

Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 18 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JOSHUA JAY SCHROEDER,
Defendant-Appellant.

No. 21-30155

D.C. No. 2:20-cr-00009-DLC-1
District of Montana,
Butte

ORDER

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

Appellee's motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 19) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Contrary to appellant's contention, the district court did not "unequivocally, clearly, and without qualification" tell him that he still had the ability to appeal at sentencing and, therefore, did not "vitiate his explicit waiver of the right to appeal in his written plea agreement." *United States v. Arias-Espinosa*, 704 F.3d 616, 620 (9th Cir. 2012).

DISMISSED.

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20 JUL 31 2020 (54-63)

ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. JOSHUA JAY SCHROEDER, Defendant.	CR 20-9-BU-DLC PLEA AGREEMENT Rule 11(c)(1)(A) and (B), <i>Federal Rules of Criminal Procedure</i>
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Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, represented by Ryan G. Weldon, Assistant United States Attorney for the District of Montana, and the defendant, Joshua Jay Schroeder, and the defendant's attorney, Dwight J. Schulte, have agreed upon the following:

JW for RSW *DS* *7/21/20*
AUSA DEE ATTY Date

1. **Scope:** This plea agreement is between the United States Attorney's Office for the District of Montana and the defendant. It does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority, or the United States Probation Office.

2. **Charge:** The defendant agrees to plead guilty to count I in the superseding information, which charges conspiracy to possess with the intent to distribute methamphetamine, in violation of 21 U.S.C. § 846. Count I carries a mandatory minimum ten years to life imprisonment, a \$10,000,000 fine, at least five years supervised release, and a \$100 special assessment. The defendant agrees to plead guilty to count II in the superseding information, which charges prohibited person in possession of firearms, in violation of 18 U.S.C. § 922(g)(1). Count II carries up to ten years imprisonment, a \$250,000 fine, three years supervised release, and a \$100 special assessment. The defendant agrees to plead guilty to count III in the superseding information, which charges conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). Count III carries up to twenty years imprisonment, a \$500,000 fine, three years supervised release, and a \$100 special assessment. The defendant also agrees to plead true to the forfeiture allegation.

At the time of sentencing, if the Court accepts this plea agreement, the United States will move to dismiss the indictment.

W. K. KERBY K DS 7/21/20
AUSA DEF ATTY Date

3. **Nature of the Agreement:** The parties agree that this plea agreement will be governed by:

- Rule 11(c)(1)(A) and (B), *Federal Rules of Criminal Procedure*. The defendant acknowledges that the agreement will be fulfilled provided the United States: a) moves to dismiss, and the Court agrees to dismiss, the indictment; and b) makes the recommendations provided below. The defendant understands that if the agreement is accepted by the Court, and the indictment is dismissed, there will not be an automatic right to withdraw the plea, even if the Court does not accept or follow the recommendations made by the United States.

4. **Admission of Guilt:** The defendant will plead guilty to conspiracy to possess with the intent to distribute methamphetamine contained in count I in the superseding information. In pleading guilty to count I, the defendant acknowledges that:

First, there was an agreement between two or more people to distribute and to possess with the intent to distribute methamphetamine;

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and,

Third, 500 or more grams of methamphetamine were within the scope of the agreement, or were reasonably foreseeable to him.

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AUSA Date

The defendant will plead guilty to being a prohibited person in possession of firearms contained in count II in the superseding information. In pleading guilty to count II, the defendant acknowledges that:

First, the defendant knowingly possessed firearms;

Second, the firearms had been shipped and transported from one state to another;

Third, at the time the defendant possessed the firearms, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year; and,

Fourth, at the time the defendant possessed the firearms, the defendant knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

The defendant will plead guilty to conspiracy to commit money laundering contained in count III in the superseding information. In pleading guilty to count III, the defendant acknowledges that:

First, there was an agreement between two or more people to accomplish a common and unlawful plan to violate 18 U.S.C. § 1956; and,

Second, the defendant knew about the plan's unlawful purpose and voluntarily joined in it.

