

Appendix A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3849

CHRISTOPHER ERWIN,
Appellant

v.

UNITED STATES OF AMERICA

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3-17-cv-05156)
District Judge: Hon. Peter G. Sheridan

Submitted Under Third Circuit LAR 34.1(a)
June 13, 2022

Before: HARDIMAN, SMITH, and FISHER, *Circuit Judges*.

(Filed: July 18, 2022)

OPINION*

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

HARDIMAN, *Circuit Judge*.

Christopher Erwin appeals the District Court's order denying his motion to set aside his sentence under 28 U.S.C. § 2255. Erwin claims the District Court should have held an evidentiary hearing on his ineffective assistance of counsel claim. Because Erwin cannot show prejudice, we will affirm.

I¹

Erwin and twenty-one others were charged with conspiring to possess and distribute oxycodone. *See* 21 U.S.C. §§ 841(a), (b)(1)(C), 846. Erwin agreed to cooperate with the Government's investigations and pleaded guilty. Erwin waived his right to appeal and the Government promised to request a downward departure at sentencing if Erwin provided substantial assistance. While the Government did move for a downward departure, the sentencing court departed downward from Erwin's Guidelines range of 262–327 months rather than his statutory maximum sentence of 240 months. The District Court sentenced him to 188 months' imprisonment—well in excess of his lawyer's prediction of no more than 120 months. Erwin appealed, in violation of his plea agreement, and we remanded for de novo resentencing. *See United States v. Erwin*, 765 F.3d 219, 223 (3d Cir. 2014). Back in the District Court, the Government requested an

¹ The District Court had jurisdiction under 28 U.S.C. § 2255. We have appellate jurisdiction under 28 U.S.C. §§ 1291, 2253.

increased sentence because of Erwin's violation of the plea agreement. The District Court then sentenced Erwin to 200 months' imprisonment.

Erwin moved to set aside his sentence under 28 U.S.C. § 2255, arguing that his attorney rendered ineffective assistance by assuring him of no more than 120 months' imprisonment. The District Court denied the motion. We granted a certificate of appealability to determine whether an evidentiary hearing was necessary.

II

The District Court was required to hold a hearing “[u]nless the motion and the files and records of the case conclusively show[ed] that [Erwin was] entitled to no relief.” 28 U.S.C. § 2255(b). But if a claim of ineffective assistance “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)).

The District Court did not err when it concluded that Erwin could not demonstrate prejudice. Erwin’s allegations did not 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)).

We accept as true Erwin’s allegations that his counsel misadvised him of the starting point for the downward departure offered in exchange for his cooperation and assured him that “the worst he could expect was 120 months of incarceration.” App. 279 n.5; *see also* App. 280. We also grant that Erwin’s motivation for his plea and cooperation was “to return to some portion of his son’s youth” after he finished serving

his sentence. App. 286. According to Erwin, but for counsel's mistaken advice on his sentencing exposure, he would have proceeded to trial or entered an open plea. Even assuming counsel's deficient performance in all these respects, the District Court's fulsome plea colloquy obviated any potential prejudice.

The District Court clearly advised Erwin of his sentencing exposure. We agree with the District Court that Judge Wolfson's plea colloquy with Erwin was "extensive." App. 10. Specifically, Judge Wolfson cautioned Erwin that § 841(b)(1)(C) carries "a statutory maximum penalty of 20 years['] imprisonment." App. 358. Erwin stated he expected an offense level of 39, understood that the offense carried a maximum sentence of 20 years, and affirmed that his sentence "may be different from any estimate [his] attorney may have given [him]." App. 361, 363. Judge Wolfson also advised Erwin that "at this point it may be impossible for [counsel] to make a completely accurate assessment as to the Guidelines range which will actually apply in your case because he does not yet have all the necessary information and has not seen the Presentence Report." App. 362. Erwin affirmed Judge Wolfson's warning, and we take him at his word that he understood. *See id.*

So regardless of what Erwin's lawyer told him, he was on notice of his sentencing exposure and the limits of his attorney's sentencing predictions. Accepting Erwin's allegations of misadvice as true, his lawyer's expectation of a downward departure from the statutory maximum was a faulty sentencing prediction. As we have noted, "[A]n erroneous sentencing prediction by counsel is not ineffective assistance of counsel where . . . an adequate plea hearing was conducted." *United States v. Shedrick*, 493 F.3d 292,

299 (3d Cir. 2007) (citations omitted); *cf. Lee v. United States*, 137 S. Ct. 1958, 1968 n.4 (2017) (holding that plea colloquy did not cure prejudice of counsel’s incorrect advice where that incorrect advice was provided during the plea colloquy and undermined the court’s question).

While defendants might expect a more lenient sentence than the statutory maximum, “all that the law requires is that the defendant be informed of his/her exposure in pleading guilty. The law does not require that a defendant be given a reasonably accurate ‘best guess’ as to what his/her actual sentence will be.” *United States v. Mustafa*, 238 F.3d 485, 492 n.5 (3d Cir. 2001). In other words, surprise or disappointment do not establish prejudice. Erwin’s cooperation agreement neither guaranteed a five-level downward departure nor specified a starting point. And most significantly, it cautioned that his sentence remained “solely to the discretion of the sentencing judge.” App. 331. Judge Wolfson had no obligation to depart downward, and her plea colloquy informed Erwin of his sentencing exposure. Because Erwin cannot establish prejudice in view of the textbook plea colloquy, no evidentiary hearing was required. We will therefore affirm.

SMITH, *Circuit Judge*, dissenting.

Christopher Erwin claims that he would have taken any risk necessary for the chance of obtaining a sentence that would see him released in time for the remainder of his son's childhood. He contends that in entering a plea bargain he relied to his detriment on misadvice from counsel that a substantial assistance departure would begin from the applicable statutory maximum, which was lower than the calculated Guidelines range. When granted, however, the departure was made from the higher Guidelines range. In bringing his ineffective assistance of counsel claim, Erwin alleges that, had he known the departure would be applied from the Guidelines range, he would have taken his chances at obtaining his desired sentence by entering an open plea or by going to trial.

I readily concede that Erwin's theory of harm would have required him to surmount a steep climb. He would have needed to establish (1) that counsel unreasonably advised him that the District Court would apply any downward departure granted from his statutory maximum sentence, not his Guidelines range, which exceeded the statutory maximum; (2) that the District Court's plea colloquy did not disabuse him of counsel's misadvice; (3) that he was relying on counsel's misadvice regarding the downward departure point, not counsel's sentencing exposure estimate, in pleading guilty, with the hope of completing his sentence in time to experience the remainder of his son's childhood; and (4) that but for

counsel’s misadvice, he would have risked a substantial increase in sentencing exposure by entering an open plea or proceeding to trial.

Here, however, the question presented is not whether Erwin is entitled to relief but whether the District Court erred by not granting Erwin a hearing. If a Section 2255 movant alleges facts capable of satisfying each part of his theory, “a hearing must be held.” *United States v. Arrington*, 13 F.4th 331, 334 (3d Cir. 2021) (applying 28 U.S.C. § 2255(b)’s command that “the court shall . . . grant a prompt hearing” unless the movant’s claim is “conclusively” undermined by the record).

In my view, Erwin has met his limited burden at this stage.¹ Because the District Court erred in denying his claim without first holding a hearing, I would vacate the District Court’s order and remand.

* * *

The majority would affirm the denial of Erwin’s claim without a hearing because it views the District Court’s plea colloquy as sufficient to disabuse him of his counsel’s misadvice regarding the downward departure point. Yet the plea colloquy was silent as to the point from which a downward departure would be calculated, and in fact at sentencing over a year later, the government stated that

¹ We read *pro se* petitions such as Erwin’s “generously.” *United States v. Santarelli*, 929 F.3d 95, 103 (3d Cir. 2019) (citation omitted).

Erwin v. United States, No. 19-3849
Dissent

“because of the [statutory] cap . . . there may be some question as to where to start” its requested downward departure. A102. Thus, the plea colloquy could not have rendered harmless counsel’s erroneous advice to Erwin—and Erwin has *prima facie* satisfied Part 2 of the four aspects of his theory of harm—unless Erwin’s reliance on counsel was not with respect to his advice regarding the starting point of the downward departure but instead based solely on his estimate of a 120-month sentence. *See United States v. Shedrick*, 493 F.3d 292, 299 (3d Cir. 2007) (“we have long held that an erroneous sentencing prediction by counsel is not ineffective assistance of counsel where, as here, an adequate plea hearing was conducted” (collecting cases)). Only then would counsel’s error have been cured by the part of the colloquy that apprised Erwin of the District Court’s sentencing discretion and the 240-month maximum.

Erwin, however, plausibly contends in his *pro se* motion that he entered the plea agreement based on his understanding that “the statutory maximum sentence was effectively [his] Guidelines range, and a [Section] 5K1.1 downward departure would begin from that starting point.” A282. That contention is supported by his wife’s sworn declaration stating that counsel “always began his sentence analysis with a Guidelines range of 240 months, and would count down from that point.” A294. So for purposes of determining whether Erwin is entitled to a hearing, Erwin has *prima facie* established Part 3 of the four aspects of his theory of harm,

Erwin v. United States, No. 19-3849
Dissent

and we should assume then that Erwin pleaded in reliance on counsel’s advice regarding the downward departure point, not counsel’s sentencing prediction.

As to Part 1 of his theory of harm, Erwin plausibly alleges both that counsel represented to him that a downward departure would start from the mandatory maximum—he and his wife both attested to that advice²—and that counsel did so even though he had “no case law” to support his advice. A292. Counsel’s neglect was compounded by his failure to ensure pursuant to USSG § 5G1.1(a) that a downward departure would be applied starting from the mandatory maximum, *see United States v. Erwin*, 765 F.3d 219, 225–28 (3d Cir. 2014) (holding that Erwin’s appellate waiver barred his direct appeal of the downward departure point), as is now required under a decision that we issued after Erwin’s sentencing, *see United States v. Rivera Cruz*, 904 F.3d 324, 327 (3d Cir. 2018) (“a [Guidelines] range . . . that falls entirely *above* a statutory maximum will typically ‘drop[] out of the case’” (quoting *Koons v. United States*, 138 S. Ct. 1783, 1788 (2018) and citing USSG § 5G1.1(a)) (emphasis in original)).

