comply with the standard conditions that have been
2 adopted by this court and the following additional conditions.

3 First, he'll submit to one drug test within fifteen
4 days of commencing supervision and at least two periodic drug
5 tests thereafter for use of a controlled substance. Second,
6 he'll cooperate in the collection of a DNA sample as directed
7 by the probation officer, unless a sample was collected during
8 imprisonment. Third, he'll provide the probation officer with
9 access to any requested financial information. Fourth, he'll
10 submit his or her person, property, house, resident, vehicle,
11 papers, electronic communications, or data storage devices, or
12 media, or office to a search conducted by the United States
13 probation officer.

14 Failure to submit to a search may be grounds for
15 revocation of release. The defendant shall warn other
16 occupants of the premises that it may be subject to searches
17 pursuant to this condition. Mr. Carraway, in your plea
18 agreement you waived your right to appeal your conviction and
19 sentence to the United States Court of Appeals. You may still
20 have the right to appeal in the rare case where enforcing the
21 waiver would result in a miscarriage of justice.

22 Any such appeal has to be filed in court within
23 fourteen days. If you decide to appeal and you can't pay the
24 cost you may apply to appeal in forma pauperis, which means
25 that, if approved, counsel will be appointed for you and you

1 will not be required to pay any costs. Anything further from
2 the government, Mr. Bloom?

3 MR. BLOOM: Your Honor, the United States would
4 request dismissal of the remaining counts.

10:12AM

5 THE COURT: All right. Without objection the
6 remaining counts are, or count is dismissed. Anything further
7 from the defense?

8 MR. FERRO: No, Your Honor.

10:12AM

9 THE COURT: All right. That concludes this sentencing.
10 Thank you.

11 (Hearing concluded at 10:12 a.m.)
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1 CERTIFICATE OF OFFICIAL COURT REPORTER

2
3 USA vs. Chico Carraway

4 1:14-CR-00167-01-JEJ

5 Sentencing Proceedings

6 17 April 2017
7

8 I, Wesley J. Armstrong, Federal Official Court
9 Reporter, in and for the United States District Court for the
10 Middle District of Pennsylvania, do hereby certify that
11 pursuant to Section 753, Title 28, United States Code that the
12 foregoing is a true and correct transcript of the
13 stenographically reported proceedings held in the
14 above-entitled matter and that the transcript page format is in
15 conformance with the regulations of the Judicial Conference of
16 the United States.

17
18 Dated this 19th day of June 2017
19
20
2122 /s/ Wesley J. Armstrong
23 _____

24 Wesley J. Armstrong

25 Registered Merit Reporter

UNITED STATES DISTRICT COURT

Middle District of Pennsylvania

UNITED STATES OF AMERICA

v.

Chico Jermell Carraway

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:14CR00167

USM Number: 72197-067

Christopher A. Ferro

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1)	Distribution and Possession with Intent to Distribute 500 Grams and More of Cocaine Hydrochloride, 28 Grams and More of Cocaine Base, and 100 Grams and More of Heroin	7/31/2014	1

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.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 3 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

4/17/2017

Date of Imposition of Judgment

Signature of Judge

John E. Jones III, U.S. District Judge

Name and Title of Judge

4/17/2017

Date

DEFENDANT: Chico Jermell Carraway
CASE NUMBER: 1:14CR00167

[illegible]

DEFENDANT: Chico Jermell Carraway
CASE NUMBER: 1:14CR00167

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

160 months. Said sentence consists of 100 months on Count 1 and 60 months on Count 2, to be served consecutively.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends placement at a facility as close as possible to Bronx, New York.

☒ 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 _____

a _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Chico Jermell Carraway
CASE NUMBER: 1:14CR00167

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
Four years on each count to run concurrent.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) the defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

DEFENDANT: Chico Jermell Carraway
CASE NUMBER: 1:14CR00167

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall submit to one drug test within 15 days of commencing supervision and at least two periodic drug tests thereafter for the use of a controlled substance;
2. The defendant shall cooperate in the collection of a DNA sample as directed by the probation officer unless a sample was collected during imprisonment;
3. The defendant shall provide the probation officer with access to any requested financial information; and
4. The defendant shall submit his or her person, property, house, residence, vehicle, papers, electronic communications or data storage devices or media, or office, to a search conducted by the United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Chico Jermell Carraway
CASE NUMBER: 1:14CR00167

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* 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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	0.00	\$ _____	0.00
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☐ 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 on Sheet 6 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:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* 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: Chico Jermell Carraway
CASE NUMBER: 1:14CR00167

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 payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ 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 the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ 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) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

1	UNITED STATES OF AMERICA,)	CASE NO.
2	Plaintiff)	1:14-CR-00167-01-JEJ
3	vs.)	
4	CHICO CARRAWAY,)	
5	Defendant)	
6	_____)	

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE JOHN E. JONES, III
UNITED STATES DISTRICT JUDGE
17 APRIL 2017 - 9:46 A.M.

APPEARANCES:

For the Government:

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(717) 221-4482

For the Defendant:

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Court Reporter:

Wesley J. Armstrong, RMR
Official Court Reporter
U.S. Courthouse & Federal Building
228 Walnut Street
Harrisburg, PA 17101
(717) 542-5569

Proceedings recorded by machine shorthand; transcript
produced by computer aided transcription.

P R O C E E D I N G S

THE COURT: Be seated, please. All right, we're assembled this morning in the case of United States versus Chico Carraway. This is a sentencing as previously set by the court. Let's have counsel enter their appearances, starting with counsel for the United States.

MR. BLOOM: Daryl Bloom on behalf of the United States, Your Honor.

MR. FERRO: Chris Ferro on behalf of the defendant.

THE COURT: Good morning to you. We'll note the appearance of Mr. Carraway as well. Would you swear him in, please, Liz?

(The defendant was sworn by the courtroom deputy.)

THE COURT: All right, Mr. Carraway, I want to ask you first, have you had an opportunity to go over the presentence report, and then there was an addendum to the presentence report which reset your advisory guideline range, have you gone over those documents with Mr. Ferro?

THE DEFENDANT: Yes.

THE COURT: You've had an opportunity to discuss it with him, is that correct?

THE DEFENDANT: Yes.

THE COURT: Mr. Ferro, you can confirm that, is that correct?

MR. FERRO: That's correct, Your Honor.

1 THE COURT: We will start with the always appropriate
2 starting point as mandated by the Third Circuit, which is the
3 advisory guideline range in this case. We will note that as
4 according to our directions Ms. Bard rendered a February 10,
09:48AM 5 2017 addendum to the presentence report that indicated that the
6 advisory guideline imprisonment range on Count 1 is 100 to
7 125 months, and then Count 2 it is noted, and that was changed
8 as a result of pretrial, or presentencing litigation, which the
9 government then and the defense is well aware of.

09:48AM 10 And then Count 2 carries a mandatory minimum sixty
11 month term of imprisonment that the law requires be served
12 consecutively, as we know, to any sentence in Count 1. The
13 fine range is \$10,000, to the extent it's relevant, to
14 five million dollars. Do I have the advisory guidelines
09:48AM 15 correct from the government's standpoint, Mr. Bloom?

16 MR. BLOOM: Yes, Your Honor.

17 THE COURT: And, Mr. Ferro, from the defense's
18 standpoint are they correct?

19 MR. FERRO: Yes, Your Honor.

09:48AM 20 THE COURT: All right. Again we have thoroughly
21 litigated a number of objections that interposed by the defense
22 in this case, and there have been several presentence rulings
23 by the court. It would appear to me that we have disposed of
24 all objections that the defense had. Is that correct,

09:49AM 25 Mr. Ferro?

1 MR. FERRO: Yes, Your Honor.

2 THE COURT: And any objections, I don't see any, I
3 don't think there were any from the government. Is that
4 correct, Mr. Bloom?

09:49AM 5 MR. BLOOM: That's correct, Your Honor.

6 THE COURT: And then there are no outstanding
7 departure motions either from the court's standpoint. Is
8 that correct, Mr. Ferro?

9 MR. FERRO: That's correct, Your Honor.

09:49AM 10 THE COURT: Same question, Mr. Bloom.

11 MR. BLOOM: That's correct, Your Honor.

12 THE COURT: All right. So we remain unaltered at the
13 same stated advisory guideline range at this point. We will
14 note before we go to Mr. Ferro that Mr. Ferro has extensively
09:50AM 15 and well represented the defendant in this matter, above and
16 beyond the call of duty in terms of looking at every possible
17 avenue to give Mr. Carraway some relief, a number of which he
18 successfully exercised on behalf of Mr. Carraway, and we have a
19 very comprehensive sentencing memorandum that was filed last
09:50AM 20 week, actually on April the 12th, that we have had an
21 opportunity to read that makes an argument for a variance among
22 other things and has attached to it several character letters
23 that have been collected on behalf of the defendant.

24 So with that I believe that I have a pretty good grip
09:50AM 25 on the defense's position in this matter requesting a variance.

1 But, Mr. Ferro, anything that you want to add or summarize at
2 this point? You're certainly free to do so.

3 MR. FERRO: Thank you, Your Honor. May it please the
4 court, again the court is very familiar with this case based
09:51AM 5 upon pretrial litigation, based upon extensive post plea
6 litigation, and so I won't certainly belabor the facts. I
7 believe the court is familiar with the government's evidence,
8 familiar with the defendant's objections, and has ruled
9 favorably with respect to several of our arguments.

09:51AM 10 So we are sort in a position now where we are asking
11 for a variance from the guidelines for several specific
12 reasons. We agree that the sentencing guidelines in this case
13 are 100 to 125 months on Count 1, and a mandatory minimum five
14 years consecutive on the 924(c) case. And so the question
09:51AM 15 becomes how much is enough, and that's obviously not a bright
16 line, it's a difficult determination, but it's our assertion
17 that the guidelines in this case are simply a starting point
18 simply start too far, too high, and that the court can impose a
19 sentence which would be respected outside of this courtroom for
09:52AM 20 the conduct committed by Mr. Carraway.

21 It would certainly give Mr. Carraway time to think
22 about his actions and to rehabilitate himself, but a sentence
23 significantly below the guidelines would also give him the
24 ability not just to be punished, but to have a glimmer of hope
09:52AM 25 of returning to his family and returning to his daughter and

1 giving him a second shot.

2 Mr. Carraway is a young man. He is 37 years old. He
3 has a young daughter who is seven. So the court has the
4 ability to with its sentence today to again punish
09:52AM 5 significantly, but also allow Mr. Carraway the ability to
6 emerge from prison while still young, still healthy, and most
7 importantly to emerge from prison to still have an effect, a
8 positive one, on his daughter and be part of her life.

9 I know from talking to Mr. Carraway, you know,
09:52AM 10 there's a sea change that has occurred in the life, and his
11 criminal history was largely committed before he had a child,
12 or certainly when his child was not a part of his life, and I
13 think being incarcerated over these past several years while
14 we're awaiting today's date has given him the ability to
09:53AM 15 determine what he wants in life, and it's not to deal drugs,
16 it's not to commit crime, it's to somehow, some way be a part
17 of this girl's life, and I think that a sentence of,
18 significantly below the suggested guideline range would allow
19 him to do that.

09:53AM 20 By way of the offense conduct, Your Honor, the
21 government has certainly presented a case in which Mr. Carraway
22 was a significant drug trafficker in the York area. In my
23 estimation, and I think it's somewhat supported by the court's
24 ruling as it relates to the objections, is that the legs have
09:53AM 25 been cut out of that argument to some degree, and what I think

1 we're left with that we can feel very strongly about with
2 little contradiction is that Mr. Carraway engaged in small
3 sales of heroin on three occasions in a controlled fashion,
4 and he engaged in a small sale of crack cocaine in a controlled
5 fashion.