5. Waiver of Rights by Plea:

(a) The defendant is entitled to have the charges outlined in paragraph 2, above, prosecuted by an indictment returned by a concurrence of 12 or more members of a legally constituted grand jury, consisting of not less than 16 and not more than 23 members.

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(b) The government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement given under oath during the plea colloquy.

(c) The defendant has the right to plead not guilty or to persist in a plea of not guilty.

(d) The defendant has the right to a jury trial unless, by written waiver, the defendant consents to a non-jury trial. The United States must also consent and the Court must approve a non-jury trial.

(e) The defendant has the right to be represented by counsel and, if necessary, have the Court appoint counsel at trial and at every other stage of these proceedings.

(f) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and the defendant's attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

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(g) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not the judge was persuaded of the defendant's guilt beyond a reasonable doubt.

(h) At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence. If the witnesses for the defendant would not appear voluntarily, their appearance could be mandated through the subpoena power of the Court.

(i) At a trial, there is a privilege against self-incrimination so that the defendant could decline to testify and no inference of guilt could be drawn from the refusal to testify. Or the defendant could exercise the choice to testify.

(j) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal the conviction to the Ninth Circuit Court of Appeals for review to determine if any errors were made that would entitle the defendant to reversal of the conviction.

(k) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, Federal Rules of Criminal Procedure. By execution of this agreement, the defendant waives that right and agrees to hold

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that hearing before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge, if necessary.

(l) If convicted in this matter, a defendant who is not a citizen of the United States may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

The defendant understands that by pleading guilty pursuant to this agreement, the defendant is waiving all of the rights set forth in this paragraph. The defendant's attorney has explained those rights and the consequences of waiving those rights.

6. Recommendations: The United States will recommend the defendant's offense level be decreased by two levels for acceptance of responsibility, pursuant to USSG §3E1.1(a), unless the defendant is found to have obstructed justice prior to sentencing, pursuant to USSG §3C1.1, or acted in any way inconsistent with acceptance of responsibility. The United States will move for an additional one-level reduction, pursuant to USSG §3E1.1(b), if appropriate under the Guidelines. The parties reserve the right to make any other arguments at the time of sentencing. The defendant understands that the Court is not bound by this recommendation.

The United States will recommend a low-end guideline sentence based off the guideline range adopted by the Court.

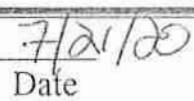
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AUSA DEF ATTY Date

7. Sentencing Guidelines: Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

8. Waiver of Appeal of the Sentence – General: The defendant understands that the law provides a right to appeal and collaterally attack the sentence imposed in this case. 18 U.S.C. § 3742(a); 28 U.S.C. §§ 2241, 2255. Based on the concessions made by the United States, the defendant knowingly waives any right to appeal or collaterally attack any aspect of the sentence, including conditions of probation or supervised release. This waiver includes challenges to the constitutionality of any statute of conviction and arguments that the admitted conduct does not fall within any statute of conviction. This waiver does not prohibit the right to pursue a collateral challenge alleging ineffective assistance of counsel.

9. Voluntary Plea: The defendant and the defendant's attorney acknowledge that no threats, promises, or representations have been made to induce the defendant to plead guilty, and that this agreement is freely and voluntarily endorsed by the parties.

10. Forfeiture: The defendant also agrees to abandon all right, title, and interest in the firearms found in the investigation, and any property involved in counts I and II of the indictment, execute a release and waiver to that effect, or

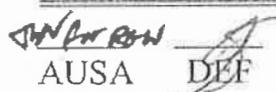
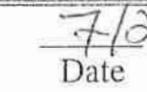
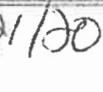

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stipulate to the entry of an Order of Forfeiture transferring the property to the United States.