And on Part 4, Erwin plausibly asserts that, but for his counsel’s misadvice, he would have gone to trial or entered an open plea in lieu of accepting the plea

² Erwin’s counsel, in an affidavit submitted along with the government’s answer to Erwin’s Section 2255 motion, does not deny that he advised Erwin that any downward departure would be applied from his statutory maximum sentence.

bargain. Even if going to trial or pleading openly would have almost certainly increased his sentencing exposure—amounting to “throwing a ‘Hail Mary’”—a criminal defendant can still be prejudiced by his counsel’s misadvice during plea bargaining if the defendant proves that he would have taken those odds but for his counsel’s error. *Lee v. United States*, 137 S. Ct. 1958, 1967 (2017).

Erwin claims he would have taken any risk necessary for the chance of obtaining a sentence that would see him released in time to experience the remainder of his son’s childhood. So he has adequately alleged that, had he known that the downward departure would start from the mandatory maximum—that the Guidelines range he was hoping for would have required an eight-level departure³—he would have pursued the “smallest chance of success” at trial or by pleading openly. *Id.* at 1966. After all, “calculation of the Guidelines range can rarely be shown not to affect the sentence imposed,” *United States v. Langford*, 516 F.3d 205, 213 (3d Cir. 2008), and the starting point of a downward departure is a key component of a Guidelines range calculation. Thus, Erwin has stated a *prima facie* claim that counsel’s error deprived him of his right to be “reasonably

³ A 120-month sentence, which would have seen Erwin released in time to experience the remainder of his son’s childhood, falls within the 108-to-135 month range associated with Offense Level 31 for Erwin’s Criminal History Category of I under the 2012 edition of the Sentencing Guidelines that applied to Erwin. U.S. SENT’G GUIDELINES MANUAL, Ch. 5 Pt. A (U.S. SENT’G COMM’N 2012). Erwin’s Offense Level was 39.

Erwin v. United States, No. 19-3849
Dissent

informed” of his chances of obtaining his desired result in entering the plea agreement. *United States v. Bui*, 795 F.3d 363, 367 (3d Cir. 2015).

* * *

I grant that Erwin would have had his work cut out for him in order to succeed on the merits of each of the four components of his theory of harm. Failure with respect to any one part would have meant denial of his claim for relief. His long odds of succeeding, however, should have been an indication that a hearing would have quickly uncovered any flaws in Erwin’s theory.

Because I would have remanded Erwin’s claim for a hearing on the merits, I respectfully dissent.

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHRISTOPHER ERWIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civ. No. 17-5156 (PGS)

OPINION

PETER G. SHERIDAN, U.S.D.J.

I. INTRODUCTION

Petitioner, Christopher Erwin, has filed a *pro se* motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. For the following reasons, this Court will deny the motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

Between 2009 to 2010, Petitioner and his co-defendants became a target of the Drug Enforcement Agency (“D.E.A.”) for their involvement in a large-scale drug trafficking organization. (*See* Crim. No. 12-364, Presentence Investigation Report. (“PSR”) at ¶ 34) Petitioner, who was identified as the leader of the drug trafficking organization, received oxycodone prescriptions from co-defendants Dr. Jaqueline Lopresti and Dr. Hassan Lahham. (*See* PSR at ¶¶ 35-36) The doctors provided Petitioner and his co-conspirators with these non-medically necessary prescriptions in exchange for cash. (*See id.* at ¶ 35) Petitioner alongside his co-defendants would then employ “runners” to fill the prescriptions at pharmacies which ultimately resulted in hundreds of thousands of tablets for distribution. (*Id.*) The oxycodone tablets were sold at a profit. (*Id.*)

The investigation also uncovered that Petitioner personally transported his co-defendants to physicians and pharmacies in furtherance of the drug conspiracy. (*See* PSR at ¶¶ 42-43) Petitioner provided the funds to fill the prescriptions as well as the payments to the prescription-writing doctors. (*See id.* at ¶¶ 43, 48) Petitioner also kept written records of customers he sent to the prescription-writing doctors as well as details of individual transactions with physicians, prescriptions provided and the pharmacy where the prescription was filled. (*See id.* at ¶ 45)

Ultimately, petitioner was arrested on May 11, 2011. (*See* PSR at ¶ 139) On May 24, 2012, Petitioner pled guilty by information to one count of knowingly and intentionally conspiring to distribute and possess with intent to distribute oxycodone, in violation of 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(C), 846. (*See* Crim. No. 12-364, ECF No. 283 at 24-29) On July 25, 2013, Petitioner stipulated to plead guilty to a superseding information charging him with one count of conspiracy to distribute oxycodone, in violation of 21 U.S.C. § 846(a)(1). (*Id.* at ECF No. 278)

Petitioner's plea agreement included, among other things, a stipulation waiving appeal and collateral attack, writ, or motion after sentencing. (*See* Crim. No. 12-364, ECF No. 274 at 4)

Prior to sentencing, the United States Probation Office prepared a PSR. The PSR calculated a 38-base offense level. (*See* Crim. No. 12-364, ("PSR") at ¶ 116) Petitioner also received a four-level increase pursuant to United States Sentencing Guidelines ("USSG") § 3B1.1(a) because he was the organizer and leader of an organization that involved more than five participants. (*Id.* at ¶ 117) The PSR then decreased the total offense level by two for acceptance of responsibility under § 3E1.1(a) and one level pursuant to § 3E1.1(b)(2). (*Id.* at ¶ 144) Thus, the PSR calculated a total offense level of 39. (*Id.* at 156) The PSR determined a criminal history score of 0 and a corresponding criminal history category of I. (*Id.* at ¶ 163) Petitioner's

total offense level and criminal history category resulted in a guideline imprisonment range of 262 to 327 months. (*Id.* at 187)

At Petitioner's sentencing hearing before District Judge Freda L. Wolfson on July 25, 2013, the Court granted the government's motion for substantial assistance pursuant to USSG § 5K1.1 which resulted in a five-level downward departure. (*See* Crim. No. 12-364, ECF No. 284 at 9-10) As a result of the five-level downward departure, Petitioner's sentencing range was 151 to 188 months. (*Id.* at 11) The Court sentenced Petitioner to a top-of-the guidelines-range 188 months sentence followed by three years of supervised release. (*Id.* at 34-35)

Shortly thereafter, Petitioner appealed his sentence to the United States Court of Appeals for the Third Circuit. *United States v. Erwin*, 765 F.3d 219 (3d Cir. 2014). The United States responded that Petitioner's case should be remanded for resentencing in light of Petitioner's breach of the plea agreement. *Id.* at 225. The Third Circuit rejected Petitioner's arguments for why the appellate waiver should not be upheld and held that specific performance in the form of resentencing was appropriate. *Id.* at 231-32. Petitioner's sentence was vacated and remanded for resentencing. *Id.* at 232.

On April 15, 2016, Petitioner appeared for resentencing before District Judge Peter G. Sheridan. (*See* Crim. No. 12-364, ECF No. 302) Petitioner received a two-level reduction in his guidelines offense level with regard to the amount of drugs involved as a result of the amendments to the U.S. Sentencing Guidelines since his first sentencing in 2013. (*Id.* at 2-3) Consequently, Petitioner's guidelines offense level was 37 and his criminal history category remained I. (*Id.* at 3) The government did not move for a downward departure as it did at Petitioner's first sentencing. (*Id.* at 4, 15) At resentencing, the government asked for a small variance, in the form of a twelve-month sentence increase. (*Id.* at 10-11) The Court sentenced

Petitioner to a low-end sentence of 200 months followed by three years of supervised release.
(*Id.* at 16-17)

After petitioner's resentencing, he filed a *pro se* § 2255 motion and a subsequent amended motion in this Court. (ECF Nos. 5, 10)¹ Petitioner raises the following claims in his petition.

1. "Counsel rendered ineffective assistance in advising Petitioner on acceptance of plea offer."
2. "Counsel rendered ineffective assistance ensuring that the terms of the plea agreement were fulfilled."
3. "The government breached the plea agreement."
4. "The government breached the plea agreement."

(ECF No. 10 at 3)

Respondent filed a response in opposition to petitioner's § 2255 motion. (ECF No. 14)

III. LEGAL STANDARD FOR § 2255 MOTION

A motion to vacate, set aside or correct a sentence of a person in federal custody pursuant to 28 U.S.C. § 2255 entitles a prisoner to relief if "the court finds . . . [t]here has been such a denial or infringement of the constitutional rights of the prisoner as to render judgment vulnerable to collateral attack." 28 U.S.C. § 2255(b). "In considering a motion to vacate a defendant's sentence, 'the court must accept the truth of the movant's factual allegations unless they are clearly frivolous based on the existing record.'" *United States v. Booth*, 432 F.3d 542, 545 (3d Cir. 2005) (quoting *Gov't of Virgin Islands v. Forte*, 865 F.2d 59, 62 (3d Cir. 1989)) (citing R. Governing § 2255 Cases R. 4(b)). A District Court "is required to hold an evidentiary

¹ Petitioner filed his final amended motion while the government's answer was pending. (ECF No. 10) Nonetheless, the government's answer addresses the arguments in Petitioner's most recent amendment. (ECF No. 14)

hearing ‘unless the motion and files and records of the case show conclusively that the movant is not entitled to relief.’” *Id.* (quoting *Forte*, 865 F.2d at 62). The Third Circuit has stated that this standard creates a “‘reasonably low threshold for habeas petitioners to meet.’” *Id.* (quoting *United States v. McCoy*, 410 F.3d 124, 134 (3d Cir. 2005) (quoting *Phillips v. Woodford*, 267 F.3d 966, 973 (9th Cir. 2001))). Accordingly, this Court abuses its discretion “if it fails to hold an evidentiary hearing when the files and records of the case are inconclusive as to whether the movant is entitled to relief.” *Id.* (citing *McCoy*, 410 F.3d at 134).