09:54AM

6 We don't dispute that that is not it, and there's no
7 argument to say that well, you caught him the only four times
8 he ever dealt drugs. Mr. Carraway acknowledged by his plea
9 that he was engaged that type of behavior. But the assertion
10 that he was a kingpin, the assertion that he was making large
11 amounts of money, the assertion that he was involved in
12 kilograms of whatever substance, has simply just not been
13 supported by any credible evidence.

09:54AM

14 So I think you come down to on the scale of what you
15 deal with, Your Honor, on a daily basis in federal court, if
16 we're looking at a one to ten that shades towards the very
17 garden variety to almost arguably a de minimus type of drug
18 trafficking offense which is usually dealt with in the state
19 court.

09:54AM

20 We acknowledge we're here, we acknowledge we're
21 appropriately here, but I think there's an ability to say that
22 this is not the type of case that the government proffered
23 initially and that there's room here to say that the sentencing
24 guidelines, although a good starting point, are not necessary
25 to achieve justice in this case. As the court sees, there are

09:54AM

09:55AM

1 multiple members of my client's family here, too many to count,
2 over a dozen. Many letters of support have been provided to
3 the court by certain members. I think their show here is
4 significant. It tells the court that once Mr. Carraway emerges
09:55AM 5 not only with his focus on his daughter, he has tons of support
6 out in the community, tons of people who care about him and
7 love him, and that obviously is a significant benefit towards
8 lack of recidivism.

9 When you emerge from prison and have nobody or go
09:55AM 10 into prison and have nobody it's a lonely place. He has a lot
11 of people here, a lot of people who care about him, and I
12 submit to the court that that's not just blood and that's
13 because he's a good person and he's a caring family member, a
14 caring brother, a caring son, a caring cousin, and so that's
09:55AM 15 why all those people have trekked here, most, Your Honor, at
16 least from four hours away to be here and to support him today
17 before the court.

18 We understand that a sentence of incarceration will
19 be necessary. We're asking the court to recommend to the
09:56AM 20 Bureau of Prisons that my client be incarcerated as close as
21 possible to the Bronx, New York so he can be near these people
22 and his daughter, and we're asking the court, as we did in our
23 sentencing memorandum, to impose a sentence of four years on
24 Count 1, with the mandatory minimum consecutive sentence of
09:56AM 25 five years on Count 2. That will be a total term of

1 incarceration of nine years, which we acknowledge is well below
2 the suggested guideline range, but is still a tremendous amount
3 of incarceration and certainly enough time for Mr. Carraway to
4 be significantly punished, but also rehabilitated, and the
09:56AM 5 ability again to return to his community while still in his
6 late forties and while his daughter is still in her teenage
7 years.

8 THE COURT: All right. Thank you, Mr. Ferro.
9 Appreciate it. Mr. Carraway, what do you have to say?

09:56AM 10 THE DEFENDANT: I truly apologize to the community
11 that I have indulged in illegal activities, to the families
12 that I have destroyed. I'm ashamedful as a parent, as a son, as
13 a citizen, but sitting under the word has taught me to not
14 indulge in things that are going to take me from my family,
09:57AM 15 from my friends, and from all them that love me, everybody that
16 that I have done good for. I just ask Your Honor to have
17 leniency on me and to know that I'm a changed man here today
18 sitting in front of you. That's it.

19 THE COURT: All right. Thank you, Mr. Carraway.
09:57AM 20 Mr. Bloom?

21 MR. BLOOM: Your Honor, everyone's a changed man when
22 they come before the court and they're getting sentenced.
23 That's not what the evidence bears in this case. First I want
24 to address Mr. Ferro's indication that this is not a federal
09:57AM 25 case. I have to respectfully disagree. This case involved

1 substantial quantities of drugs, and I know the court had
2 determined drug weights substantially less than what the
3 government believes they are, but nonetheless I would note just
4 one of the individuals, Jennifer Keller, who had in a body
09:58AM 5 cavity who was bringing drugs back, she had no reason to lie.
6 There were no charges, there was nothing, her case was
7 completely finished at that time, she attributed the drugs to
8 the defendant.

9 I would note that another of the individuals who were
09:58AM 10 obtaining, who admittedly are drug dealers, those individuals
11 were also obtaining drugs from the defendant. So this isn't
12 just somebody who's selling small quantities of controlled
13 substances. We have the most dangerous, in fact in this case
14 we have the most dangerous of factors. We have someone who's
09:58AM 15 distributing large quantities of drugs, and maybe in small
16 amounts, but nonetheless large quantities.

17 We know that because we can even see the drugs that
18 were found and recovered during the search warrant. So we have
19 that with the combination of the guns, the most dangerous of
09:58AM 20 combinations. In fact, the defendant was really, he was a
21 pharmacist of drugs. He had heroin. He had crack cocaine. He
22 had cocaine hydrochloride. He had oxycodone. He had
23 marijuana. Literally a little bit of everything.

24 I would note that as it relates to the guidelines,
09:59AM 25 and if you look at the guidelines, the range for that

1 particular offense level, the 26, goes from 400 to 700. He is
2 well above half of that, so there's no reason that that should
3 be varied from there. In fact, he was almost 600 kilograms of
4 marijuana or marijuana equivalency. So that's another reason
09:59AM 5 that the government would suggest that he should be sentenced
6 at the high end of that.

7 I would note that the defendant has not really worked
8 consistently since 2010. I know there were a couple of times
9 he was in prison, which I'll address in just a moment, but I
09:59AM 10 would note that the defendant preyed on other's weaknesses. We
11 have seen and this court has seen a number of individuals who
12 come in here and that are selling drugs to support their heroin
13 addiction, their cocaine addiction, their crack addiction.

14 The defendant doesn't have that. His was based upon
10:00AM 15 solely greed. He's a marijuana, and based upon the presentence
16 report he's a marijuana user. So the heroin, the crack, the
17 cocaine, the oxycodone, these are all drugs that he's preying
18 on other people's weaknesses, preying on that weakness, which
19 is the weakness of addiction. I would suggest to the court in
10:00AM 20 fact the recommended by the defense as to a sentence would be
21 providing disparate treatment from everybody that were
22 similarly situated from the defendant.

23 I would note that his criminal history also reflects
24 someone who should have a significant sentence in this
10:00AM 25 particular case. This is someone who there are seven

1 convictions that he has that are not even pointed. He was
2 borderline and ultimately determined not to be a career
3 offender. He's had other weapons convictions that date back to
4 the age of 19. It's not his first delivery conviction. And
10:01AM 5 even look at the example what he's done after he's released and
6 he's been, has had his parole revoked.

7 On all those factors, Your Honor, and I would note,
8 and I'm not going to -- I don't really want to address the drug
9 weights. The court made a decision on that and the court made
10:01AM 10 a decision on role in the offense, but if the court can
11 consider those factors for 3553(a), I would note that the court
12 was very conservative in determining the drug weights and the
13 court was very conservative in not giving him any adjustment
14 for role in the offense specifically as it relates to the
10:01AM 15 cocaine that was being brought back from New York.

16 We know he was getting it from there. We also know
17 that he was in the vehicle with three other females bringing
18 drugs back. We know that he was doing others. I think there
19 were ten individuals that were in some way involved with the
10:01AM 20 defendant and the trafficking of controlled substance. And
21 therefore on all those factors the United States would actually
22 ask Your Honor to find that the defendant actually should be
23 sentenced at the top of the guideline range of 125 months based
24 upon all those factors.

10:02AM 25 THE COURT: Thank you, Mr. Bloom. Having heard from

1 counsel, having viewed the submissions of the parties, having
2 been utterly familiar with this case for quite some time, as I
3 alluded to earlier, let me state as follows as we pass sentence
4 on Mr. Carraway. First of all, we'll note importantly that we
10:02AM 5 consider, as we must, the guidelines to be advisory to us.

6 We have considered this case and we will sentence
7 with a view towards examining it through the lens containing
8 all seven factors under Section 3553(a). I want to note areas
9 that I think are particularly pertinent that speak to these
10:03AM 10 factors and are I think responsive to and touch on the areas
11 that both counsel have raised.

12 As to the first factor, the nature and circumstances
13 of the offense and the history and characteristics of
14 Mr. Carraway, I will note that this offense, as we know, is
10:03AM 15 the, involves the distribution and possession with intent to
16 distribute a significant amount of cocaine hydrochloride and
17 heroin.

18 Moreover, as Mr. Bloom just noted, there's a firearm
19 involved in this case, and that is a very troubling combination
10:03AM 20 and there's no question that what I have before me is
21 unfortunately for you, Mr. Carraway, you're an armed drug
22 dealer. You have a significant criminal history. There is at
23 least one instance of delivery of cocaine.

24 What's troublesome about your criminal history is
10:04AM 25 that it shows a disrespect for the law, a consistent

1 disrespect. As Mr. Ferro said, you're not of advanced age, but
2 you're old enough to know better and you just keep coming back
3 to the well. It's also important to note that you escaped
4 being a career offender, as the expression goes, by the skin of
5 your teeth through good work by Mr. Ferro to aggressively
6 litigate a drug weight. I know it's an area that the
7 government is not particularly happy with, but I erred on the
8 side of caution in determining drug weights.

10:04AM

9 So break after break, erring on the side of caution
10 have gone your way up to this point. Your exposure at the
11 beginning of this case was in excess of thirty years as this
12 thing scored out, and so you find yourself, you're in a
13 significantly lower advisory guideline range because of frankly
14 the court erring on the side of caution, as I said, in a way
15 that I know the government is not particularly thrilled about,
16 but we do what we have to do in these cases.

10:05AM

17 That said, I'm not blind to the facts and
18 circumstances that are before me. This is not my first case
19 involving an armed drug dealer, and I've attributed to you what
20 I believe that I can, but it's clear to me that for an
21 extensive period of time you were a drug dealer. You show no
22 consistency in full employment, as Mr. Bloom said, and that's
23 troubling to me.

10:05AM

24 You haven't been legit for a long time. Now, you
25 come before me saying you're a changed man, and again Mr. Ferro

10:05AM

1 has done an excellent job for you, but Mr. Bloom has the better
2 argument. Everybody has conversions when they go in front of a
3 judge to be sentenced. I'm not so sure about you, Mr. Carraway.
4 I don't know, I don't know if you're where you need to be or
10:06AM 5 not. You're going to have some time to work on that.

6 An extended period of incarceration is necessary in
7 this case. The guidelines do mean something, and in this case
8 we find ourselves in an area that I think is just and fair
9 under the circumstances. I think a deterrent aspect of this is
10:06AM 10 worth noting because we have an epidemic across the country,
11 and it's particularly true in the Middle District of
12 Pennsylvania, not just cocaine, but heroin, which is a scourge
13 and it's killing people day after day after day, and you tell
14 me that you're sorry for this, for the poison that you spread
10:07AM 15 across the countryside, but it's a little late now, and we
16 don't know the damage it did.

17 We don't, we can take a guess, but that would be
18 impermissible under the circumstances, but we just do know that
19 it is a public health hazard right now, and that's why the laws
10:07AM 20 mean something as they relate to particularly heroin
21 distribution. I don't think that you were -- I agree with
22 Mr. Ferro that you weren't the kingpin of the operation, but I
23 think you were in up to your eyeballs, and I think that you had
24 a substantial part in what took place day after day and I have
10:07AM 25 no question that you'd still be out there doing this if you

1 hadn't been caught, you won't give it up, the money was too
2 good under the circumstances.

3 I have to sentence, as I look at the sixth factor, in
4 a way that is consistent with not creating disparities, and
10:08AM 5 while Mr. Ferro makes a very eloquent argument on your behalf,
6 the fact of the matter is to reach down to the place that he's
7 advocating for me to go is to create an enormous sentencing
8 disparity that I cannot and will not do in this case.

9 So that's just not possible without filling the sixth
10:08AM 10 factor under 3553(a). It's too bad that it's come to this
11 because I think that there were, I think that you have family
12 needs and I think that you have attributes that could have
13 directed you better, but for whatever reason you just kept
14 coming back to the same behavior time after time.