11. Loss of Federal Benefits: The defendant acknowledges that, based on the plea of guilty to a federal controlled substances crime, the defendant is no longer eligible for assistance under any state program funded under Part A of Title IV of the Social Security Act or benefits under the Food Stamp Act. 21 U.S.C. § 862a. The Court may also deny the defendant eligibility to participate in any federal grant, contract, loan, professional license, or commercial license. 21 U.S.C. § 862.

12. Detention/Release After Plea: Pursuant to 18 U.S.C. § 3143(a)(2), the defendant acknowledges that the defendant will be detained upon conviction unless (A)(i) the Court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted or (ii) this agreement provides that the United States will recommend that no sentence of imprisonment be imposed and (B) the Court finds, by clear and convincing evidence, that the defendant is not likely to flee or pose a danger to any other person or the community. Then, if exceptional circumstances exist, the defendant may be released upon conditions.

13. Breach: If the defendant breaches this plea agreement, at any time, in any way, including but not limited to appealing or collaterally attacking the conviction or sentence, the United States may prosecute the defendant for any

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counts dismissed or not charged pursuant to this plea agreement. Additionally, the United States may use any factual admissions made by the defendant pursuant to this plea agreement in any such prosecution.

14. Entire Agreement: Any statements or representations made by the United States, the defendant, or defense counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.

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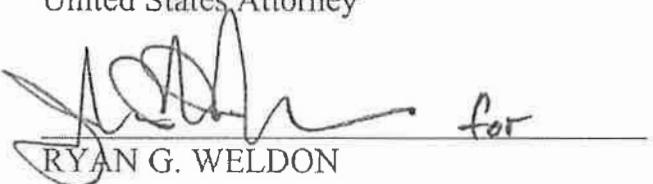
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KURT G. ALME
United States Attorney



RYAN G. WELDON

AUSA DEF ATTY 7/21/20
Date

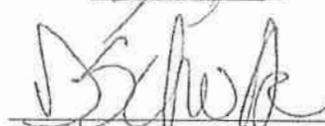
Assistant U.S. Attorney

Date: 07/30/2020


JOSHUA JAY SCHROEDER

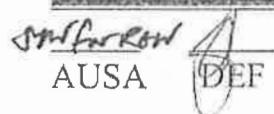
Defendant

Date: July 21st 2020


DWIGHT J. SCHULTE

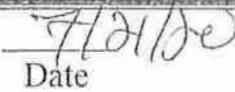
Defense Counsel

Date: 7/21/20


AUSA


DEF

ATTY


Date

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16 BEFORE THE HONORABLE KATHLEEN L. DeSOTO
17 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
18 FOR THE DISTRICT OF MONTANA

18 Russell Smith United States Courthouse
19 201 East Broadway
20 Missoula, Montana 59802
Monday, August 24, 2020
1:30 to 2:34 p.m.

1 THE DEFENDANT: I do understand.

2 THE COURT: And so you could be, you know,
3 especially in terms of the recommendations that were made and
4 the last one in particular that Mr. Weldon discussed that the
5 government is going to recommend a low-end of the guideline,
6 the Court could not go with that. The Court could sentence
7 you in a way that you weren't happy with. But do you
8 understand that even if that happens, as long as the
9 government moves to dismiss the indictment and it is dismissed
10 and the government makes those recommendations, even if the
11 Court doesn't go along with them, you won't have the right to
12 withdraw from this plea agreement. Do you have any question
13 about that?

14 THE DEFENDANT: No, I do not.

15 THE COURT: Okay. And if you go to -- well, we've
16 already talked about the recommendations: the 2 levels for
17 acceptance of responsibility, the 1 additional level if
18 appropriate, but most importantly that the government will
19 agree to recommend a low-end-of-the-guideline sentence based
20 on whatever range the Court adopts.