IV. DISCUSSION

Petitioner’s first two claims assert that trial counsel was ineffective. The Sixth Amendment guarantees effective assistance of counsel. In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court articulated the two-prong test for demonstrating when counsel is deemed ineffective. First, the petitioner must show that considering all of the circumstances, counsel’s performance fell below an objective standard of reasonableness. *See id.* at 688; *see also Grant v. Lockett*, 709 F.3d 224, 232 (3d Cir. 2013) (noting that it is necessary to analyze an ineffectiveness claim in light of all of the circumstances) (citation omitted). A petitioner must identify the acts or omissions that are alleged not to have been the result of reasonable professional judgment. *See Strickland*, 466 U.S. at 690. Under this first prong of the *Strickland* test, scrutiny of counsel’s conduct must be “highly deferential.” *See id.* at 689. Indeed, “[c]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* at 690. The reviewing court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Id.* at 689. If counsel makes “a thorough investigation of law and facts”

about his plausible options, the strategic choices he makes accordingly are “virtually unchallengeable.” *Gov’t of Virgin Islands v. Weatherwax*, 77 F.3d 1425, 1432 (3d Cir. 2006) (citing *Strickland*, 466 U.S. at 690-91). If, on the other hand, counsel pursues a certain strategy after a less than complete investigation, his choices are considered reasonable “to the extent that reasonable professional judgments support the limitations on investigation.” *Rolan v. Vaughn*, 445 F.3d 671, 682 (3d Cir. 2006) (citing *Strickland*, 466 U.S. at 690-91).

The second prong of the *Strickland* test requires the petitioner to affirmatively prove prejudice. *See* 466 U.S. at 693. Prejudice is found where “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Id.*; *see also McBride v. Superintendent, SCI Houtzdale*, 687 F.3d 92, 102 n.11 (3d Cir. 2012). “This does not require that counsel’s actions more likely than not altered the outcome, but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. The likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (internal quotation marks and citations omitted).

“With respect to the sequence of the two prongs, the *Strickland* Court held that ‘a court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.’” *Rainey v. Varner*, 603 F.3d 189, 201 (3d Cir. 2010) (quoting *Strickland*, 466 U.S. at 697). Additionally, “claims of ineffective assistance of appellate counsel are also governed by

the *Strickland* standard.” *Lusick v. Palakovich*, 270 F. App’x 108, 110 (3d Cir. 2008) (citing *United States v. Mannino*, 212 F.3d 835, 840 (3d Cir. 2000)).

A. Claims I and II – Ineffective Assistance of Counsel

Petitioner raises two ineffective assistance claims. In Claim I, Petitioner states that “[c]ounsel rendered ineffective assistance in advising Petitioner on acceptance of plea offer.” (ECF No. 10 at 15) In Claim II, Petitioner states “[c]ounsel rendered ineffective assistance ensuring that the terms of the plea agreement were fulfilled.” (*Id.* at 17)

The government responds that Petitioner represented that he understood the terms of his plea agreement both orally and in writing. (ECF No. 14 at 11) More specifically, Petitioner was aware that that he would receive a four-level increase as an organizer or leader of criminal activity and also that he was aware of the drug amount that resulted in a 38-base offense level. (*Id.* at 14) Further, they respond that the record reflects that Petitioner was well aware of his sentence exposure as it was articulated in the plea agreement as well as at his change of plea hearing. (*Id.* at 11)

Sentence Exposure

Petitioner submits that: counsel incorrectly advised him that his sentence exposure would probably be 120-months in light of Petitioner’s cooperation (ECF No. 10 at 23) as well as that counsel failed to investigate the facts of Petitioner’s case, particularly the amount of drugs involved and whether Petitioner had a leadership role. (ECF No. 10 at 19-20, 23)

A “defendant has the right to make a reasonably informed decision whether to accept a plea offer” and that “[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.” *United States v. Day*, 969 F.2d 39, 43 (3d Cir. 1992). The Third Circuit refrained from articulating a

precise “standard defense counsel must meet when advising their clients about the desirability of a plea bargain and, concomitantly, about sentence exposure.” *Id.* However, it acknowledged the importance of counsel’s “familiarity with the structure and basic content of the Guidelines.” *Id.*

In order to provide this necessary advice, counsel is required “to know [the applicable rules and guidelines] and the relevant [legal] precedent[.]” *United States v. Smack*, 347 F.3d 533, 538 (3d Cir. 2003). However, “an erroneous sentencing prediction by counsel is not ineffective assistance of counsel where . . . an adequate plea hearing was conducted.” *United States v. Shedrick*, 493 F.2d 292, 299 (3d Cir. 2007).

United States v. Bui, 795 F.3d 363, 367 (3d Cir. 2015).

At the guilty plea hearing, the Court engaged in an extensive colloquy with Petitioner about his level of satisfaction with his counsel as well as his understanding of the parameters of the plea agreement he was entering into. (ECF No. 283) The Court made a point of reviewing the sentence exposure associated with the offense which Petitioner was pleading guilty to.

Q. At this time, I’m going to advise you of the statute under which you have been charged and the maximum penalties that you face.

Title 21, United States Code, Section 846 states that:

“Any person who attempts or conspires to commit any offense defined in this subchapter, shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”

Then Title 21, United States Code, Section 8341(a)(1) provides as follows:

“Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance.”

The penalties are set forth in 841(b)(1)(C), and I’m now going to describe the maximum penalties for you:

It carries a statutory maximum penalty of 20 years imprisonment, a statutory maximum fine equal to the greatest of \$1 million, or twice of gross amount of any pecuniary gain that any persons derived from the offense, or twice the gross amount of any pecuniary loss sustained by any victims of the offense.

(ECF No. 283 at 15-16)

Further, the Court inquired of Petitioner's understanding of his particular sentence range as well as the potential effects of the as-of-then unprepared PSR on his sentence.

Q. At this time, I'm going to describe for you the Sentencing Guidelines:

First, however, do you understand that the United States Sentencing Guidelines are advisory and not mandatory?

A. Yes.

Q. Therefore, do you understand the Court can impose a sentence that is higher or lower than that recommended by the Guidelines?

A. Yes, I do.

Q. Are you aware that the Sentencing Guidelines take into account the actual conduct in which you engaged, considers the victims of your offense, the role that you played, and whether or not you have engaged in any obstruction of justice or have accepted responsibility for your acts?

A. Yes.

Q. Do you also understand that your criminal history is an important factor in applying the Sentencing Guidelines?

A. Yes, I do.

Q. Do you understand that until a Presentence Report is completed, it is impossible for either me or for your lawyer to know exactly what sentence range may be required by the Guidelines?

A. Yes.

Q. Do you also understand that it may be necessary to resolve disputed facts contained in the Presentence Report and that also may affect the applicable Guidelines and your sentence?

A. Yes.

Q. Have you discussed the Sentencing Guidelines with your attorney?

A. Yes, I have.

Q. Has he explained to you the various considerations that go into determining Guidelines shall be applied?

A. Yes.

Q. Has your attorney attempted to estimate for you what he thinks the Guidelines range may be in your case based on the information that he currently has?

A. No, just my score, the 39 and the 20 years maximum penalty.

Q. Well, in other words, he has estimated for you where he thinks-

A. I thought you mean estimate the amount of time I would get.

Q. No. He tried to estimate for you what he thinks the Guidelines range may be –

A. Yes.

Q. – based on the offense level.

A. Okay.

Q. Correct?

A. Yes.

Q. But do you understand, however, that at this point it may be impossible for him to make a completely accurate assessment as to the Guidelines range which will actually apply in your case because he does not yet have all the necessary information and has not seen the Presentence Report?

A. Yes.

(*Id.* at 18-20)

Even when a petitioner can demonstrate that his counsel was deficient in advising him as to a plea, he is still required to show that he was prejudiced by counsel's failure. "In order to

satisfy the ‘prejudice’ requirement, the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Here, the record reflects that in addition to the Court’s inquiry of Petitioner’s understanding of his sentence exposure, Petitioner signed a written plea agreement and Rule 11 form in advance of the guilty plea hearing. (*See* CR-12-364 ECF No. 274) Even if Petitioner was under the impression that he would only be sentenced to 120-months, the court’s colloquy eliminated any confusion. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977) (“Solemn declarations in open court carry a strong presumption of verity” creating a “formidable barrier in any subsequent collateral proceedings.”) Ultimately, the Court sentenced Petitioner in a manner that was consistent with the plea agreement, the government’s § 5K1.1 motion, and the warnings it provided at the guilty plea hearing. Notwithstanding, Petitioner’s disappointment with the court’s sentence, the record supports that Petitioner understood that he was subject to a sentence that could significantly exceed 120-months imprisonment. This Court will not address whether counsel’s performance was deficient, as Petitioner has not established any prejudice as a result of counsel’s representation.

Drug Quantity and Leader-Role Stipulations

Paragraph 2 of Petitioner’s Plea agreement provides the following stipulation-

The version of the United States Sentencing Guidelines effective November 1, 2011 applies in this case. The Guidelines dictate that, for calculation purposes, 1 gram of oxycodone is equivalent to 6700 grams of marijuana. U.S.S.G. § 2D1.1 n.10 (E). The parties agree that Christopher Erwin is responsible for approximately 6,912 g of oxycodone, which is the equivalent of 46,310 kg of marijuana. Accordingly, the applicable guidelines is U.S.S.G. § 2D1.1(c) (1). This guideline carries a Base Offense Level of 38.

(CR-12-364 ECF No. 274 at 8)

Further, the agreement contained a stipulation designating Petitioner as “an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” (*Id.*)

Petitioner argues that counsel’s failure to investigate the accuracy of the drug quantity that resulted in a 38-base offense level constituted ineffective assistance. (ECF No. 10 at 17) Further he describes counsel’s response to his request to investigate the issue as follows-

[Petitioner] noted that the reference to the drugs involved in the case was in weight, not numbers of pills, which made it difficult for him to determine the accuracy of the representation. His friend Michelle told him she believed the gram amount was extremely high and was inconsistent with her research, and she encouraged Erwin to ask Defense Counsel about it. His reaction was, ‘Jesus Christ. Chris, I’m saving you from life in prison and got you the 5K. Don’t make waves.’ Inasmuch as his friend Michelle did not have a law degree, while Defense Counsel had both a degree and years of experience, Erwin took his advice.

(*Id.* at 17-18)

The government asserts that Petitioner stipulated to the terms which he now challenges and that he should not be able to contest the accuracy of those stipulations. (*See* ECF No. 14 at 15)

Petitioner stipulated to the leader designation and the amount of drugs as reflected in his signed plea agreement. (*Id.* at 8) Although Petitioner now submits that he was concerned about the accuracy of the weight he stipulated to, he has not provided any facts to support his claim that the drug amount he stipulated to was inaccurate. To the extent that Petitioner may be arguing that the calculation may be inaccurate, this Court’s review of the applicable United States Sentencing Guidelines Drug Quantity Table reflects that the amount in question corresponds with a 38-base offense level. *See* U.S.S.G. §2D1.1(c)(1). Nor has Petitioner presented any facts

to support why a supervisor role was more appropriate than a leader role designation for sentence enhancement purposes. The record before the Court is bare of any substantiation. Petitioner's claims are purely speculative and fall short of meeting his burden of proof to establish ineffective assistance of counsel.