10:09AM 15 So the upshot is that you bought yourself a far
16 longer sentence than you would have liked. Finally, as I have
17 said very frequently, you found yourself in state court
18 repeatedly, but you didn't find yourself in federal court.

19 Federal court, as Mr. Ferro knows and Mr. Bloom knows, this is
10:09AM 20 the big leagues of the criminal law, and you get hit in federal
21 court and it's a whole different situation than what happens in
22 state court, and you kept, you kept at it time after time after
23 time until you finally got on the radar of the feds, and that's
24 why you're here.

10:09AM 25 This is not an inappropriate prosecution. You put

1 yourself on the radar of the federal government, and this is
2 what happens. Pursuant to the Sentencing Reform Act of 1984
3 it's the judgment of the court that the defendant Chico Jermell
4 Carraway is hereby committed to the custody of the Bureau of
10:10AM 5 Prisons to be imprisoned for a term of 160 months. The
6 sentence consists of 100 months on Count 1 and 60 months on
7 Count 2, to be served consecutively. I will recommend --
8 Mr. Bloom, you have no objection to a place of incarceration
9 close to the Bronx, do you?

10:10AM 10 MR. BLOOM: I do not, Your Honor.

11 THE COURT: I will recommend that the defendant be
12 lodged in a federal institution that is close to New York City,
13 understanding that ultimately the final decision is with the
14 federal Bureau of Prisons. I find that the defendant does not
10:10AM 15 have the ability to pay a fine. However, I will order that the
16 special assessment in the amount of \$100 is payable immediately
17 to the clerk of this court, that's on each count, for a total
18 of \$200.

19 Upon release from imprisonment the defendant will be
10:10AM 20 placed on supervised release for a term of four years on each
21 count, to be served concurrently. Within 72 hours of his
22 release the defendant shall report in person to the probation
23 office in the district to which he is released. While on
24 supervised release Mr. Carraway shall not commit any federal,
10:11AM 25 state, or local crimes, he'll not possess a dangerous weapon,

1 and he'll comply with the standard conditions that have been
2 adopted by this court and the following additional conditions.

3 First, he'll submit to one drug test within fifteen
4 days of commencing supervision and at least two periodic drug
10:11AM 5 tests thereafter for use of a controlled substance. Second,
6 he'll cooperate in the collection of a DNA sample as directed
7 by the probation officer, unless a sample was collected during
8 imprisonment. Third, he'll provide the probation officer with
9 access to any requested financial information. Fourth, he'll
10:11AM 10 submit his or her person, property, house, resident, vehicle,
11 papers, electronic communications, or data storage devices, or
12 media, or office to a search conducted by the United States
13 probation officer.

14 Failure to submit to a search may be grounds for
10:11AM 15 revocation of release. The defendant shall warn other
16 occupants of the premises that it may be subject to searches
17 pursuant to this condition. Mr. Carraway, in your plea
18 agreement you waived your right to appeal your conviction and
19 sentence to the United States Court of Appeals. You may still
10:12AM 20 have the right to appeal in the rare case where enforcing the
21 waiver would result in a miscarriage of justice.

22 Any such appeal has to be filed in court within
23 fourteen days. If you decide to appeal and you can't pay the
24 cost you may apply to appeal in forma pauperis, which means
10:12AM 25 that, if approved, counsel will be appointed for you and you

1 will not be required to pay any costs. Anything further from
2 the government, Mr. Bloom?

3 MR. BLOOM: Your Honor, the United States would
4 request dismissal of the remaining counts.

10:12AM 5 THE COURT: All right. Without objection the
6 remaining counts are, or count is dismissed. Anything further
7 from the defense?

8 MR. FERRO: No, Your Honor.

9 THE COURT: All right. That concludes this sentencing.
10:12AM 10 Thank you.

11 (Hearing concluded at 10:12 a.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

USA vs. Chico Carraway

1:14-CR-00167-01-JEJ

Sentencing Proceedings

17 April 2017

I, Wesley J. Armstrong, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of June 2017

/s/ Wesley J. Armstrong

Wesley J. Armstrong

Registered Merit Reporter

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	No. 1:14-CR-167
	:	
vs.	:	(Electronically Filed)
	:	
CHICO JERMELL CARRAWAY	:	(Judge JONES)

DEFENDANT’S SENTENCING MEMORANDUM
ADDRESSING 3353(a) FACTORS

AND NOW, to wit, this 11TH day of April, 2017, comes the Defendant, Chico Carraway, by and through her counsel, Christopher A. Ferro, Esquire, of The Law Office of Christopher A. Ferro, LLC, respectfully files this Sentencing Memorandum:

As the court knows, its overarching mandate is to impose the minimum sentence sufficient to serve the purposes of sentencing. Kimbrough v. United States, 128 S.Ct. 558, 570 (2007). Despite any assertion to the contrary, Chico Carraway’s history and characteristics, and the context of the offense, show that a below-guideline sentence will more than fulfill the purposes of sentencing.

I. Background

The Defendant, Chico Carraway, (hereinafter “Defendant”) plead guilty to Counts 1 and 2 of the Indictment in the above matter pursuant to a written plea agreement with the Government. Following Defendant’s plea, a Presentence Report was prepared and distributed by the United States Probation Department. The Defendant, by and through counsel, lodged several objections to the contents of the Presentence Report. These

objections, including, but not limited to the Defendant's designation as a career offender and various enhancements under the United States sentencing guidelines.

On January 25, 2017, after a hearing and argument on the aforementioned objections, this Honorable Court issued an Order addressing the Defendant's objections. On January 31, 2017, the Court issued a corrected Order addressing the drug weights applicable to the Defendant. Finally, on February 10, 2017, the United States Probation Department, pursuant to this Honorable Court's direction, issued amended guideline calculations based upon the Court's finding.

The Defendant believes, and therefore avers, that a sentence below the revised advisory guideline range is appropriate and applicable based upon various sentencing factors under 18 U.S.C. Section 3553(a).

II. Applicable Law of Sentencing

After United States v. Booker, 543 US 220 (2005), sentencing courts must (1) properly calculate the guideline range; (2) rule on any departure motions made under the guidelines; and (3) exercise their discretion by choosing a sentence in light of all relevant section 3553(a) sentencing factors, regardless of whether the chosen sentence varies from the sentence calculated under the guidelines. United States v. Gunter, 462 F.3d 237, 247 (3rd Circuit 2006) and United States v. Cooper, 437 F.3d, 324 (3rd Circuit 2006).

The guidelines are no more than a "starting point in the initial benchmark" for the sentence. Gall v. United States, 128 S.Ct. 586, 596 (2007). After calculating the guidelines, the court must consider all pertinent factors set forth in Section 3553(a), with no special weight afforded the guidelines or any other factor. Id. at 596. As noted

above, the court's overarching mandate is to impose a sentence "sufficient, but not greater than necessary" to accomplish the four purposes of sentencing (retribution, deterrents, incapacitation, and rehabilitation). Kimbrough, 128 S.Ct. at 570. In determining the sentence sufficient to accomplish the purposes of sentencing, the court must consider several factors which include, but are not limited to, the following:

- the nature and circumstances of the offense and the history and characteristics of the defendant;
- the kind of sentences available;
- the guidelines and policy statements issued by the Sentencing Commission, including the advisory guideline range;
- the need to avoid unwarranted sentencing disparity; and
- the need to provide restitution where applicable.

18 U.S.C. §3553(a)(1)

The United States Supreme Court has made it clear that sentencing courts are free to simply disagree with the guidelines' recommended sentence in any particular case, and may impose a different sentence based on a contrary view of what is appropriate under Section 3553(a). Rita, 127 S.Ct. at 2466.

III. 3553(a) Factors

A. The Offense Conduct and Carraway's related personal background.

1. The Offense Conduct

From October 7, 2013 through July 2, 2014, the Defendant made several small controlled sales of heroin and crack cocaine.

On December 11, 2013, a search warrant was executed at 147 West Philadelphia Street, in York, Pennsylvania. At the time the warrant was served, several individuals were located at the residence. The Defendant, upon being summoned to the location by one of the co-defendants, arrived shortly thereafter. A 380 caliber semi-automatic pistol was located in a bedroom area of the location, which also contained several of the Defendant's personal belongings.

The Government initially asserted that the Defendant was a large scale drug trafficker, but relied heavily on historical information provided by unreliable, and significantly impaired witnesses. Although the Defendant acknowledges selling small amounts of heroin and crack cocaine, he was not a leader or organizer or a drug ring and made little, if any, money for his efforts.

The controlled sales (October 7, 2013 - 1.9 grams; November 13, 2013 - 1.81 grams; December 9, 2013 - 5.4 grams; and July 2, 2014 - 1.15 grams - crack cocaine) were the only credible evidence of the Defendant's drug trafficking. The majority of the offense conduct attributed to the Defendant in the Presentence Report has been proven to be false, or at least, unsupported by credible evidence. While the Defendant acknowledges selling a dangerous drug in the community and accepts responsibility related thereto, his offenses are of a garden variety nature as it relates to the unfortunate situation. With respect to drug sales that affect interstate commerce, the Defendant's actions, while heinous and criminal, are de minimis, when viewed comparatively to other large scale drug traffickers.

2. Carraway's personal background.

The Defendant is a 37 year old single man. The Defendant was born and raised in Bronx, New York. The Defendant has seven maternal half-siblings and six paternal half-siblings. Most of the Defendant's family still resides in New York.

The Defendant was raised in a low income family. Although poor, the Defendant had a good relationship with both his parents (who were never married) and most of his half-siblings.

The Defendant was married for approximately six years before divorcing in 2010. The Defendant is the father of a daughter, age 7. He maintains regular contact with his daughter. Recent incarceration has fueled the Defendant's desire to be a better father and play an instrumental role in her life moving forward.

The Defendant received a secondary school diploma in 2009 and was enrolled for over a year at Monroe Community College in Bronx, New York. He also briefly attended Harrisburg Area Community College in the summer months of 2014.

The Defendant has used marijuana on a daily basis from age 13 to the day of his arrest. The only time the Defendant has resisted the urge to use marijuana was during terms of incarceration. The Defendant briefly entered into treatment programs in both 2001 and 2006. It is clear that marijuana addiction played a slight role with the Defendant's current offense. He is willing to engage in treatment while incarcerated and believes drug abstinence will play a significant role in ending future criminal behavior.

Several letters have been written to the Court on behalf of the Defendant. The letters are attached hereto and marked collectively as Exhibit "A". The letters, written by Defendant's friends and family members describe a good son who has made some

isolated bad decisions. The letters describe a person of compassion and significant potential.

Cheryl Thompson, a friend of the Defendant's for over 20 years, describes him as "intelligent, compassionate, reliable, responsible, empathetic, and humble." In imploring leniency from the Court, Ms. Thompson also believes the Defendant has become "more grounded and focused on restructuring his life in order to become a model citizen and a positive representation for his child, as well as the citizens in our community."

The Defendant, upon release from incarceration plans to return to New York to live with his relatives. His main focus, which will guide his rehabilitative efforts during incarceration, is finding a way to support his child and earn an honest living. In connection with the foregoing, the Defendant intends to take advantage of educational opportunities in the Federal system. After release, he hopes to obtain a degree in business management. The Defendant, by and through his experiences in the criminal justice system and life on the street, believes he can positively contribute to the youth in his community by describing to them how drugs and environmental issues helped contribute to his negative decisions.

B. Guideline Range, Available Sentences, and the Need to Avoid Sentencing Disparity.

Following all rulings by this Honorable Court on objections, the Defendant's sentencing guidelines on Count 1, based on the Defendant's criminal history category of VI and an offense level of 24 is 100-125 months. On Count 2, the guidelines, pursuant to 18 U.S.C. Section 924(c) is a mandatory minimum term of 5 years to run consecutive to Court 1.