21 And then there is a general, if you go with me to
22 page 8, paragraph 8, there's a general waiver of appeal. And
23 so normally if a person is convicted and then sentenced, you
24 would have the right to appeal either your conviction or --
25 and your sentence -- and/or, I should say, your sentence to

1 the Ninth Circuit Court of Appeals. And that's the appellate
2 court for the division that we are in here in Montana.

3 So normally you would have the right to appeal your
4 sentence and your conviction if you so chose. But by virtue
5 of this plea agreement here today, you are waiving your right
6 to appeal, and you're also waiving your right to collaterally
7 attack; so, in other words, file a habeas motion after your
8 appeals have been exhausted. You're waiving that right as
9 well. Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: And the one thing that you do not waive
12 is the ineffective assistance of counsel. So if for some
13 reason later you felt that Mr. Schulte had not provided
14 adequate counsel to you, you could bring an ineffective
15 assistance of counsel claim.

16 THE DEFENDANT: Okay.

17 THE COURT: But that's the only thing that survives
18 this waiver. It's a very, it's a very absolute waiver. Any
19 question about that?

20 THE DEFENDANT: No. I understand.

21 THE COURT: Okay. And finally, in paragraph 10,
22 which is still at the bottom of page 8 there, by the
23 forfeiture you're agreeing to abandon all right, title, and
24 interest in the firearms and any property that was involved in
25 Counts 1 and 2 of the indictment. And if you need to execute

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5 United States Court Reporter

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16 BEFORE THE HONORABLE DANA L. CHRISTENSEN
17 UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF MONTANA

18 Russell Smith United States Courthouse
19 201 East Broadway
20 Missoula, Montana 59802
Thursday, June 8, 2021
09:04:38 to 13:23:37

25 Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

1 specifically, paragraphs 174 to 181.

2 Forfeiture, I've issued a final order of forfeiture.

3 Mr. Schroeder, you'll be making criminal monetary
4 penalty payments during your custodial sentence. Those
5 payments will be made through the Bureau of Prisons Inmate
6 Financial Responsibility Program, and they'll be made to the
7 Clerk of Court, United States District Court, the address of
8 which is P.O. Box 8537, Missoula 59807.

9 Mr. Weldon, I believe we're dealing here with a
10 superseding, are we not?

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

12 THE COURT: So we need to dismiss the underlying
13 indictment?

14 MR. WELDON: The United States makes that motion,
15 Your Honor.

16 THE COURT: The underlying indictment in this case
17 is dismissed with prejudice.

18 And, Mr. Schulte, I believe Mr. Schroeder has waived
19 his right of appeal; is that correct?

20 MR. SCHULTE: That is correct, Your Honor.

21 THE COURT: Mr. Schroeder, you have waived your
22 right of appeal, but I nevertheless need to tell you what that
23 right is. You will have 14 days from the date of entry of
24 judgment in which to appeal. Judgment will be entered today,
25 so that 14-day time period will begin to run today. If you do

1 not appeal within that 14-day time period, any appeal would be
2 barred. Do you understand that, Mr. Schroeder?

3 THE DEFENDANT: Yeah.

4 THE COURT: All right.

5 Mr. Weldon, any legal objections to this sentence?

6 MR. WELDON: No, Your Honor. Thank you.

7 THE COURT: Any legal objections, Mr. Schulte?

8 MR. SCHULTE: No, Your Honor.

9 THE COURT: All right.

10 Mr. Schroeder, I'm going to remand you back to the
11 custody of the Marshals Service to carry out the judgment of
12 the Court, and we'll be in recess.

13 MR. SCHULTE: Your Honor, Mr. Schroeder has
14 requested that we address self-surrender so that he can attend
15 his June 18 --

16 THE COURT: Right. The answer is no.

17 MR. SCHULTE: Thank you, Your Honor.

18 THE COURT: You're going back into custody,
19 Mr. Schroeder.

20 We'll be in recess. Thank you.

21 (Proceedings were concluded at 13:23:37.)

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