Accordingly, petitioner is not entitled to federal habeas relief on this claim.

B. Claim II – Failure to Ensure Government's Compliance with Unwritten Terms of the Plea Agreement

In Claim II, Petitioner asserts that counsel failed to ensure that the government's oral promises to render him any benefits from his cooperation was reduced to writing in the written plea agreement. (ECF No. 10 at 24-29)

He claims that:

At sentencing, Defense Counsel did nothing to bring to the Court's attention that the cooperation aspect of the plea agreement- which had not been disclosed to the Court prior to July 12, 2013, 5K1.1. motion (and which did not clearly notify the Court that the parties had failed to disclose the cooperation was part of the plea agreement instead of some post-plea 11th hour thing)- was predicated on a downward departure starting at the 240-month level.

...

As a material term of his cooperation agreement with the Government, Erwin told agents about a large-scale marijuana operation in New York, and its links to organized crime. Agents asked him to go to the location with them to identify it, but never followed up. The government has an obligation to deal with those to whom it had promised discretionary consideration for 5K1.1 departures in good faith, *Irwin*, supra, and Defense Counsel had a duty to Erwin to ensure that the government fulfilled its obligations so that Erwin could get as much credit for assistance as the quality of his information merited.

...

As for Defense Counsel's failure to advocate for the Government to proceed in good faith in permitting Erwin to cooperate fully,

Erwin was concerned from the outset that he lacked enough information on the conspiracy to obtain substantial credit. Had he been aware that Defense Counsel would not advocate for the Government to proceed in good faith, there is a reasonable probability that he would not have entered into the cooperation and plea agreement, and would have instead gone to trial.

(ECF No. 10 at 28-29)

At Petitioner's change of plea hearing, he engaged in the following colloquy with the Court prior to entering a guilty plea-

Q. That letter is supposed to set out all the bargains, benefits, things that flow to you in exchange for your willingness to plea guilty to the Information.

Do you feel that the plea bargain letter sets forth both accurately and completely all of the terms of the plea bargain as you understand it?

A. Yes.

Q. Do you have any questions at all that you wish to ask me or your attorney about what the plea bargain letter means or what any of the words or phrases in there mean?

A. No.

Q. Do you understand the terms of the plea agreement?

A. Yes.

Q. Has anyone made any other or different promises or assurances to you of any kind in an effort to induce you to enter a plea of guilty in this case?

A. No.

Q. Has anyone attempted in any way to force you to plead guilty in this case?

A. No.

(12-cr-364, ECF No. 283 at 11-12)

According to Petitioner, he was under the impression that he would receive the benefits of his cooperation in the form of a more favorable sentencing range. (*Id.* at 22) Petitioner concedes that he did not notice that the written plea agreement did not contain any information about a cooperation agreement, because he “barely skimmed it due to his severe attention deficit disorder being at an all-time high due to his depression.” (*Id.* at 19) More notably, Petitioner provides that the Assistant United States Attorney assigned to his case, explicitly told him that he would not be making any promises to Petitioner. (*Id.* at 18) This flies in the face of his own claim that he was induced to cooperate based on his reliance on the government’s oral promises. Nonetheless, prior to Petitioner’s sentencing, the government filed a motion for substantial assistance pursuant § 5K1.1. The sentencing judge granted the government’s motion, thereby resulting in a five-level downward departure in Petitioner’s offense level. *See United States v. Podlucky*, 2014 WL 7369841 at *6 (W.D. Pa. Dec. 29, 2014) (“[e]ven if Petitioner could establish that his counsel was ineffective for failing to seek the inclusion of such additional provisions, he cannot establish that he was prejudiced by counsel’s failure to do so.”)

Petitioner’s own statements to the Court at his guilty plea hearing as well as his concession that the prosecutor warned him that he was not going to make him any promises completely undermine the instant claim. Petitioner fails to show that he is entitled to relief on this ineffective assistance of counsel claim. Therefore, Petitioner is not entitled to relief on this claim.

C. Claims III and IV – Government Breached the Plea Agreement

In Claims III and IV, Petitioner claims that the government breached the plea agreement by asking the Court to apply the downward departure to a Guidelines range that did not apply to him. (ECF No. 10 at 30) Respondent argues that this claim should be denied because the waiver agreement bars this sort of claim, the Third Circuit addressed and denied this claim on direct appeal, and finally that the claim still fails on the merits. (ECF No. 14 at 24)

This Court agrees that Petitioner is simply relitigating a matter previously addressed by the Third Circuit Court of Appeals. *See Erwin*, 763 F.3d 219. On direct appeal, Petitioner argued that the district court erroneously applied the downward departure from the wrong offense level. *Id.* at 225. Petitioner now argues that the government’s breach resulted in the district court’s erroneous application. Nonetheless, the instant claims are essentially identical to those unsuccessfully raised on direct appeal. Moreover, the Third Circuit issued a thorough opinion before upholding the appellate waiver and remanding Petitioner’s case for re-sentencing. *See United States v. DeRewal*, 10 F.3d 100, 105, 106 n.4 (3d Cir. 1993) (“Many cases have held that Section 2255 generally may not be employed to relitigate questions which were raised and considered on direct appeal.”) (citations and internal quotation marks omitted)). Therefore, Petitioner is precluded from raising these claims in the instant motion.

Accordingly, Petitioner is not entitled to relief on this claim.

V. CERTIFICATE OF APPEALABILITY

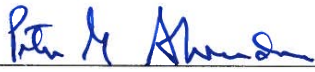
Pursuant to 28 U.S.C. § 2253(c), unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken from a final order in a proceeding under 28 U.S.C. § 2255. A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies

this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller–El v. Cockrell*, 537 U.S. 322, 327 (2003). Applying this standard, the Court finds that a certificate of appealability shall not issue on the claims.

VI. CONCLUSION

Petitioner’s claims are denied and the Court will not grant an evidentiary hearing. A certificate of appealability will not issue on these denied claims. An appropriate order will be entered.

DATED: September ²⁰₁, 2019


PETER G. SHERIDAN
United States District Judge

Appendix C

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : **CRIMINAL COMPLAINT**

v. :

Mag. No. 11-5017 (TJB)

CHRISTOPHER ERWIN,
JACQUELINE LOPRESTI,
HASSAN LAHHAM, et al. :

RECEIVED

MAY 9 - 2011

TONIANNE J. BONGIOVANNI
U.S. MAGISTRATE JUDGE

I, Mark Wassmuth, the undersigned complainant, being duly sworn, state that the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A.

I further state that I am a Special Agent with the United States Drug Enforcement Administration, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.

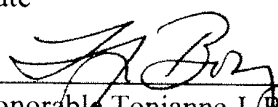


Mark Wassmuth, Special Agent
Drug Enforcement Administration

Sworn to before me and subscribed
in my presence,

May 9, 2011 _____ at
Date

Trenton, New Jersey _____
City and State



Honorable Tonianne J. Bongiovanni
United States Magistrate Judge

ATTACHMENT A

**Count One
(Drug Conspiracy)**

From in or about January 2009 to in or about December 2010, in the District of New Jersey, and elsewhere, the defendants,

**Christopher Erwin, Jacqueline Lopresti, Hassan Lahham, Ahmed Shaker,
Stephen Sampson, James Baker, Alex Bushman, Ray Difabio, Heather Dockery,
Wendy Galati, Edward Gural, Donald Johnson, Bryan Lewicki, Gregory Mann,
Gary Morrill-Carpenter, Carter Nies, Theodore Pohlig, Jonathan Puggi,
Henry Shubert, Jr., Kyle Skora, Crescenzo Terranova, and Robert Walton, III,**

did knowingly and intentionally conspire and agree with each other and with others to distribute and possess with intent to distribute oxycodone, a Schedule II controlled substance, contrary to Title 21, United States Code, Section 841(a)(1) and (b)(1)(C).

In violation of Title 21, United States Code, Section 846.

ATTACHMENT B

I, Mark Wassmuth, a Special Agent with the United States Drug Enforcement Administration ("DEA"), having conducted this investigation and discussed this matter with other law enforcement officers who have participated in the investigation, have knowledge of the facts set forth below. Because this affidavit is being submitted for the limited purpose of establishing probable cause, I have not included every detail of every aspect of the investigation. All conversations and statements described in this attachment are related in substance and in part and are not word-for-word transcripts or quotations.

THE CONSPIRACY

1. An investigation has uncovered that the DEFENDANTS¹ have been operating a large scale drug trafficking organization involved in the illegal distribution of oxycodone, a Schedule II controlled substance, throughout New Jersey and elsewhere. The investigation has revealed that from in or about January 2009 through in or about December 2010, the DEFENDANTS, working together and with others, have repeatedly fraudulently obtained large quantities of oxycodone by filling prescriptions, or having others fill prescriptions on their behalf, and then selling the oxycodone for money.
2. The investigation has uncovered that various physicians, including defendant LOPRESTI and defendant LAHHAM, have indiscriminately provided defendant ERWIN, the remaining defendants, and others, with prescriptions for oxycodone when there was no medical necessity in exchange for cash payments. The investigation has further revealed defendant ERWIN, the remaining defendants, and others, with the knowledge of defendant LOPRESTI and defendant LAHHAM, employed the customers to pose as "patients" and others to serve as "runners" to transport the customers to fill the prescriptions at numerous pharmacies so as to attempt to avoid detection. Defendant ERWIN, the remaining defendants, and others paid the customers and "runners" either in cash or with a portion of the oxycodone tablets that were obtained from the pharmacies. Defendant ERWIN, the remaining defendants, and others then resold the oxycodone tablets for a profit. In total, at least several thousand illegitimate and unlawful prescriptions were provided by defendant LOPRESTI and defendant LAHHAM and were filled by or at the behest of defendant ERWIN, the remaining defendants, and others which produced hundreds of thousands of oxycodone tablets for further distribution.
3. During the course of the investigation, law enforcement agents have spoken with various individuals who have acted as customers and "runners" for defendant ERWIN's drug trafficking organization, and who have extensive knowledge of the criminal activities of the DEFENDANTS, and their co-conspirators. In addition, law enforcement agents have reviewed (a) video recordings (i) of individuals providing illegitimate prescriptions, and (ii) of individuals,

¹Collectively, the 22 individuals named and identified as defendants in Attachment A and paragraph 4 of Attachment B will be referred to herein as the "DEFENDANTS."

including defendant ERWIN and some of the DEFENDANTS, at pharmacies to fill fraudulent prescriptions for oxycodone, as well as (b) consensually recorded transactions and conversations involving defendants ERWIN, LOPRESTI, LAHHAM, some of the DEFENDANTS, and others, in which they carried out aspects of the illegal scheme. Law enforcement agents have also reviewed records maintained in accordance with applicable law by dozens of pharmacies that document the criminal transactions of defendants ERWIN, LOPRESTI, LAHHAM, the remaining defendants, and others.