A sentence below the guideline range is certainly available to this Court. The harsh mandatory minimum sentence applicable to Count 2 ensures a significant period of incarceration. Mercy and mitigation on Count 1 is appropriate and reasonable. Any period of incarceration beyond five years will provide adequate time for rehabilitation and most assuredly represent a significant punishment for low level drug dealing.

IV. Conclusion

For all the foregoing reasons, the defense submits that the minimally sufficient sentence, to satisfy all of the goals of sentencing, would be, on Count 1, a period of four years of confinement with the statutorily mandated consecutive term on five years incarceration on Count 2.

Respectfully Submitted,

THE LAW OFFICE OF
CHRISTOPHER A. FERRO, LLC

By: /s/ Christopher A. Ferro
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	No. 1:14-CR-167
	:	
vs.	:	(Electronically Filed)
	:	
CHICO JERMELL CARRAWAY	:	(Judge JONES)

CERTIFICATE OF SERVICE

I, Christopher A. Ferro, Esquire, of The Law Office of Christopher A. Ferro, LLC, hereby certify that on April 12, 2017, a copy of the Defendant's Sentencing Memorandum, was served by electronic service upon the following attorney and/or individuals of record:

Daryl F. Bloom

Daryl.Bloom@usdoj.gov

Respectfully Submitted,
THE LAW OFFICE OF
CHRISTOPHER A. FERRO, LLC

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

1	UNITED STATES OF AMERICA,)	CASE NO.
2	Plaintiff)	1:14-CR-00167-01-JEJ
3	vs.)	
4	CHICO CARRAWAY,)	
5	Defendant)	
6	_____)	

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE JOHN E. JONES, III
UNITED STATES DISTRICT JUDGE
16 NOVEMBER 2015 - 9:49 A.M.

APPEARANCES:

For the Government:

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Court Reporter:

Wesley J. Armstrong, RMR
Official Court Reporter
U.S. Courthouse & Federal Building
228 Walnut Street
Harrisburg, PA 17101
(717) 542-5569

Proceedings recorded by machine shorthand; transcript
produced by computer aided transcription.

1 P R O C E E D I N G S

2 THE COURT: Be seated, please. All right, we're
3 assembled in the matter of United States versus Chico Carraway.

4 This case was called for trial this morning. The court was

09:50AM 5 notified by counsel that at the eleventh hour there were
6 discussions between Mr. Carraway and the government that
7 resulted in a plea agreement. We were presented with a plea
8 agreement and it has been represented to the court that both
9 the government and Mr. Carraway have executed the plea

09:50AM 10 agreement. We'll note the appearances of Daryl Bloom,
11 assistant United States attorney, on behalf of the government,
12 and Christopher Ferro, Esquire on behalf of the defendant
13 Mr. Carraway. Would you swear in Mr. Carraway, please, Liz?

14 (The defendant was sworn by the courtroom deputy.)

09:50AM 15 EXAMINATION BY THE COURT:

16 Q. Mr. Carraway, you were scheduled to go to trial this
17 morning. I'm now advised that you desire to enter a plea
18 pursuant to a plea agreement that I've been presented with.
19 Is that correct, sir?

09:50AM 20 A. Yes, sir.

21 Q. All right. Now, let me give you some preliminary
22 instructions. We're going to go through a number of questions
23 and answers this morning so that I can satisfy myself that you
24 understand the rights that you give up when you enter a plea of
09:51AM 25 guilty. I want you to listen carefully to me. If you don't

1 understand any of the questions that I've put to you, then I'm
2 going to rely on you to tell me that and I'll restate them or
3 rephrase them.

4 If you want to conference with Mr. Ferro at any time
09:51AM 5 privately during these proceedings you should signal me and
6 we'll take a break so that you can do that. In addition to
7 that it's important that you tell the truth in answer to all my
8 questions. If you don't do that and it's determined that you
9 haven't, you can expose yourself to additional charges for
09:51AM 10 making false statements or for perjury. Do you understand all
11 these preliminary instructions?

12 A. Yes, sir.

13 Q. All right. Can you read, write, and speak in English?

14 A. Yes, sir.

09:51AM 15 Q. How old are you?

16 A. Thirty-six.

17 Q. How far did you go in school?

18 A. I attended college.

19 Q. All right. You didn't graduate from college but have some
09:51AM 20 college?

21 A. Credit, yes, sir.

22 Q. Some credit, all right. And have you ever been treated
23 for a drug or alcohol problem or for any kind of mental
24 illness?

09:52AM 25 A. No, sir.

1 Q. Are you taking any prescription medication today?

2 A. No, sir.

3 Q. Have you consumed any drugs or alcohol in the last
4 twenty-four hours?

09:52AM 5 A. No, sir.

6 Q. Do you understand why you're here today?

7 A. Yes, sir.

8 Q. Now, Mr. Ferro has represented you in this matter. Are
9 you satisfied with his representation?

09:52AM 10 A. Yes, sir.

11 Q. And have you had enough time to discuss all of these
12 charges with Mr. Ferro, including your determination to plead
13 guilty today?

14 A. Yes, sir.

09:52AM 15 THE COURT: And, Mr. Ferro, you waive a formal reading
16 of the indictment?

17 MR. FERRO: I do, Your Honor.

18 BY THE COURT:

19 Q. All right. Now, you know, Mr. Carraway, I believe, but I
09:52AM 20 want to confirm this, that you have a right to a trial by a
21 jury in this matter. You're aware of that?

22 A. Yes, sir.

23 Q. You understand that if I accept your plea today there
24 won't be a trial?

09:52AM 25 A. Yes, sir.

1 Q. And you will have given up that constitutional right, do
2 you understand that?

3 A. Yes, sir.

4 Q. I want to explain to you, and again I'm sure that you know
09:53AM 5 this, but I want to make absolutely certain of it, what would
6 have taken place had the case proceeded to trial today, you
7 would have selected a jury through Mr. Ferro's assistance.
8 That jury would consist of twelve people. You would be
9 innocent until proven guilty.

09:53AM 10 To prove you guilty the government would have the
11 burden of proving each and every element of the crimes with
12 which you're charged beyond a reasonable doubt. The government
13 would have to do that to the satisfaction of a unanimous jury.
14 That is, all twelve jurors would have to agree to establish
09:53AM 15 your guilt.

16 The government would, or to attempt to establish your
17 guilt the government would present witnesses. You'd have the
18 right in turn to cross examine those witnesses after the
19 government proceeded with direct examination. In addition to
09:53AM 20 that the government would have other evidence that it could and
21 would present, documentary evidence and other things. You would
22 have the right following that to present your own case,
23 including your own testimony should you choose if you had
24 chosen to do that.

09:54AM 25 However, you couldn't be compelled to testify or to

1 present a case, and if you opted not to do that that fact could
2 not be used against you at the time of trial. You'd have the
3 right to have me decide any pretrial motions before the trial
4 would commence, and in addition to that you would have the
09:54AM 5 right to present any legal or factual defenses at the time of
6 trial that you felt that you wanted to assert. But again to
7 repeat, if I accept your plea of guilty today there will be no
8 trial in this case and you will have given up that right. Is
9 it your desire to do that?

09:54AM 10 A. Yes, sir.

11 Q. There is a written plea agreement in this case, and it's
12 been represented to the court that you have agreed to it.
13 And did you go over that plea agreement today with your lawyer
14 before this proceeding?

09:54AM 15 A. Yes, sir.

16 Q. The plea agreement has affixed to it I believe, I don't
17 have a signed copy but I think counsel has a signed copy, did
18 you sign it on page 23? Mr. Ferro is showing you the signature
19 page. Is that your signature?

09:55AM 20 A. Yes, sir.

21 Q. And are you telling me that you're in agreement with all
22 thirty-two paragraphs?

23 A. Yes, sir.

24 Q. Did Mr. Ferro explain the legal ramifications of this
09:55AM 25 agreement before you signed it?

1 A. Yes, sir.

2 Q. Did he answer any questions that you had about the legal
3 ramifications of it?

4 A. Yes, sir.

09:55AM 5 THE COURT: All right. Mr. Bloom, if you would
6 summarize the plea agreement for the court, please?

7 MR. BLOOM: Certainly, Your Honor. Count 1 of the
8 indictment provides that the defendant agrees to plead guilty
9 to Counts 1 and 2 of the indictment, Count 1 charging a
09:55AM 10 violation of Title 21 United States Code, Section 841(a)(1),
11 which is the distribution and possession with intent to
12 distribute in excess of 28 grams of cocaine base, also known as
13 crack, in excess of 100 grams of heroin, in excess of 500 grams
14 of cocaine hydrochloride, also referred to as powder.

09:56AM 15 The maximum penalty for Count 1 is forty years
16 imprisonment, a five million dollar fine, a term of supervised
17 release, as well as a special assessment in the amount of \$100.
18 Paragraph 1 also provides that the defendant agrees to plead
19 guilty to Count 2 of the indictment, which charges a violation
09:56AM 20 of Title 18, United States Code, Section 924(c), which is
21 possession of a firearm in furtherance of a drug trafficking
22 crime. Both Counts 1 and 2 carry a mandatory period of
23 imprisonment of five years each.

24 Count 4, or paragraph 4 of the plea agreement
09:56AM 25 provides that the maximum penalty possible then would be life

1 imprisonment, a \$5,250,000 fine, a term of supervised release,
2 as well as a special assessment in the amount of \$100. If I
3 neglected to note, Count 2 carries a period of imprisonment of
4 no less than five, and up to life imprisonment, and a \$250,000
09:56AM 5 fine, a term of supervised release, as well as a special
6 assessment in the amount of \$100.

7 Paragraph 2 provides a two-level reduction in offense
8 level for acceptance of responsibility provided that the
9 defendant accept responsibility as contemplated by the
09:57AM 10 sentencing guidelines. Paragraph 13 provides that the United
11 States will make an appropriate sentencing recommendation at
12 the time of sentencing based on the nature and circumstances of
13 the offense.

14 Paragraph 15 of the plea agreement provides for a
09:57AM 15 destruction order wherein the defendant agrees to the
16 destruction of any items seized during the course of
17 investigation. That would be with or without a court order.
18 Paragraph 21 of the plea agreement provides that the court is
19 not a party to the plea agreement and is therefore free to
09:57AM 20 impose any sentence up to the maximum sentence under the
21 statute.

22 Paragraph 26 provides for a limited appellate waiver
23 wherein the defendant waives appeal, but reserves the right to
24 appeal any calculation in excess of the mandatory discharged in
09:57AM 25 the indictment that are found by the court. And, as indicated

1 just a few moments ago, page 23 of the plea agreement, which
2 bears the defendant's signature, above that signature it
3 indicates that the defendant has read the agreement, that the
4 defendant has reviewed the agreement with counsel, that he
09:58AM 5 understands the terms of the agreement, and that he voluntarily
6 agrees to those terms.

7 And one other thing if I neglected to mention, that
8 Count 2 of the plea agreement provides for a five year
9 mandatory term that's consecutive to the underlying offense.

09:58AM 10 Those are the essential terms of the plea agreement, Your
11 Honor.

12 THE COURT: All right. I thought that that was the
13 case, that it's consecutive under the terms of the Count 2.

14 BY THE COURT:

09:58AM 15 Q. Mr. Carraway, did Mr. Bloom accurately summarize the plea
16 agreement that you signed?

17 A. Yes, sir.

18 Q. And other than the terms and conditions that are in the
19 plea agreement did anyone promise or offer you anything else to
09:58AM 20 get you to plead guilty this morning?

21 A. No, sir.

22 Q. Did anybody make any threats or use force or violence
23 against you or any member of your family or any other person
24 that caused you to either come here today to plead guilty or to
09:59AM 25 sign the plea agreement?

1 A. No, sir.

2 Q. Are you a citizen of the United States?

3 A. Yes, sir.

4 Q. Now, within the plea agreement, as Mr. Bloom carefully

09:59AM 5 read, there are certain maximum penalties that you're exposed
6 to, and in addition to that there are minimum penalties of five
7 years each on Counts 1 and 2 that have to be served
8 consecutively. Do you understand all that?

9 A. Yes, sir.

09:59AM 10 Q. And do you understand that I can sentence you up to the
11 maximum penalties provided by law? It doesn't mean that I
12 will, but I can, and even if you're dissatisfied with the
13 sentence it won't give you the right to withdraw your plea of
14 guilty. Do you fully understand that?

09:59AM 15 A. Yes, sir.

16 Q. Do you understand that there's no parole under the federal
17 system, and that means that you have to serve all of any term
18 of imprisonment that I sentence you to, less any good time that
19 you earn when you're in prison?

09:59AM 20 A. Yes, sir.

21 Q. And do you understand also that if I sentence you to a
22 term of imprisonment, there will be a term of supervised
23 release after you get out of prison, and that if you're on
24 supervised release on my order and you violate that order, I

10:00AM 25 could put you back in prison. Do you understand that?

1 A. Yes, sir.

2 Q. Have you discussed with Mr. Ferro that there are certain
3 advisory sentencing guidelines that I have to consider when I
4 sentence you?

10:00AM 5 A. Yes, sir.

6 Q. And do you understand that what we're going to do is have
7 a presentence report prepared by the assigned probation officer
8 in this case. The probation officer will, among other things,
9 determine what he or she believes the advisory sentencing

10:00AM 10 guideline range to be. You will have the right to object if
11 you believe that the probation officer has stated that
12 incorrectly from your standpoint after you have consulted with
13 Mr. Ferro.

14 You'll also have the right to object to any other

10:01AM 15 material portion of the presentence report, and that will then
16 trigger a situation where I'll have to make the call as to what
17 your guidelines are or any other, resolve any other objections,
18 but here's what you need to understand. If you don't agree with
19 anything that I have done in resolving any of your objections,

10:01AM 20 that disagreement won't give you the right to withdraw your
21 plea of guilty. Do you fully understand that?

22 A. Yes, sir.

23 Q. And in addition to that under the sentencing guidelines
24 you're going to be able to ask me to vary out of the advisory
10:01AM 25 guidelines once we find them and also to depart under certain

1 circumstances from the guidelines based on provisions of the
2 sentencing code. Again, however, I don't have to do what
3 you've asked me to do in any of those motions or requests to
4 either depart or to vary, and if you disagree with how I have
10:01AM 5 handled any of your motions or requests, that disagreement
6 won't then trigger a right on your part to withdraw your plea
7 of guilty. Do you understand that?

8 A. Yes, sir.

9 Q. You are pleading guilty to a felony, and in the event that
10:02AM 10 I accept your plea you may lose valuable civil rights such as
11 the right to vote, to hold public office, to serve on a jury,
12 to possess a firearm, or to hold a professional license. Do
13 you fully understand that?

14 A. Yes, sir.

10:02AM 15 THE COURT: And in addition to that -- is there any
16 restitution in this case?

17 MR. BLOOM: No, Your Honor.

18 THE COURT: All right. And you agree with that?

19 MR. FERRO: I do, Your Honor.

10:02AM 20 BY THE COURT:

21 Q. You understand that in the, I want to get into this
22 particularly, in the presentence report that's going to be
23 prepared do you understand that there's going to be the
24 probation officer's determination as to what he or she believes
10:02AM 25 the drug weight, drug weights to be. Do you fully understand

1 that?

2 A. Yes, sir.

3 Q. And you'll have the right to object if you think those
4 drug weights are incorrect, which means that we will very

10:02AM 5 likely then have a hearing, at which time I will determine
6 the drug weights. Do you understand that?

7 A. Yes, sir.

8 Q. Do you understand that if you haven't done so already
9 you're going to have to give up a DNA sample as a result of

10:03AM 10 this plea?

11 A. Yes, sir.

12 Q. In paragraph 26, which you've already told me that you
13 agreed to the entirety of the plea agreement, but I want to
14 highlight this, that is the limited waiver of appeal as

10:03AM 15 summarized by Mr. Bloom. What that indicates is that you have
16 waived or given up your right to a direct appeal to the next

17 highest court of the sentence that I give you in this case,
18 except in this narrow circumstance. The narrow circumstance

19 would be with respect to drug weights. If you disagree with

10:03AM 20 the drug weight that I have come up with and you think I've

21 erred in that, you have the right to appeal that to the next
22 highest court. Do you understand that?

23 A. Yes, sir.

24 Q. In addition to that you also have a narrow appeal path if
10:03AM 25 enforcing this waiver would trigger what's called a miscarriage

1 of justice, which is a very, very narrow path. So you've left
2 yourself that out, although it's a very narrow one. Do you
3 understand that?

4 A. Yes, sir.

10:04AM 5 Q. You've preserved for yourself the right to what's called
6 an indirect or a habeas corpus proceeding to challenge any
7 sentence. You've not waived that. Do you understand that?

8 A. Yes, sir.

9 Q. And the government has the right to appeal anything that I
10:04AM 10 do by way of the sentence. Do you understand that?

11 A. Yes, sir.

12 Q. All right. In Count 1 of the indictment you are charged
13 with distribution and possession with intent to distribute
14 cocaine hydrochloride, cocaine base, and heroin, that in
10:04AM 15 violation of 21 United States Code, Sections 841(a)(1) and
16 (B)(1), capital B(i), (2), and (3), one, two, and three, I'm
17 sorry, subsections. The government would have the obligation,
18 the duty in order to find you guilty to prove each and every
19 element of that charge beyond a reasonable doubt to the

10:05AM 20 satisfaction of a unanimous jury, and those elements, so that
21 you understand them, are as follows, that you knowingly and
22 intentionally distributed or possessed with intent to
23 distribute a mixture or substance containing a controlled
24 substance that had 100 grams or more of a mixture or substance

10:05AM 25 containing heroin, 500 grams or more of a mixture or a

1 substance containing cocaine, its salts, optical and geometric
2 isomers; 3.28 grams or more of a mixture or substance
3 containing cocaine base.

4 In Count 2 of the indictment you're charged with
10:05AM 5 possession of a firearm during and in relation to a drug
6 trafficking crime, that in violation of 18 United States Code
7 Section 924. The elements of that offense are you that you
8 committed the crime of distribution and possession with intent
9 to distribute cocaine hydrochloride, cocaine base, and/or
10:06AM 10 heroin as charged in Count 1 of the indictment, and that you
11 knowingly possessed a firearm in furtherance of that crime.
12 Do you understand the element of both Counts 1 and 2, the
13 counts you're intending to plead guilty to?

14 A. Yes, sir.

10:06AM 15 Q. I'm going to ask Mr. Bloom to give the facts of this case.
16 Mr. Carraway, I want you to listen carefully to what he has to
17 say, because I'm going to come back to you then and ask if
18 you're in agreement with the facts as the prosecutor has stated
19 them. Do you understand that?

10:06AM 20 A. Yes, sir.

21 THE COURT: You may proceed.

22 MR. BLOOM: Your Honor, had this matter proceeded to
23 trial the evidence would establish that on October 7, 2013 a
24 controlled buy was made from the defendant Chico Carraway for
10:06AM 25 1.95 grams of heroin for \$200. The transaction was recorded

1 with surveillance. On November 20th, 2013 again a controlled
2 buy was made from the defendant, and this amount was 1.81 grams
3 of heroin for \$180. Again there was surveillance confirmed
4 that as well.

10:07AM 5 On December 9, 2013 another controlled buy was
6 conducted from the defendant, this time for 5.45 grams of
7 heroin for \$900 dollars. Again the surveillance team captured
8 the images of the transaction. Thereafter a search warrant was
9 conducted on December 11, 2013 at 147 West Philadelphia Street.

10:07AM 10 In the room where the defendant slept a number of items were
11 located. Specifically items during the course of the search
12 that were located were 28.74 grams of heroin, 71.98 grams of
13 cocaine hydrochloride, and 101.25 grams of cocaine base.

14 On May 31st, 2014 the defendant's vehicle was stopped
10:08AM 15 in New Jersey. The defendant was a passenger in the front seat.
16 The individual in the rear was, had an internal body cavity
17 that contained 297.767 grams of cocaine hydrochloride. The
18 individual indicated that she was instructed to hide the drugs
19 per the request of the defendant Mr. Chico Carraway.

10:08AM 20 A controlled buy was conducted on July 2nd, 2014,
21 this time for cocaine base which weighed 1.15 grams and was
22 purchased for \$200. I should also mention that at the time of
23 the defendant's arrest on December 12th, 2013, after he was
24 taken into the York County prison the prison had located 3.36
10:09AM 25 grams of crack cocaine on the defendant as well as a hundred

1 oxycodone pills and .44 grams of marijuana.

2 The evidence would further establish that no less
3 than three witnesses would testify that the defendant possessed
4 firearms and no less than two of those witnesses would testify
10:09AM 5 that the defendant carried a firearm during drug transactions.

6 I would note that during the course of the search a firearm was
7 located at that time in a black garbage bag approximately three
8 feet from the bed where the defendant was laying, and

9 specifically that firearm and the make of that firearm are

10:09AM 10 indicated in the indictment, and more specifically indicates
11 that it's an FEG model PMK 380-caliber semi automatic pistol,
12 serial number N-23248, which was manufactured in Hungary. Your
13 Honor, those would be the facts had this matter proceeded to
14 trial.

10:10AM 15 THE COURT: All right. Thank you, Mr. Bloom.

16 BY THE COURT:

17 Q. Mr. Carraway, are they the correct facts in this case?

18 A. Yes, sir.

19 THE COURT: One minute, please. Liz?

10:10AM 20 (Brief pause.)

21 MR. BLOOM: Your Honor? I'm sorry, I have something as
22 well, too. I should probably just mention that, you know,

23 without adding it all up and going through that in some of the
24 evidence in this matter would establish that the weight of the

10:10AM 25 controlled substance is consistent with the indictment charged.

1 That's in excess of 28 grams of cocaine base, in excess of 100
2 grams of heroin, and in excess of 500 grams of cocaine
3 hydrochloride.

4 BY THE COURT:

10:10AM 5 Q. Do you agree with that, Mr. Carraway?

6 A. Yes, sir.

7 Q. Understanding that there will be a finding by the
8 probation officer based on all the evidence, and then you'll
9 have the right to object, as I said, and then we'll have a

10:11AM 10 hearing, if necessary, to determine the drug weights. Is that
11 your understanding?

12 A. Yes, sir.

13 Q. All right. Based on everything that I've said to you this
14 morning and all the questions I've put to you do you now wish
10:11AM 15 to enter a plea of guilty to Counts 1 and 2 of the indictment?

16 A. Yes, sir.

17 Q. We have the written plea that memorializes what
18 Mr. Carraway just told me, and it also contains a motion to
19 withdraw the previously entered pleas of not guilty to Counts 1

10:11AM 20 and 2. We'll grant that motion by our order of today. We'll

21 make that a part of the record. As we do we find that

22 Mr. Carraway is fully alert, competent, and capable of entering
23 an informed plea, that he is aware of and understands the
24 consequences of the plea, which is knowing and voluntary, and

10:11AM 25 is supported by an independent basis in fact demonstrating each

1 of the elements of the offenses charged in Counts 1 and 2.

2 I adjudicate the defendant guilty as charged in
3 Counts 1 and 2. Again I will order a presentence report. Liz,
4 you'll have to contact probation on that, and we will schedule
10:12AM 5 a presentence conference for March 21st, obviously that's 2016,
6 at 9:30 a.m. That's March 21st, 2016 at 9:30 a.m. in chambers,
7 and again, Mr. Carraway, Mr. Ferro will go over the presentence
8 report that will have been produced by that time with you and
9 we will determine based on your input and the government's
10:12AM 10 input how we're going to handle any disputes that may arise
11 based on the presentence report. We may have to have a hearing
12 before we have a sentencing, but the idea is that you'll be
13 sentenced at some point after March the 21st of next year. Do
14 you understand that?