DEFENDANTS

4. At all times relevant to this Complaint:

a. **Defendant CHRISTOPHER ERWIN** (“ERWIN”) has held himself out as the owner of a landscaping company, when in reality he is unemployed and earning significant income only through a drug trafficking organization (hereinafter referred to as the “ERWIN Organization”) he leads and manages which has been engaged in the illegal trafficking of controlled substances, primarily oxycodone, a Schedule II controlled substance.

b. **Defendant JACQUELINE LOPRESTI** (“LOPRESTI”) has been a licensed Doctor of Osteopathy (“D.O.”) in the State of New Jersey and registered as a physician with the DEA, and thereby authorized to prescribe controlled substances. Defendant LOPRESTI provides medically unnecessary prescriptions for controlled substances, including oxycodone, for profit from an office in Little Silver, New Jersey, among other places.

c. **Defendant HASSAN LAHHAM** (“LAHHAM”) has been a licensed Doctor of Medicine (“M.D.”) in the State of New York and registered as a physician with the DEA, and thereby authorized to prescribe controlled substances. Defendant LAHHAM provides medically unnecessary prescriptions for controlled substances, including oxycodone, for profit, from offices in New York and at hotels and fast food restaurants in Atlantic City, New Jersey, among other places.

d. **Defendant AHMED SHAKER** (“SHAKER”) was an associate of defendant LAHHAM, who also worked as defendant LAHHAM’s driver, and unlawfully sold prescriptions for oxycodone to co-conspirators.

e. **Defendant STEPHEN SAMPSON** (“SAMPSON”) acted as defendant ERWIN’s partner and top associate in the ERWIN Organization. Defendant SAMPSON acquired oxycodone from defendants LOPRESTI and LAHHAM for further distribution, arranged for fraudulent prescriptions written by defendants LOPRESTI and LAHHAM to be filled in order to be distributed to others for profit, recruited others to fraudulently purport to be patients of defendants LOPRESTI and LAHHAM in order to acquire prescriptions for oxycodone which would then be filled and in turn, distributed for profit.

f. **Defendant JAMES BAKER** (“BAKER”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

g. **Defendant ALEX BUSHMAN** (“BUSHMAN”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM, had fraudulent prescriptions for oxycodone filled in his name, and recruited others to act as customers on behalf of the ERWIN Organization.

h. **Defendant RAY DIFABIO** (“DIFABIO”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

i. **Defendant HEATHER DOCKERY** (“DOCKERY”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and had fraudulent prescriptions for oxycodone filled in her name in order to acquire oxycodone for further distribution.

j. **Defendant WENDY GALATI** (“GALATI”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM, had fraudulent prescriptions for oxycodone filled in her name, and recruited others to act as customers on behalf of the ERWIN Organization.

k. **Defendant EDWARD GURAL** (“GURAL”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

l. **Defendant DONALD JOHNSON** (“JOHNSON”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

m. **Defendant BRYAN LEWICKI** (“LEWICKI”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

n. **Defendant GREGORY MANN** (“MANN”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

o. **Defendant GARY MORRILL-CARPENTER** (“MORRILL”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

p. **Defendant CARTER NIES** (“NIES”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM, had fraudulent prescriptions for oxycodone filled in his name, and recruited others to act as customers on behalf of the ERWIN Organization.

q. **Defendant THEODORE POHLIG** (“POHLIG”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

r. **Defendant JONATHAN PUGGI** (“PUGGI”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

s. **Defendant HENRY SHUBERT, Jr.** (“SHUBERT”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM, had fraudulent prescriptions for oxycodone filled in his name, and recruited others to act as customers on behalf of the ERWIN Organization.

t. **Defendant KYLE SKORA** (“SKORA”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM, had fraudulent prescriptions for oxycodone filled in his name, and recruited others to act as customers on behalf of the ERWIN Organization.

u. **Defendant CRESCENZO TERRANOVA** (“TERRANOVA”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM and had fraudulent prescriptions for oxycodone filled in his name in order to acquire oxycodone for further distribution.

v. **Defendant ROBERT WALTON, III** (“WALTON”) was a co-conspirator in the ERWIN Organization who acted as a customer to defendant LOPRESTI and defendant LAHHAM, had fraudulent prescriptions for oxycodone filled in his name, and recruited others to act as customers on behalf of the ERWIN Organization. See following chart for reference.

Defendant	Paragraphs
Erwin	<i>passim</i>
Lopresti	<i>passim</i>
Lahham	<i>passim</i>
Shaker	94, 95, 98, 101, 102, 104, 105, 108
Sampson	31, 35, 67, 68, 90, 92, 97, 98, 99, 105, 111
Baker	37, 40, 69, 90, 112
Bushman	34, 37, 38, 40, 41, 42, 68, 90, 113
DiFabio	30, 44, 69, 90, 114
Dockery	46 - 57, 69
Galati	39, 42, 68, 90, 115
Gural	34, 36, 69, 116
Johnson	36, 42, 69, 117
Lewicki	34, 36, 43, 69, 90, 118
Mann	10, 12, 14, 15, 16, 18, 19, 69, 70
Morrill	35, 38, 69, 90, 119
Nies	32, 33, 36, 68, 90, 120
Pohlig	38, 69, 121
Puggi	86, 87, 90, 122
Shubert	27, 28, 34, 44, 45, 68, 78, 90, 123
Skora	31, 68, 90, 124
Terranova	10, 69, 90, 125
Walton	31, 67, 68, 90, 126

CONTROLLED SUBSTANCES

5. The term “controlled substance” has the meaning given in Section 802(6) of Title 21, United States Code, that is, “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter.” *See also* 21 U.S.C. § 812. Schedule I drugs are those drugs with the most potential for abuse and addiction, with no medical use within the United States. Schedule II drugs are those drugs with the most potential for abuse and addiction, but with some medical use within the United States. Each subsequent Schedule lists those drugs with potential for abuse and addiction, with medical use within the United States.

6. Oxycodone is a Schedule II controlled substance and is the active controlled substance in Roxicet and Roxicodone (brand name drugs manufactured by Roxane Pharmaceuticals), Endocet and Percocet (brand name drugs manufactured by Endo Pharmaceuticals), and OxyContin (brand name drug manufactured by Purdue Pharma).

7. Under Title 21, United States Code of Federal Regulations (CFR), Section 1306.04(a), a prescription for a controlled substance must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. As a result, a doctor is not authorized to handle, distribute, and prescribe controlled substances, and is not prescribing them legally, if he or she is not acting in the usual course of professional practice and for legitimate medical purposes. In order to explain what the usual course of professional practice is in the area of pain medicine, I reviewed a good deal of the transcript of testimony of Dr. Andrew G. Kaufman, who testified at the trial of United States v. Jaszczult, Crim. No. 07-067 (Chesler, J.), as an expert witness for the prosecution. I will summarize portions of that testimony that are relevant to this application, and have provided transcript references/citations. Dr. Kaufman is the Director of Pain Medicine at the University of Medicine and Dentistry of New Jersey in Newark, NJ. He is board-certified by the American Board of Anesthesiologists, with a subcertification in pain medicine. He is the director of the University Hospital Comprehensive Pain Center (Tr. 1043). He previously testified as an expert witness in civil cases about four times. (Tr. 1045). He testified in substance and in part as follows:

a. When a doctor meets a patient for the first time, the doctor should take a complete history of the patient, including the location of the pain. The location is important because it will yield clues about the cause, and which tests to order, and which treatment and medications to provide often depends on the cause of the pain. (Tr. 1046-47).

b. One of the purposes of taking a complete history is to prevent a situation whereby a medication is prescribed that is contraindicated by the presence of another medical problem, which could be uncovered by taking that history. (Tr. 1048).

c. Another purpose of taking a complete history is to determine what treatment(s) might have been tried before, unsuccessfully, so that the doctor does not order the useless (or even dangerous or painful) treatment(s) again. (Tr. 1048).

d. After taking a full history, the next step would be a thorough examination, directed towards the specific problem being considered. (Tr. 1049).

e. The doctor should explore using physical therapy, a chiropractor, or even an acupuncturist, depending on the nature of the problem. In short, the doctor should treat the patient in a step-by-step organized fashion, instead of jumping around from one treatment to another haphazardly. (Tr. 1047-48).

f. Prescribing narcotic drugs or, for that matter any medication, without taking a full history and a thorough examination would be outside the usual course of professional practice. (Tr. 1048-50).

g. For example, a thorough examination of a patient who complains of back pain would involve observing the patient's position, e.g., bent over, rotation of back, hunched over, determining whether there are muscle spasms, tender points, movement (flexion), and conducting a motor and sensory examination. (Tr. 1049-50).

h. The doctor testified that he never examines a female patient alone, regardless of age. (Tr. 1050).

i. After eliciting the history and conducting the exam, the doctor should review whatever test results are available, e.g., MRI, X-ray, lab reports, and order any necessary tests that have not been done. (Tr. 1050).

j. Then the doctor will formulate a differential diagnosis, listing the most likely condition followed by less likely conditions, and develop a treatment program based on that diagnosis. (Tr. 1051).

k. For example, for low back pain, the accepted treatment course is to prescribe an anti-inflammatory drug and a program of physical therapy. (Tr. 1052).

l. Narcotic drugs are not prescribed early in the treatment algorithm (i.e., treatment plan or course of treatment). (Tr. 1054-55).

m. One reason for not prescribing narcotic drugs early is that the doctor should first choose drugs to prescribe to try to deal with the underlying cause of the problem, as opposed to the pain itself. (Tr. 1055).

n. For example, an anti-inflammatory drug would be used to reduce inflammation, which may be causing the irritation that may be causing the pain. A muscle relaxant would treat the muscle spasms that might be causing the pain. (Tr. 1055). A narcotic drug, on the other hand, masks the pain but does not treat the underlying cause of the pain. (Tr. 1055).