10:12AM 15 A. Yes, sir.

16 Q. Do you have any questions?

17 A. No, sir.

18 THE COURT: Mr. Bloom, anything further from the
19 government?

10:13AM 20 MR. BLOOM: Nothing from the United States, Your
21 Honor.

22 MR. FERRO: Nothing from the defense, Your Honor.

23 THE COURT: All right. I thank counsel. At this time
24 given the plea, obvious plea, and the facts and circumstances,
10:13AM 25 including the sentencing exposure, we'll remand Mr. Carraway to

1 the custody of the marshal s pending further proceedings and
2 orders of this court and set all this down by order, by
3 separate order. That's all we have. All right? Thank you.

4 (Hearing concluded at 10:13 a.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

USA vs. Chico Carraway

1:14-CR-00167-01-JEJ

Change of Plea Hearing

16 November 2015

I, Wesley J. Armstrong, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of June 2017

/s/ Wesley J. Armstrong

Wesley J. Armstrong

Registered Merit Reporter

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : NO. 1:14-CR-167
:
v. : (JUDGE JONES)
:
CHICO JERMELL CARRAWAY, : (ELECTRONICALLY FILED)
Defendant :

PLEA AGREEMENT

The following Plea Agreement is entered into by the United States Attorney for the Middle District of Pennsylvania and the above-captioned defendant. Any reference to the United States or to the Government in this Agreement shall mean the Office of the United States Attorney for the Middle District of Pennsylvania.

A. Violation(s), Penalties, and Dismissal of Other Counts

1. Guilty plea. The defendant agrees to plead guilty to Counts I and II of the Indictment. Count I charges the defendant with a violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(B)(i), (ii) and (iii), Distribution and Possession With Intent to Distribute Cocaine Hydrochloride, Cocaine Base and Heroin. The maximum penalty for Count I is imprisonment for a period of 40 years, a fine of \$5,000,000, a maximum term of supervised release of life to be

determined by the court, which shall be served at the conclusion of and in addition to any term of imprisonment, as well as the costs of prosecution, imprisonment, probation, or supervised release ordered, denial of certain federal benefits, and an assessment in the amount of \$100. Count II charges the defendant with a violation of Title 18, United States Code, Section 924(c), Possession of a Firearm During and in Relation to a Drug Trafficking Crime. The maximum penalty for Count II is imprisonment for a period of life, a fine of \$250,000, a maximum term of supervised release of five years to be determined by the court, which shall be served at the conclusion of and in addition to any term of imprisonment, as well as the costs of prosecution, imprisonment, probation, or supervised release ordered, denial of certain federal benefits, and an assessment in the amount of \$100. At the time the guilty plea is entered, the defendant shall admit to the court that the defendant is, in fact, guilty of the offenses charged in those counts. The defendant agrees, however, that the United States may, at its sole election, reinstate any dismissed counts or seek additional charges in the event the charge(s) to which the defendant

pleads guilty pursuant to this Agreement subsequently are vacated, set aside, or invalidated by the district court or appellate court. The defendant further agrees to waive any defenses to reinstatement of those charges or additional charges based upon laches, the assertion of speedy trial rights, any applicable statute of limitations, or any other ground. The calculation of time under the Speedy Trial Act for when trial must commence is tolled as of the date of the defendant's signing of this Plea Agreement.

2. Mandatory Minimum Sentence. Count I carries a mandatory minimum period of imprisonment of five years. Count II carries a mandatory minimum period of imprisonment of five years.

3. Term of Supervised Release. The defendant understands that the court must impose at least a four year term of supervised release in addition to any term of imprisonment, fine or assessment involving a violation of the Controlled Substances Act. The defendant also understands that the court must impose a term of supervised release following any sentence of imprisonment exceeding one (1) year, or when required by statute. The court may require a term of

supervised release in any other case. In addition, the defendant understands that as a condition of any term of supervised release or probation, the court must order that the defendant cooperate in the collection of a DNA sample if the collection of a sample is so authorized by law.

4. Maximum Sentence – Multiple Counts. The defendant understands that the total, maximum possible sentence for all charges is the combination of penalties described above; that is, life in prison and/or fines totaling \$5,250,000, supervised release of life, the costs of prosecution, denial of certain federal benefits and an assessment totaling \$200.

5. No Further Prosecution, Except Tax Charges. The United States Attorney's Office for the Middle District of Pennsylvania agrees that it will not bring any other criminal charges against the defendant directly arising out of the defendant's involvement in the offense(s) described above. However, nothing in this Agreement will limit prosecution for criminal tax charges, if any, arising out of those offenses.

B. Fines and Assessments

6. Fine. The defendant understands that the court may impose a fine pursuant to the Sentencing Reform Act of 1984. The willful failure to pay any fine imposed by the court, in full, may be considered a breach of this Plea Agreement. Further, the defendant acknowledges that willful failure to pay the fine may subject the defendant to additional criminal violations and civil penalties pursuant to Title 18, United States Code, Section 3611, et seq.

7. Alternative Fine. The defendant understands that under the alternative fine section of Title 18, United States Code, Section 3571, the maximum fine quoted above may be increased if the court finds that any person derived pecuniary gain or suffered pecuniary loss from the offense and that the maximum fine to be imposed, if the court elects to proceed in this fashion, could be twice the amount of the gross gain or twice the amount of the gross loss resulting from the offense.

8. Inmate Financial Responsibility Program. If the court orders a fine or restitution as part of the defendant's sentence, and the sentence includes a term of imprisonment, the defendant agrees to

voluntarily enter the United States Bureau of Prisons-administered program known as the Inmate Financial Responsibility Program through which the Bureau of Prisons will collect up to 50% of the defendant's prison salary and apply those amounts on the defendant's behalf to the payment of the outstanding fine and restitution orders.

9. Special Assessment. The defendant understands that the court will impose a special assessment of \$200 pursuant to the provisions of Title 18, United States Code, Section 3013. Not later than the date of sentencing, the defendant or defendant's counsel shall mail a check in payment of the special assessment directly to the Clerk, United States District Court, Middle District of Pennsylvania. If the defendant intentionally fails to make this payment this failure may be treated as a breach of this Plea Agreement and may result in further prosecution, the filing of additional criminal charges, or a contempt citation.

10. Collection of Financial Obligations. In order to facilitate the collection of financial obligations to be imposed in connection with this case, defendant consents and agrees to the following:

- (a) to fully disclose all assets in which defendant has an interest or over which defendant has control, directly or indirectly; including those held by a spouse, nominee, or other third party.
- (b) to submit to interviews by the Government regarding the defendant's financial status;
- (c) to submit a complete, accurate and truthful financial statement on the form provided by the Government to the United States Attorney's Office not later than 14 days following entry of the guilty plea;
- (d) whether represented by counsel or not, to consent to contact by and communication with the Government, and to waive any prohibition against communication with a represented party by the Government regarding defendant's financial status;
- (e) to authorize the Government to obtain the defendant's credit reports in order to evaluate the defendant's ability to satisfy any financial obligations imposed by the court;

(f) to submit any financial information requested by the Probation Office as directed and to the sharing of financial information between the Government and the Probation Office.

C. Sentencing Guidelines Calculation

11. Determination of Sentencing Guidelines. The defendant and counsel for both parties agree that the United States Sentencing Commission Guidelines, which took effect on November 1, 1987, and its amendments, as interpreted by *United States v. Booker*, 543 U.S. 220 (2005), will apply to the offense or offenses to which the defendant is pleading guilty. The defendant further agrees that any legal and factual issues relating to the application of the Federal Sentencing Guidelines to the defendant's conduct, including facts to support any specific offense characteristic or other enhancement or adjustment and the appropriate sentence within the statutory maximums provided for by law, will be determined by the court after briefing, a pre-sentence hearing, and/or a sentencing hearing.

12. Acceptance of Responsibility— Two Levels. If the defendant can adequately demonstrate recognition and affirmative acceptance of

responsibility to the Government as required by the Sentencing Guidelines, the Government will recommend that the defendant receive a two-level reduction in the defendant's offense level for acceptance of responsibility. The failure of the court to find that the defendant is entitled to a two-level reduction shall not be a basis to void this Plea Agreement.

D. Sentencing Recommendation

13. Appropriate Sentence Recommendation. At the time of sentencing, the United States may make a recommendation that it considers appropriate based upon the nature and circumstances of the case and the defendant's participation in the offense, and specifically reserves the right to recommend a sentence up to and including the maximum sentence of imprisonment and fine allowable, together with the cost of prosecution.

14. Special Conditions of Probation/Supervised Release. If probation or a term of supervised release is ordered, the United States may recommend that the court impose one or more special conditions, including but not limited to the following:

- (a) The defendant be prohibited from possessing a firearm or other dangerous weapon.
- (b) The defendant make restitution, if applicable, payment of which shall be in accordance with a schedule to be determined by the court.
- (c) The defendant pay any fine imposed in accordance with a schedule to be determined by the court.
- (d) The defendant be prohibited from incurring new credit charges or opening additional lines of credit without approval of the Probation Office unless the defendant is in compliance with the payment schedule.
- (e) The defendant be directed to provide the Probation Office and the United States Attorney access to any requested financial information.
- (f) The defendant be confined in a community treatment center, halfway house, or similar facility.
- (g) The defendant be placed under home confinement.
- (h) The defendant be ordered to perform community service.

(i) The defendant be restricted from working in certain types of occupations or with certain individuals, if the Government deems such restrictions to be appropriate.

(j) The defendant be directed to attend substance abuse counseling which may include testing to determine whether the defendant is using drugs or alcohol.

(k) The defendant be directed to attend psychiatric or psychological counseling and treatment in a program approved by the Probation Officer.

(l) The defendant be denied certain federal benefits including contracts, grants, loans, fellowships and licenses.

(m) The defendant be directed to pay any state or federal taxes and file any and all state and federal tax returns as required by law.

E. Destruction

15. Destruction Order. By this Agreement, the defendant agrees, should the United States deem it appropriate, to the destruction of the items seized during the course of the investigation. The

defendant agrees that the items may be destroyed by the investigative agency with or without a court order authorizing the destruction of the items seized. If the United States determines that a destruction order should be obtained, the defendant and defendant's counsel hereby concur in a motion for such an order.

F. Victims' Rights

16. Victims' Rights. The defendant understands that pursuant to the Victim and Witness Protection Act, the Crime Victims' Rights Act, the Justice for All Act, and the regulations promulgated under those Acts by the Attorney General of the United States, crime victims have the following rights:

- (a) The right to be reasonably protected from the accused;
- (b) The right to reasonable, accurate, and timely notice of any public court proceeding or any parole proceeding involving the crime, or of any release or escape of the accused;
- (c) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be

materially altered if the victim heard other testimony at that proceeding;

(d) The right to be reasonably heard at any public hearing in the district court involving release, plea, sentencing, or any parole proceeding. The defendant understands that the victim's comments and recommendations at any of these proceedings may be different than those of the parties to this Agreement;

(e) The reasonable right to confer with the attorney for the Government in the case. The defendant understands that the victim's opinions and recommendations given to the attorney for the Government may be different than those presented by the United States as a consequence of this Agreement;

(f) The right to full and timely restitution as provided for by law. The attorney for the Government is required to "fully advocate the rights of victims on the issue of restitution unless such advocacy would unduly prolong or complicate the sentencing proceeding," and the court is authorized to order restitution by the

defendant including, but not limited to, restitution for property loss, economic loss, personal injury, or death;

(g) The right to proceedings free from unreasonable delay; and

(h) The right to be treated with fairness and with respect for the victim's dignity and privacy.

G. Information Provided to Court and Probation Office

17. Background Information for Probation Office. The defendant also understands that the United States will provide to the United States Probation Office all information in its possession which the United States deems relevant regarding the defendant's background, character, cooperation, if any, and involvement in this or other offenses.

18. Objections to Pre-Sentence Report. The defendant understands that pursuant to the United States District Court for the Middle District of Pennsylvania "Policy for Guideline Sentencing" both the United States and defendant must communicate to the Probation Officer within fourteen (14) days after disclosure of the pre-sentence report any objections they may have as to material information,

sentencing classifications, sentencing guideline ranges and policy statements contained in or omitted from the report. The defendant agrees to meet with the United States at least five (5) days prior to sentencing in a good faith attempt to resolve any substantive differences. If any issues remain unresolved, they shall be communicated to the Probation Officer for inclusion in an addendum to the pre-sentence report. The defendant agrees that unresolved substantive objections will be decided by the court after briefing, or a pre-sentence hearing, or at the sentencing hearing where the standard of proof will be a preponderance of the evidence, and the Federal Rules of Evidence, other than with respect to privileges, shall not apply under Fed. R. Evid. 1101(d)(3), and the court may consider any reliable evidence, including hearsay. Objections by the defendant to the pre-sentence report or the court's rulings, will not be grounds for withdrawal of a plea of guilty.

19. Relevant Sentencing Information. At the sentencing, the United States will be permitted to bring to the court's attention, and the court will be permitted to consider, all relevant information with

respect to the defendant's background, character and conduct including the conduct that is the subject of the charges which the United States has agreed to dismiss, and the nature and extent of the defendant's cooperation, if any. The United States will be entitled to bring to the court's attention and the court will be entitled to consider any failure by the defendant to fulfill any obligation under this Agreement.

20. Non-Limitation on Government's Response. Nothing in this Agreement shall restrict or limit the nature or content of the United States' motions or responses to any motions filed on behalf of the defendant. Nor does this Agreement in any way restrict the government in responding to any request by the court for briefing, argument or presentation of evidence regarding the application of Sentencing Guidelines to the defendant's conduct, including but not limited to, requests for information concerning possible sentencing departures.

H. Court Not Bound by Plea Agreement

21. Court Not Bound by Terms. The defendant understands that the court is not a party to and is not bound by this Agreement or

any recommendations made by the parties. Thus, the court is free to impose upon the defendant any sentence up to and including the maximum sentence of imprisonment for life, a fine of \$5,250,000, a maximum term of supervised release of up to life, which shall be served at the conclusion of and in addition to any term of imprisonment, the costs of prosecution, denial of certain federal benefits and assessments totaling \$200.

22. No Withdrawal of Plea Based on Sentence or Recommendations. If the court imposes a sentence with which the defendant is dissatisfied, the defendant will not be permitted to withdraw any guilty plea for that reason alone, nor will the defendant be permitted to withdraw any pleas should the court decline to follow any recommendations by any of the parties to this Agreement.

I. Breach of Plea Agreement by Defendant

23. Breach of Agreement. In the event the United States believes the defendant has failed to fulfill any obligations under this Agreement, then the United States shall, in its discretion, have the option of petitioning the court to be relieved of its obligations. Whether

or not the defendant has completely fulfilled all of the obligations under this Agreement shall be determined by the court in an appropriate proceeding at which any disclosures and documents provided by the defendant shall be admissible and at which the United States shall be required to establish any breach by a preponderance of the evidence. In order to establish any breach by the defendant, the United States is entitled to rely on statements and evidence given by the defendant during the cooperation phase of this Agreement.

24. Remedies for Breach. The defendant and the United States agree that in the event the court concludes that the defendant has breached the Agreement:

(a) The defendant will not be permitted to withdraw any guilty plea tendered under this Agreement and agrees not to petition for withdrawal of any guilty plea;

(b) The United States will be free to make any recommendations to the court regarding sentencing in this case;

(c) Any evidence or statements made by the defendant during the cooperation phase will be admissible at any trials or sentencings;

(d) The United States will be free to bring any other charges it has against the defendant, including any charges originally brought against the defendant or which may have been under investigation at the time of the plea. The defendant waives and hereby agrees not to raise any defense to the reinstatement of these charges based upon collateral estoppel, Double Jeopardy or other similar grounds.

25. Violation of Law While Plea or Sentence Pending. The defendant understands that it is a condition of this Plea Agreement that the defendant refrain from any further violations of state, local or federal law while awaiting plea and sentencing under this Agreement. The defendant acknowledges and agrees that if the government receives information that the defendant has committed new crimes while awaiting plea and/or sentencing in this case, the government may petition the court and, if the court finds by a preponderance of the evidence that the defendant has committed any other criminal offense while awaiting plea or sentencing, the Government shall be free at its sole election to either: (a) withdraw from this Agreement; or (b) make any sentencing recommendations to the court that it deems appropriate.

The defendant further understands and agrees that, if the court finds that the defendant has committed any other offense while awaiting plea or sentencing, the defendant will not be permitted to withdraw any guilty pleas tendered pursuant to this Plea Agreement, and the government will be permitted to bring any additional charges which it may have against the defendant.

J. Appeal Waiver

26. Limited Appeal Waiver – Direct. The defendant is aware that Title 18, United States Code, Section 1291 affords a defendant the right to appeal a judgment of conviction and sentence; and that Title 18, United States Code, Section 3742(a) affords a defendant the right to appeal the sentence imposed. Acknowledging all of this, the defendant knowingly waives the right to appeal the conviction and sentence, except as to the calculation of drug weight(s) made by the Court. This waiver includes any and all other possible grounds for appeal, whether constitutional or non-constitutional, including, but not limited to, the manner in which that sentence was determined in light of *United States v. Booker*, 543 U.S. 220 (2005). The defendant further

acknowledges that this limited appeal waiver is binding only upon the defendant and that the United States retains its right to appeal in this case.

K. Other Provisions

27. Agreement Not Binding on Other Agencies. Nothing in this Agreement shall bind any other United States Attorney's Office, state prosecutor's office or federal, state or local law enforcement agency.

28. No Civil Claims or Suits. The defendant agrees not to pursue or initiate any civil claims or suits against the United States of America, its agencies or employees, whether or not presently known to the defendant, arising out of the investigation, prosecution or cooperation covered by this Agreement, including but not limited to any claims for attorneys' fees and other litigation expenses arising out of the investigation and prosecution of this matter. By the defendant's guilty plea in this matter the defendant further acknowledges that the Government's position in this litigation was taken in good faith, had a substantial basis in law and fact and was not vexatious.

29. Plea Agreement Serves Ends of Justice. The United States is entering into this Plea Agreement with the defendant because this disposition of the matter fairly and adequately addresses the gravity of the series of offenses from which the charges are drawn, as well as the defendant's role in such offenses, thereby serving the ends of justice.

30. Merger of All Prior Negotiations. This document states the complete and only Plea Agreement between the United States Attorney for the Middle District of Pennsylvania and the defendant in this case, and is binding only on the parties to this Agreement and supersedes all prior understandings or plea offers, whether written or oral. This agreement cannot be modified other than in writing that is signed by all parties or on the record in court. No other promises or inducements have been or will be made to the defendant in connection with this case, nor have any predictions or threats been made in connection with this plea. Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the defendant certifies that the defendant's plea is knowing and voluntary, and is not the result of force or threats or promises apart from those promises set forth in this written Plea Agreement.

31. Deadline for Acceptance of Plea Agreement. The original of this Agreement must be signed by the defendant and defense counsel and received by the United States Attorney's Office on or before 10:30 a.m. November 16, 2015, otherwise the offer may, in the sole discretion of the Government, be deemed withdrawn.

32. Required Signatures. None of the terms of this Agreement shall be binding on the Office of the United States Attorney for the Middle District of Pennsylvania until signed by the defendant and defense counsel and then signed by the United States Attorney or his designee.

ACKNOWLEDGMENTS

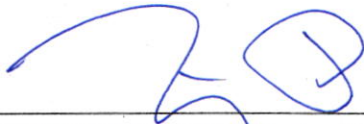
I have read this agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

11-16-15
Date

Chico Carraway
CHICO JERMELL CARRAWAY
Defendant

I am the defendant's counsel. I have carefully reviewed every part of this agreement with the defendant. To my knowledge my client's decision to enter into this agreement is an informed and voluntary one.

11/16/15
Date



CHRISTOPHER A. FERRO
Counsel for Defendant

PETER J. SMITH
UNITED STATES ATTORNEY

11/16/2015
Date

By: 

DARYL F. BLOOM
Assistant United States Attorney

DFB/me/2014R00256/November 16, 2015
VERSION DATE: November 28, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

UNITED STATES OF AMERICA : CASE NO.
:
v. :
:
CHICO JERMELL CARRAWAY : 1:14-CR-00167

TRANSCRIPT OF PROCEEDINGS
MOTION TO DISMISS COUNSEL

Held before the HONORABLE JOHN E. JONES, III
October 7, 2015, commencing at 10:06 a.m.
Courtroom No. 4, Federal Building, Harrisburg, Pennsylvania

APPEARANCES:

DARYL F. BLOOM, ESQUIRE
United States Attorney's Office
228 Walnut Street, Suite 220
Harrisburg, PA 17108
For the United States

CHRISTOPHER A. FERRO, ESQUIRE
The Law Office of Christopher A. Ferro, LLC
345 E. Market Street
York, PA 17403
For the Defendant

Proceedings recorded by machine shorthand; transcript
produced by computer-aided transcription.

Wendy C. Yinger, RMR, CRR
Official Court Reporter
wendy_yinger@pamd.uscourts.gov

1 THE COURT: All right. We're assembled in the matter
2 of United States versus Chico Carraway. The Court scheduled
3 this proceeding as a result of a pro se motion, labeled a pro
4 se motion to dismiss counsel filed by Mr. Carraway. And we'll
5 note the appearance of Daryl Bloom, United States Attorney.
6 And Chris Ferro is here on behalf of the Defendant. The
7 Defendant is present as well. Let's have you swear him in,
8 Liz, if you would, please.

9 **CHICO JERMELL CARRAWAY, DEFENDANT, SWORN**

10 THE COURT: At this point I think, respectfully, it
11 might be a good idea, Mr. Bloom, if you would absent yourself
12 so that I can have a candid dialogue with the Defendant with
13 counsel. And Mr. Nawrocki as well, I guess. Thank you.

14 (Mr. Bloom and Agent Nawrocki left the courtroom.)

15 THE COURT: Mr. Ferro, let me go to you first.
16 Anything you want to put on the record at this point?

17 MR. FERRO: No, Your Honor. I would indicate to the
18 Court that trial is scheduled in November, and based upon my
19 experience and training and my meetings with the Defendant, I
20 believe I'm prepared to go to trial in this matter and
21 represent the Defendant to the best of my abilities.

22 We have had a discussion regarding the general nature
23 of why we're here today. I've asked again what it is that I
24 should do or not be doing that he is complaining of at this
25 point in time. And generally what I hear is, to represent me

1 to the best of my abilities. I have informed him that I
2 believe I am doing that and I will continue to do that.

3 There are no specific issues that I think have been
4 brought to my attention that have not been done or should be
5 done or need to be done. It's just general dissatisfaction
6 largely, I guess, based upon communication. And I've had a
7 conversation with Mr. Carraway that we've communicated about
8 these issues, and it's my belief that he simply doesn't like
9 some of the content of my communications not the actual
10 communications themselves.

11 THE COURT: Thank you. You talked about his case
12 with him today, I understand?

13 MR. FERRO: Yes, Your Honor.

14 THE COURT: And when have you last communicated with
15 him before today?

16 MR. FERRO: Your Honor, I was at the York County
17 Prison approximately a month and a half ago prior to the last
18 request for a continuance. And I intended to be -- obviously
19 trial in this matter is November, middle of November, and I
20 intended to be at the York County Prison again this week
21 regardless of this motion and probably every week thereafter
22 until trial is completed.