o. The general principles behind prescribing narcotic drugs are to prescribe short-acting drugs (meaning that they last 3-4 hours), e.g., Percoset, Vicodin, in as small a dosage as possible. A doctor would not prescribe at the outset a long-acting narcotic (meaning that the drug is designed to give a slow release to the patient throughout the entire day), e.g., OxyContin, at the outset, because the doctor does not know if the patient needs to be on that much medication. (Tr. 1055-56).

p. There are guidelines published concerning the proper use of these drugs by doctors. (Tr. 1057).

q. Although the guidelines come from different sources, e.g., the American Pain Society, the American Cancer Society, they are similar in that they all encourage taking full histories, performing exams, advising patients of side effects of drugs, starting with short-acting drugs at as low doses as possible, having frequent visits to monitor how the patient is doing, questioning the patient about side effects, effectiveness of the treatment, etc. (Tr. 1057-58).

r. New Jersey has guidelines for prescribing narcotic drugs, i.e., controlled substances, such as requiring that the person must be a patient, that the doctor must see the patient in the office, the doctor must keep a chart for the patient in the office, and must perform regular follow-up. (Tr. 1058-59).

s. The guidelines require the doctor to keep records of what was done during office visits and the doctor's thought process. (Tr. 1059).

t. Not following these guidelines would be outside the usual course of professional practice. (Tr. 1059-60).

u. Schedule II drugs (oxycodone) can be prescribed only for one month at a time, the prescriptions must be written, and no automatic renewals are allowed. (Tr. 1060).

v. There are multiple risks associated with patients taking narcotic drugs. There are many possible side effects, and the possibility of addiction and diversion (sharing the drug with someone else or selling it). (Tr. 1061-62).

w. It is standard practice to use an opioid contract, also known as a pain management agreement, which is an explicit agreement between a doctor and a patient, often in writing, that the patient will follow all the rules and regulations governing that drug. (Tr. 1062-64).

x. It may be dangerous for the doctor to continue to prescribe medications when the patient is not taking them properly or not taking them at all, because the doctor then is participating in the patient's addiction and not recognizing it, and may also become a "mark" for others to come see him or her to try to get narcotics from him or her. (Tr. 1066).

y. Part of the agreement requires the patient not to use other illegal controlled substances like marijuana or cocaine, due to potential interactions between drugs and the possibility of overdose. (Tr. 1068).

z. It is standard practice within the pain medicine community to use random urine drug tests. (Tr. 1068-69).

aa. The purpose of these tests is two-fold: to determine if the patient is using illegal controlled substances and also whether the patient is taking the prescribed drug(s) properly and as directed. (Tr. 1069).

bb. It is commonly part of the agreement not to share, trade, or sell the prescribed drugs, or to attempt to obtain them from another doctor. (Tr. 1070).

cc. A doctor can try to ensure that his or her patient does not obtain such drugs from another doctor by communicating with other doctors the patient has seen or will see. (Tr. 1070-71).

dd. The agreement normally advises patients that lost or stolen drugs will not be replaced, due to the danger of diversion. (Tr. 1071-72).

ee. Regular office visits are required so that the doctor can question the patient about, among other things, side effects, dosages, his/her physical conditions and health/physical problems, and examine the patient to determine, among other things, the success of the treatment(s). (Tr. 1073).

ff. Essentially, the doctor must monitor the patient's progress. Among other things, the doctor should be concerned that a patient is using the prescribed drug(s) at a higher rate than prescribed, because the patient may be putting him/herself at risk. (Tr. 1074).

CONFIDENTIAL SOURCES

8. Law enforcement agents have repeatedly spoken with multiple Confidential Sources who provided information regarding the drug trafficking activities of the DEFENDANTS, and others. These Confidential Sources identified the DEFENDANTS from observing a photographic image of DEFENDANTS shown to them by law enforcement agents. The information provided by the Confidential Sources has been corroborated throughout the course of this investigation by other independently reliable sources, such as surveillance, prescription records, and other Confidential Sources who provided substantially similar information.

Confidential Source Number 1

9. A Confidential Source (hereinafter "CS#1") was involved in the ERWIN Organization. At the direction of law enforcement agents, CS#1 acted as a customer for the purposes of the ERWIN Organization and accordingly visited defendant LOPRESTI from whom CS#1 secured medically unnecessary oxycodone prescriptions. At the direction of one of defendant ERWIN's co-conspirators (hereinafter, "Co-Conspirator#1" or "CC#1"), CS#1 visited various pharmacies in order to fill the medically unnecessary oxycodone prescriptions written by defendant LOPRESTI and thereafter provided the oxycodone tablets to CC#1. Additionally, CS#1 introduced an undercover law enforcement agent (hereinafter, "UC#1") to CC#1, and UC#1 also acted as a customer who secured medically unnecessary oxycodone prescriptions from defendant LOPRESTI. The process of carrying out the scheme to illegally acquire and distribute oxycodone is demonstrated in the following examples of such illegal transactions.

10. On or about May 4, 2009, CC#1 brought defendant MANN and CS#1 to defendant LOPRESTI's office. On the way, they stopped to pick up defendant TERRANOVA.

a. CC#1 stated that because this was the first time CC#1 was bringing defendant MANN and CS#1 to defendant LOPRESTI, defendant LOPRESTI required payment of \$500 (\$250 for each) in cash for their initial office visits. CC#1 advised that all subsequent office visits to defendant LOPRESTI to obtain prescriptions for oxycodone tablets would cost \$150.

b. Upon entering defendant LOPRESTI's office CC#1 placed paper U.S. Currency inside a paper bag that contained a blueberry muffin that CC#1 had brought to the office that day for defendant LOPRESTI. CC#1 placed the bag on a countertop near the receptionist's area, though there was no receptionist present that day. CC#1 stated that CC#1 brings defendant LOPRESTI muffins because defendant LOPRESTI has been very good to CC#1. CC#1 was not examined by defendant LOPRESTI that day.

c. Defendant LOPRESTI brought CS#1 into an examination room. CS#1 did not advise defendant LOPRESTI at any time that CS#1 currently experienced any pain, nor did defendant LOPRESTI inquire of such. Defendant LOPRESTI did not order any X-Rays, MRIs, or any

other medical testing for CS#1. Nonetheless, defendant LOPRESTI wrote a prescription for 120 oxycodone 30mg tablets and handed it to CS#1.

d. Defendant LOPRESTI similarly brought defendant MANN and defendant TERRANOVA into an examination room and defendant LOPRESTI provided each of them with prescriptions for 120 oxycodone 30mg tablets.

e. CC#1 then brought defendant MANN, defendant TERRANOVA, and CS#1 to a pharmacy in Old Bridge, New Jersey, where CC#1 provided approximately \$240 to each of them to have defendant LOPRESTI's prescriptions filled.

f. After returning from inside the pharmacy to the vehicle where CC#1 was waiting, defendant MANN, defendant TERRANOVA, and CS#1 gave their prescription bottles to CC#1 who emptied the contents of each into a larger bottle that CC#1 had brought. CC#1 advised that CC#1 carried a personal prescription bottle with CC#1's name on it in order to avoid being arrested if stopped by the police. CC#1 then provided defendant MANN and defendant TERRANOVA each 20 oxycodone 30mg tablets as payment for their assistance in securing the oxycodone. CS#1 declined to take any tablets by stating CS#1 only went along with defendant MANN that day to help defendant MANN. Defendant MANN then purchased an additional quantity of oxycodone tablets from CC#1 for \$14 to \$15 per tablet.

i. A review of the pharmacy records revealed that the prescriptions for oxycodone written by defendant LOPRESTI for defendant MANN, defendant TERRANOVA, and CS#1 on May 4, 2009, were filled on May 4, 2009.

11. On or about May 26, 2009, CC#1 transported CS#1 to the office of defendant LOPRESTI. On the way they stopped to pick up UC#1. The purpose of the visit was for CS#1 and UC#1 to obtain prescriptions from defendant LOPRESTI for 120 oxycodone 30mg tablets. The agreement was that CC#1 would give CS#1 and UC#1 each 20 oxycodone 30mg tablets as payment after having these prescriptions filled and turning them over to CC#1. UC#1 and CC#1 also agreed that UC#1 would purchase an additional 150 oxycodone 30mg tablets from CC#1 for a reduced price of \$14.50 per tablet. CS#1 and UC#1 were equipped with digital recorders and all of their conversations with defendant LOPRESTI and CC#1 were recorded. UC#1 was also equipped with a transmitting device so that law enforcement agents could monitor the conversation for UC#1's safety.

a. Prior to entering defendant LOPRESTI's office, CC#1 directed UC#1 to give CC#1 \$400 in cash so that CC#1 could pay defendant LOPRESTI for CS#1's and UC#1's office visit (\$250 for UC#1's first visit, \$150 for CS#1). CC#1 also directed UC#1 to tell defendant LOPRESTI that UC#1 had a back injury and to ask defendant LOPRESTI for a prescription for oxycodone tablets. CC#1 stated that on a previous occasion CC#1 had taken a female co-conspirator to defendant LOPRESTI who failed to follow CC#1's instructions to tell defendant

LOPRESTI that she had pain. CC#1 related that defendant LOPRESTI “freaked out” on CC#1 for bringing this individual to her office.

b. CC#1 also stated that CC#1 had to give CC#1’s partner, defendant ERWIN, \$1,000 to help pay for the office visits of co-conspirators with defendant LOPRESTI that week because defendant LOPRESTI was going away on vacation. As they were about to enter defendant LOPRESTI’s office, CC#1 identified a vehicle parked in the parking lot of defendant LOPRESTI’s office as belonging to defendant ERWIN.

c. While in defendant LOPRESTI’s office, CS#1 and UC#1 observed defendant ERWIN with a male co-conspirator, who later exited defendant LOPRESTI’s office together and departed in defendant ERWIN’s vehicle.

d. Once inside the waiting room of defendant LOPRESTI’s office, CC#1 placed U.S. Currency in a paper bag that contained a muffin CC#1 had purchased on the way to defendant LOPRESTI’s office. CC#1 walked up to the receptionist’s window, reached through the window, and placed the bag containing the currency on a countertop. Defendant LOPRESTI then took the bag away.

e. CC#1 told defendant LOPRESTI that CC#1 brought a new patient, UC#1, that day. Defendant LOPRESTI replied approvingly and brought UC#1 into an examination room. As instructed by CC#1, UC#1 informed defendant LOPRESTI that UC#1 had herniated disks from an old back injury. Defendant LOPRESTI asked UC#1 if UC#1 was on any medications and UC#1 replied negatively. Without conducting any sort of physical examination, except for listening to UC#1’s heartbeat and checking UC#1’s blood pressure, defendant LOPRESTI wrote a prescription to UC#1 for 120 oxycodone 30mg tablets.