23 THE COURT: Without getting into the substance of any
24 plea negotiations or any particular offer, is there a plea
25 offer on the table from the United States?

1 MR. FERRO: There is a proposal from the United
2 States that we reviewed and discussed all the issues related to
3 that plea. Mr. Carraway has directly indicated he does not
4 wish to take the benefit of that plea and has indicated his
5 desire to proceed to trial in this matter.

6 THE COURT: What's Mr. Carraway's exposure in the
7 event that the Government is successful on the several counts
8 that are in the indictment, three, I believe, if I'm not
9 incorrect? What's his maximum exposure?

10 MR. FERRO: It is my assessment, Your Honor, that Mr.
11 Carraway is likely a career offender, and based upon that
12 designation, I believe his guidelines would be in excess of 30
13 years.

14 THE COURT: Without, again, getting into the
15 substance of the plea discussions, I presume that, am I
16 correct, that the plea offer is less than that?

17 MR. FERRO: Significantly, Your Honor, yes.

18 THE COURT: All right. Mr. Carraway, what's your
19 problem with Mr. Ferro?

20 THE DEFENDANT: My problem with Mr. Ferro was, I
21 didn't believe he was representing me correctly to the best of
22 his ability.

23 THE COURT: I want to know specifically what your
24 problem is with Mr. Ferro's representation. I'll tell you why
25 I ask you that. Because this Court knows Mr. Ferro to be an

1 excellent advocate for his clients, a terrific lawyer as a
2 matter of fact. And I find it hard to believe that Mr. Ferro
3 is acting in any way that is not in your best interest.

4 So I want you to tell me -- don't tell me broadly
5 that you are dissatisfied with him -- I want to know
6 specifically what your problem is with Mr. Ferro.

7 THE DEFENDANT: Our communication. My family reached
8 out to him. No e-mails being returned. I feel like if these
9 people is concerned about my well-being, I feel like he should
10 report back to them and allow them --

11 THE COURT: Well, Mr. Ferro represents you.

12 THE DEFENDANT: Correct.

13 THE COURT: He's not your public relations man, he's
14 your lawyer. Did Mr. Ferro communicate to you the plea offer
15 that was extended by the Government?

16 THE DEFENDANT: Yes. We had a talk in York County
17 about it when it was first offered.

18 THE COURT: And you rejected it, is that right?

19 THE DEFENDANT: Correct.

20 THE COURT: And you told Mr. Ferro that you wanted to
21 go to trial, is that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And Mr. Ferro just told me that he's
24 prepared to go to trial. Do you have any reason to doubt that?

25 THE DEFENDANT: No. I needed to know that he was

1 willing to represent me correct at trial. I don't know if he
2 was going to just be at trial just to be at trial.

3 THE COURT: I assure you, Mr. Carraway, that's not
4 the way Mr. Ferro does business. Mr. Ferro is an excellent
5 lawyer. And you're not making it any easier for him when you
6 are filing pro se motions. If there's a bona fide -- if
7 there's a real disconnect between a Defendant and his lawyer,
8 then my job is to analyze that, and in the right circumstance,
9 I'll get somebody a new lawyer. You're lucky to have Mr.
10 Ferro. You're lucky to have him.

11 And there's an old -- there's sort of an old saying
12 in the business, in the criminal law business, and it's that
13 sometimes Defendants want to shoot the messenger. And the
14 messenger in this case is Mr. Ferro. And I suspect he's
15 telling you something that you don't want to hear. And because
16 he is telling you something you don't want to hear, you want a
17 new lawyer. Well, it doesn't work that way. Sometimes lawyers
18 have to give their clients bad news, Mr. Carraway.

19 THE DEFENDANT: That's what I'm expecting him to do,
20 just being open and honest with me.

21 THE COURT: Well, he is being honest with you. He
22 conveyed an offer to you that you didn't like. And that's
23 fine, that's your prerogative. I'm not here to tell you to
24 plead. Believe me, you do what you think is right by you. But
25 Mr. Ferro isn't telling me nor is he telling you, and you

1 apparently accept this because you just told me this, that he's
2 ready to go to trial. Now if you want a trial, we're going to
3 give you a trial in November. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So here's what I'm going to tell you.
6 Mr. Ferro is going to talk further to you because he has to in
7 preparation for trial. You're going to listen carefully.
8 Listen carefully to Mr. Ferro because he has your best interest
9 at heart. He's one of the finest criminal lawyers who appears
10 before this Court.

11 As I said, I want to repeat this, you're lucky to
12 have him. Not everybody is as talented as Mr. Ferro. So you
13 drew a good counsel. And you'd be a fool not to utilize his
14 services, I'm telling you straight out as somebody who is
15 trying to look out for your best interest.

16 THE DEFENDANT: How can I utilize it if I don't get
17 an offer --

18 THE COURT: What do you mean? Because he's not
19 holding your hand enough?

20 THE DEFENDANT: I'm a grown man, sir. I don't need
21 him to hold my hand.

22 THE COURT: It sounds like you do. And he sure isn't
23 obligated to, as I said, contact every one of your family
24 members. That's too bad.

25 THE DEFENDANT: I didn't ask him to do that. What

1 I'm saying is that if I can't get through to him, people that
2 are in contact with me and they are concerned of my well-being
3 is trying to contact him because they have 24/7 service with
4 their phones.

5 THE COURT: What do you want him to tell you? You
6 rejected the plea offer, and now he's got to prepare for trial.
7 He's got over a month to prepare for trial. That's plenty of
8 time. He's telling me he's ready now. He's got some things he
9 has to do. He may have to subpoena some witnesses. That's
10 plenty of time. Plenty of time to prepare for trial. And
11 believe me, he's going to be in touch with you as the date gets
12 close to trial.

13 Now when he comes to see you next, which will be
14 soon, you're going to have to have a good chat with Mr. Ferro
15 and get your head screwed on and figure out whether it's in
16 your best interest to risk a 30-year plus sentence or to
17 seriously consider a plea offer.

18 And I am absolutely forbidden from getting into the
19 substance of that, and I won't. But you're going to have to
20 listen to what he has to say. And this is a tough choice for
21 you, and I understand that. But he's acting in your best
22 interest. Now I can't help what's happened up to this point or
23 that you're feeling hurt because he hasn't had enough
24 communication with you.

25 But I'm not going to dismiss him because it's the

1 worst thing I could do for you. And I'm looking out for your
2 interest when I do this because you're going to get another
3 attorney who may not be as good as Mr. Ferro.

4 And I guarantee you're going to be dissatisfied
5 because they're not going to get in touch with you, in your
6 estimation, enough. You tell your family members that this is
7 between you and Mr. Ferro. It is not Mr. Ferro's obligation.
8 It is not his obligation to explain himself again and again to
9 every one of your family members. It doesn't work that way,
10 Mr. Carraway.

11 And I think you know that because this isn't the
12 first time, your first trip through the criminal justice
13 system. So I'm going to deny your pro se motion at this point.
14 You're going to continue with Mr. Ferro as your counsel. Mr.
15 Ferro is going to fully prepare for trial. The case is
16 scheduled for trial. Mr. Ferro has assured the Court that he's
17 ready to go. What's the date of jury selection, Liz?

18 COURTROOM DEPUTY: November 16th.

19 THE COURT: November 16th is the date of jury
20 selection. You'll be brought here, and we'll commence the
21 trial, unless in the meantime I'm advised that you intend to
22 plea, in which case, of course, we'll convene a plea
23 proceeding. Otherwise, we're going to start the trial and
24 you're going to have Mr. Ferro as your lawyer. Do you
25 understand, Mr. Carraway?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Mr. Ferro, anything else you
3 want to put on the record?

4 MR. FERRO: No, Your Honor.

5 THE COURT: All right. Would you do me a favor, Mr.
6 Ferro? Get Mr. Bloom and bring him in.

7 (Mr. Bloom and Agent Nawrocki entered the courtroom.)

8 THE COURT: All right. The record will indicate that
9 Mr. Bloom has returned to the courtroom on the Court's
10 instruction. Just for the record, the Court will note for Mr.
11 Bloom's benefit that the Court has had a dialogue with both Mr.
12 Carraway and his counsel. The Court has denied, and will
13 memorialize this in a separate order, the pro se motion by Mr.
14 Carraway finding that the relationship between Mr. Carraway and
15 his counsel is not in any way broken such that Mr. Ferro cannot
16 competently and zealously represent Mr. Carraway going forward
17 in all matters that will follow.

18 The matter remains set for jury selection on November
19 the 16th of this year. And absent other proceedings, we will
20 be prepared to start the trial on that day. Mr. Bloom,
21 anything else you want to put on the record?

22 MR. BLOOM: Nothing for the United States, Your
23 Honor.

24 THE COURT: Anything else? I already asked Mr.
25 Ferro, but anything else while Mr. Bloom is here?

1 MR. FERRO: No, Your Honor.

2 THE COURT: All right. We'll proceed accordingly.

3 Thank you, all.

4 (Proceeding adjourned at 10:18 a.m.)

5 *****

6
7 CERTIFICATION

8
9 I, Wendy C. Yinger, Federal Official Realtime Court
10 Reporter, in and for the United States District Court for the
11 Middle District of Pennsylvania, do hereby certify that
12 pursuant to Section 753, Title 28, United States Code, that the
13 foregoing is a true and correct transcript of the
14 stenographically reported proceedings held in the
15 above-entitled matter and that the transcript page format is in
16 conformance with the regulations of the Judicial Conference of
17 the United States.

18
19
20 /s/ Wendy C. Yinger
21 Wendy C. Yinger, RMR, CRR
22 U.S. Official Court Reporter
(717) 440-1535

23
24 (The foregoing of this transcript does not apply to any
25 reproduction of the same by any means unless under the direct
control and/or supervision of the certifying reporter.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA: NO. 1:14-CR- 167.
:
v. : (Judge *A. Ches.*)
:
CHICO JERMELL CARRAWAY, :
Defendant. :

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT I

(Distribution and Possession With Intent to Distribute
Cocaine Hydrochloride, Cocaine Base and Heroin)

From on or about April 2013, and continuing to at least as late as on
or about July 2014, in York County, within the Middle District of
Pennsylvania, and elsewhere, the defendant,

CHICO JERMELL CARRAWAY,

knowingly and intentionally distributed and possessed with intent to
distribute 100 grams and more of a mixture and substance containing a
detectable amount of heroin, a Schedule I narcotic controlled substance,
500 grams and more of a mixture and substance containing a detectable
amount of cocaine hydrochloride, a Schedule II narcotic controlled
substance and 28 grams and more of a mixture and substance containing

a detectable amount of cocaine base, a Schedule II narcotic controlled substance.

All in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(B)(i), (ii) and (iii).

THE GRAND JURY FURTHER CHARGES THAT:

COUNT II

(Possession of a Firearm During and
in Relation to a Drug Trafficking Crime)

Beginning at least as early as December, 2013, in York County,
within the Middle District of Pennsylvania, the defendant,

CHICO JERMELL CARRAWAY,

did knowingly possess a firearm during, in relation to and in furtherance
of a drug trafficking crime, for which they may be prosecuted in a court of
the United States, that is, possession with intent to distribute a controlled
substance in violation of Title 21, United States Code, Section 841(a)(1).

All in violation of Title 18, United States Code, Section 924(c)(1)(A).

THE GRAND JURY FURTHER CHARGES THAT:

COUNT III

(Felon in Possession of a Firearm)

Beginning at least as early as December 2013, in York County, in the Middle District of Pennsylvania, the defendant,

CHICO JERMELL CARRAWAY,

having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting commerce a firearm, to wit: FEG, Model PMK, .380 caliber semi-automatic pistol, serial number N23248, manufactured in Hungary.

All in violation of Title 18 United States Code § 922(g)(1).

A TRUE BILL

Peter J. Smith
PETER J. SMITH
United States Attorney

FOREPERSON

Date

7-9-2014