f. Defendant LOPRESTI then brought CS#1 to an examination room. Defendant LOPRESTI did not ask any questions relating to the CS#1’s medical condition, and CS#1 never stated that CS#1 was experiencing any pain. Nonetheless, defendant LOPRESTI wrote a prescription for 120 oxycodone 30mg tablets and handed it to CS#1.

g. After leaving defendant LOPRESTI’s office, CC#1 brought CS#1 and UC#1 to a pharmacy. CS#1 and UC#1 went into the pharmacy, presented the prescriptions, and each obtained 120 oxycodone 30mg tablets. CS#1 and UC#1 turned over the tablets to CC#1 who gave CS#1 and UC#1 each 20 oxycodone 30mg tablets as payment. UC#1 then purchased an additional 150 oxycodone 30mg tablets from CC#1 at \$14.50 per tablet.

i. A review of the pharmacy records revealed that the prescriptions for oxycodone written by defendant LOPRESTI for CS#1 and UC#1 on May 26, 2009, were filled on May 26, 2009.

h. CC#1 told CS#1 and UC#1 that CC#1 would bring them to defendant LOPRESTI again in three weeks to obtain more oxycodone tablet prescriptions. CC#1 advised that CC#1 was going to sell the remaining oxycodone tablets to other drug buyers for a price up to \$25 per tablet.

12. In addition, on May 26, 2009, prior to picking up UC#1, CC#1 was recorded stating, in sum and substance, the following to CS#1:

a. CC#1 brings twelve other individuals to defendant LOPRESTI to obtain prescriptions for oxycodone tablets.

b. CC#1 has been bringing such individuals to defendant LOPRESTI four times a week for a year and a half without getting stopped by the police for not having a driver's license.

c. CC#1 stated that defendant ERWIN brings ten individuals a week to defendant LOPRESTI to obtain oxycodone prescriptions and makes \$20,000 a week selling the oxycodone tablets obtained through those prescriptions.

d. CC#1 was at one time helping defendant ERWIN make \$5,000 a week and only getting 20 oxycodone 30mg tablets per prescription as payment for the individuals brought to defendant LOPRESTI to obtain oxycodone prescriptions. This angered CC#1 so CC#1 decided to bring additional people to defendant LOPRESTI.

e. CC#1 was introduced to defendant LOPRESTI by defendant ERWIN.

f. CC#1 knows too much for defendant ERWIN to cut CC#1 out of the operation.

g. CC#1 and defendant ERWIN have another doctor in New York (referring to defendant LAHHAM) who also gives their people prescriptions for oxycodone tablets.

h. CC#1 has a customer who buys 70 oxycodone 30mg tablets every other day.

i. CC#1 explained that defendant LOPRESTI was loyal to defendant ERWIN and CC#1 and would "cut off" or stop prescribing oxycodone to the customers if the customers attempted to go to the office without the approval or knowledge of defendant ERWIN or CC#1, or if the customers started bringing other people.

j. Defendant ERWIN is having a sexual relationship with defendant LOPRESTI.

k. CC#1 will tell defendant MANN to give \$150 to CC#1 in order for CC#1 to get his prescription again, just as CC#1 did last Saturday on May 23, 2009. CC#1 does not want defendant MANN to go to defendant LOPRESTI without CC#1.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant MANN on May 23, 2009, was filled on May 23, 2009.

l. Defendant ERWIN is getting two thousand oxycodone tablets this week because he will be bringing co-conspirators to defendant LOPRESTI.

m. CC#1 complained that getting prescriptions everyday takes up all of CC#1's time.

13. On or about June 16, 2009, as promised by CC#1, CC#1 again brought CS#1 and UC#1 back to defendant LOPRESTI's office. UC#1 was equipped with a digital recorder and all of the conversations with defendant LOPRESTI and CC#1 were recorded.

a. After their arrival, CC#1, CS#1, and UC#1 attempted to enter defendant LOPRESTI's office, but defendant ERWIN blocked the doorway and prevented them from entering defendant LOPRESTI's office. Defendant ERWIN directed CC#1, CS#1, and UC#1 to wait outside until his people were finished receiving prescriptions from defendant LOPRESTI. CC#1, CS#1, and UC#1 then turned around, went outside and waited in UC#1's vehicle.

b. As they were waiting, CC#1 advised that CC#1 recognized six (6) people inside defendant LOPRESTI's waiting room who CC#1 described as some of the co-conspirators who defendant ERWIN personally handles. CC#1 opined that defendant ERWIN brings too many "scumbags" for defendant LOPRESTI to handle. CC#1 then advised that defendant ERWIN sent a text message directing CC#1 to wait until he leaves before entering defendant LOPRESTI's office. CC#1 preferred to wait outside than be inside defendant LOPRESTI's office with all of those "assholes." CC#1 subsequently recognized two more people walking towards the front door to defendant LOPRESTI's office as also being some of the co-conspirators who defendant ERWIN personally handles.

c. As defendant ERWIN exited, defendant ERWIN waved at CC#1, CS#1, and UC#1 in a manner indicating they could now enter defendant LOPRESTI's office. Defendant ERWIN and a male co-conspirator departed in the co-conspirator's vehicle.

d. CC#1, CS#1, and UC#1 then entered defendant LOPRESTI's office. A short time later, a male co-conspirator entered defendant LOPRESTI's office along with a female co-conspirator. CC#1 confronted the male co-conspirator and asked why he was there with the female co-conspirator. CC#1 and the male co-conspirator then went outside where they were observed engaging in conversation.

e. Defendant LOPRESTI brought CS#1 into an examination room. CS#1 complained of having a migraine headache. Defendant LOPRESTI provided Advil to CS#1 for the migraine headache and then wrote a prescription for 120 oxycodone 30mg tablets and gave it to CS#1. Defendant LOPRESTI did not ask at any time if CS#1 experienced any other pain or if CS#1

needed to continue taking oxycodone tablets. CS#1 did not advise defendant LOPRESTI, at any time, that CS#1 experienced any other pain.

f. Defendant LOPRESTI then brought UC#1 into an examination room and asked if UC#1 wanted a refill of the prescription for 120 oxycodone 30mg tablets she provided three weeks ago. UC#1 replied affirmatively and defendant LOPRESTI wrote a prescription for 120 oxycodone 30mg tablets for UC#1. Defendant LOPRESTI then walked out of the room while talking on a telephone. Approximately three minutes later, defendant LOPRESTI returned and UC#1 notified her that she misspelled UC#1's name. Defendant LOPRESTI wrote a second, corrected prescription for 120 oxycodone 30mg tablets and handed it to UC#1. At that point defendant LOPRESTI asked if UC#1 wanted her to check UC#1's blood pressure. UC#1 advised defendant LOPRESTI that UC#1 felt fine and a blood pressure check was unnecessary.

g. CC#1 directed CS#1 and UC#1 to follow CC#1 to a pharmacy in Old Bridge, New Jersey. On the way, CC#1 parked in a commuter parking lot and entered UC#1's vehicle. CC#1 advised that previously another co-conspirator saw a police officer taking pictures of CC#1's vehicle at the pharmacy and CC#1 did not want to take the vehicle there again in fear of being seen by the police.

h. As they continued to the pharmacy, CC#1 stated CC#1 just called defendant LOPRESTI and told her not to give the male co-conspirator the prescription. CC#1 also had spoken to the male co-conspirator who said defendant LOPRESTI only gave him a prescription for Percocet 5 mg and that he still wanted to go to defendant LOPRESTI with CC#1 on Saturday. CC#1 stated CC#1 would no longer take the male co-conspirator to defendant LOPRESTI because he tried to go around CC#1's back and get prescriptions without CC#1 or defendant ERWIN. CC#1 stated that the male co-conspirator claimed he was only taking his wife to defendant LOPRESTI.

i. An analysis of CC#1's cell phone toll records indicate that a short time after departing from defendant LOPRESTI's office with CS#1 and UC#1, CC#1 placed calls to defendant LOPRESTI's office phone number and defendant ERWIN's cell phone number, among others.

i. Prior to entering the pharmacy, CC#1 directed UC#1 to use UC#1's money to pay for the prescription and CC#1 would deduct it from the price of the tablets that CC#1 would sell back to UC#1. CS#1 and UC#1 then entered the pharmacy as CC#1 waited inside UC#1's vehicle. After having the prescriptions filled, CS#1 and UC#1 turned over the tablets to CC#1. CC#1 then gave them each 20 oxycodone 30mg tablets as payment for their efforts. UC#1 then purchased an additional 150 oxycodone 30mg tablets from CC#1 at a price of \$14.50 per tablet. After repeated attempts to purchase all of the oxycodone tablets from CC#1, CC#1 refused to sell the remaining 50 oxycodone tablets to UC#1. CC#1 stated CC#1 would sell these 50 tablets for \$25 apiece to other drug buyers.

i. A review of the pharmacy records revealed that the prescription for oxycodone written by defendant LOPRESTI for CS#1 on June 16, 2009, was filled on June 16, 2009. Despite the fact that UC#1 paid for and received the 120 oxycodone 30mg tablets prescribed to him by defendant LOPRESTI as well as a receipt for such purchase, all of which was turned over to law enforcement agents and entered into evidence, the pharmacy failed to maintain a record of its distribution of the narcotic oxycodone.

14. On or about June 25, 2009, during a consensually recorded telephone call between CS#1 and CC#1, CC#1 advised that defendant LOPRESTI directed CC#1 to have the customers refrain from parking their cars in her office parking lot. Defendant LOPRESTI wanted them to park their cars across the street in a shopping center and walk back to her office one person at a time. CC#1 further stated that defendant ERWIN had a prescription for 120 oxycodone 30mg tablets from defendant LOPRESTI for defendant MANN and that CC#1 would go to defendant ERWIN's house to pick it up.

15. On or about June 27, 2009, law enforcement agents met with CS#1 and equipped CS#1 with a digital recorder and followed CS#1 as CS#1 traveled with defendant MANN to CC#1's house. CC#1 gave defendant MANN a prescription written on June 22, 2009 by defendant LOPRESTI for defendant MANN for 120 oxycodone 30mg tablets and \$200 to have it filled. Defendant MANN then went to a pharmacy with CS#1, where he had the prescription filled. Defendant MANN and CS#1 returned to CC#1's house where defendant MANN received 20 oxycodone 30mg tablets as payment for filling the prescription and he purchased another 60 oxycodone 30mg tablets from CC#1 for \$14.50 each. CC#1 kept the remaining 40 oxycodone tablets. Defendant MANN stated to CS#1 that he was neither examined by defendant LOPRESTI nor did he ask defendant LOPRESTI to have this prescription renewed. Furthermore, defendant MANN stated that he did not give permission to defendant ERWIN or CC#1 to pick up this prescription from defendant LOPRESTI.

a. A review of the pharmacy records revealed that the prescription for oxycodone written by defendant LOPRESTI for defendant MANN on June 22, 2009, was filled on June 27, 2009.

16. In addition, on June 27, 2009, defendant MANN was recorded stating, in sum and substance, the following to CS#1:

a. Defendant MANN believed that defendant LOPRESTI must be breaking the law with all of the prescriptions for oxycodone she is writing, and he wondered how defendant LOPRESTI could get away with it without having proper patient medical records.

b. Defendant MANN had filled a prescription from defendant LOPRESTI with CC#1 two times previously.

c. Defendant MANN stated that if arrested, he would turn in defendant LOPRESTI to the police.

d. After filling the prescription but before returning to CC#1's house to receive a total of 80 oxycodone tablets, defendant MANN stated that what he was doing was illegal.

e. Defendant MANN stated that he hoped his buyers of the oxycodone tablets would not overdose and die like the pop singer Michael Jackson.

f. Defendant MANN advised that on the previous day, he purchased 70 oxycodone tablets from his Staten Island supplier for \$15 a pill and he complained that this supplier overcharged him by \$100.

17. On or about July 17, 2009, CC#1 provided CS#1 a prescription written on July 16, 2009, by defendant LOPRESTI for 120 oxycodone 30mg tablets in the name of CS#1. Under the supervision of law enforcement agents, CS#1 received a total of 100 oxycodone 30mg tablets from CC#1 related to this prescription. CS#1 did not ask defendant LOPRESTI for a renewal of this prescription and at no time did CS#1 meet with or have any conversation with defendant LOPRESTI regarding the medical necessity for the renewal of this prescription. CC#1 also provided the money to CS#1 to have the prescription filled at a pharmacy. CS#1 had the prescription filled and then turned over all of the 120 oxycodone 30mg tablets to CC#1 at which time CC#1 gave 20 oxycodone 30mg tablets to CS#1 as payment for filling the prescription. CS#1 then purchased, with DEA serialized buy money, 80 additional oxycodone tablets from CC#1 at the price of \$14.00 per tablet. CC#1 refused to sell the remaining 20 oxycodone tablets to CS#1.

a. A review of the pharmacy records revealed that the prescription for oxycodone written by defendant LOPRESTI for CS#1 on July 16, 2009, was filled on July 17, 2009.

18. On or about July 21, 2009, law enforcement agents met with CS#1 and equipped CS#1 with a digital recorder and followed CS#1 as CS#1 traveled with defendant MANN to CC#1's house. Once there CC#1 gave defendant MANN a prescription written on July 20, 2009, by defendant LOPRESTI for defendant MANN for 120 oxycodone 30mg tablets. CS#1 advised defendant MANN that CC#1 told CS#1 that if defendant MANN wanted to get oxycodone tablets manufactured by a different company, he should go to a pharmacy at another location. Defendant MANN advised CS#1 that he indeed wanted to get the other brand of tablets because those tablets would sell faster than those he received the last time from the last pharmacy used. Defendant MANN then went to the pharmacy recommended by CC#1. After filling the prescription, defendant MANN returned to CC#1's house where CC#1 gave 20 oxycodone 30mg tablets to defendant MANN as payment for filling the prescription and defendant MANN then purchased 80 oxycodone tablets at the price of \$14.00 each. CC#1 kept the remaining 20 oxycodone tablets.

a. A review of the pharmacy records revealed that the prescription for oxycodone written by defendant LOPRESTI for defendant MANN on July 20, 2009, was filled on July 21, 2009.

19. In addition, on July 21, 2009, defendant MANN was recorded stating, in sum and substance, the following to CS#1:

a. Defendant MANN, in reference to defendant LOPRESTI, wondered what kind of doctor would write prescriptions without seeing her patients.

b. Defendant MANN stated his belief that what defendant LOPRESTI was doing had to be illegal.

c. Defendant MANN wondered if defendant LOPRESTI cared about what she was doing.

d. Defendant MANN wondered if he could get into trouble for getting prescriptions filled in this manner and that doing this made him nervous.

e. Defendant MANN wondered who actually drives up to defendant LOPRESTI to pick up the prescriptions.

20. On or about July 28, 2009, in a consensually recorded telephone call, CC#1 advised CS#1 that defendant ERWIN would obtain a prescription for 120 oxycodone 30mg tablets from defendant LOPRESTI for UC#1. Two days later, on or about July 30, 2009, in a consensually recorded telephone call, CC#1 advised CS#1 that CC#1 had received the prescription for 120 oxycodone 30mg tablets from defendant LOPRESTI for UC#1. Under the supervision of law enforcement agents, CS#1 advised CC#1 that UC#1 was unavailable but CS#1 could pick up the prescription from CC#1 and give it to UC#1. CC#1 and CS#1 agreed that UC#1 would then take this prescription, fill it, turn over the 120 oxycodone 30mg tablets to CC#1, and that UC#1 would be able to buy the tablets back for \$14.00 per pill. CC#1 subsequently met with CS#1 at a local convenience store where CC#1 gave CS#1 the prescription from defendant LOPRESTI for 120 oxycodone 30mg tablets which was signed and dated July 28, 2009 by defendant LOPRESTI. At no time did UC#1 have any conversation with defendant LOPRESTI regarding the renewal of this prescription. CS#1 provided this prescription to law enforcement agents who entered the prescription into evidence.

Confidential Source Number 2

21. In or about October 2009, law enforcement agents identified and met with a source of information (hereinafter "CS#2") who identified Co-Conspirator #2 (hereinafter "CC#2"), Co-Conspirator #3 (hereinafter "CC#3"), and defendant ERWIN as partners in a large-scale drug trafficking organization distributing thousands of oxycodone tablets on a monthly basis. CS#2 met defendant ERWIN two years prior and began buying oxycodone tablets from him at that time. Defendant ERWIN introduced CS#2 to CC#3 who subsequently recruited CS#2 to pose as a patient to obtain medically unnecessary prescriptions for oxycodone tablets from defendant LAHHAM in New York City. CS#2 advised that defendant ERWIN transported CS#2 to defendant LAHHAM's office and CS#2 did receive these medically unnecessary prescriptions on

two occasions. In addition, CC#3 transported CS#2 to defendant LAHHAM's office and CS#2 did receive medically unnecessary prescriptions on two other occasions.

Confidential Source Number 3

22. In or about November 2009, law enforcement agents identified and met with a third Confidential Source (hereinafter "CS#3"). CS#3 advised that in May 2009, CC#2 and CC#3 recruited CS#3 to help their drug trafficking organization acquire oxycodone tablets for distribution through defendant LAHHAM. As with the other co-conspirators, CC#3 offered to take CS#3 to defendant LAHHAM and pay CS#3 with 20 tablets of oxycodone or cash if CS#3 would go to defendant LAHHAM and pose as a patient or to have fraudulent prescriptions for oxycodone in other people's names filled at various pharmacies. CS#3 agreed to take part in the scheme.

23. Shortly thereafter CC#3 transported CS#3 to defendant LAHHAM's office. CC#3 instructed CS#3 to tell defendant LAHHAM that CS#3 had back pain. Once there, CS#3 went into the examination room with defendant LAHHAM and CC#3. CS#3 stated that defendant LAHHAM asked no medical questions about CS#3's current medical condition or history and prescribed no medical testing or X-Rays. CS#3 witnessed CC#3 pay defendant LAHHAM approximately \$200 in cash after which defendant LAHHAM handed CS#3's prescription for 120 oxycodone 30mg tablets directly to CC#3. CS#3 was never examined by defendant LAHHAM again nor asked any questions by defendant LAHHAM regarding the necessity for being prescribed oxycodone tablets.

24. Subsequently, CS#3 went to defendant LAHHAM's office six (6) times to obtain prescriptions for oxycodone. CS#3 witnessed CC#3 in possession of four (4) prescriptions for oxycodone in CS#3's name that CC#3 had filled without CS#3 being present. CS#3 was paid with 10 or 20 oxycodone tablets each time CS#3 had a prescription from defendant LAHHAM filled and turned the tablets over to CC#3. CS#3 did this approximately 20 times under CS#3's own name and various other names between May 2009 and November 2009.

Confidential Source Number 4

25. In or about November 2009, law enforcement agents identified and met with a fourth Confidential Source (hereinafter "CS#4"). CS#4 advised that in May 2009, CC#3 offered to pay CS#4 \$200 to \$250 if CS#4 would take a prescription from defendant LAHHAM for 120 oxycodone 30mg tablets under CS#4's name or the names of other individuals to various pharmacies and hand over all of the tablets to CC#2 or CC#3. CS#4 accepted the offer. CS#4 admitted to filling defendant LAHHAM prescriptions approximately 16 to 20 times between May 2009 and November 2009. CS#4 was never examined by defendant LAHHAM. CS#4 advised that CC#3 told CS#4 that CC#2 and CC#3 sell the oxycodone tablets to their buyers for \$20 to \$25 apiece.

Confidential Source Number 5

26. In or about April 2010, law enforcement agents identified and met with a fifth Confidential Source (hereinafter "CS#5"). CS#5 advised that on or about April 6, 2010, defendant ERWIN recruited CS#5 to visit defendant LAHHAM in order to obtain a prescription for 120 oxycodone 30mg tablets. As with the other co-conspirators, defendant ERWIN offered to pay CS#5 with 20 tablets of oxycodone or cash. CS#5 agreed to take part in the conspiracy. Defendant ERWIN took CS#5 to a hotel in Atlantic City, New Jersey, where defendant LAHHAM met CS#5 inside a hotel room along with two (2) other of defendant ERWIN's co-conspirators.

27. Defendant LAHHAM gave CS#5 little, if any, medical examination. CS#5 stated defendant LAHHAM asked no medical questions about CS#5's current medical condition or history and prescribed no medical testing or X-Rays prior to writing a prescription for oxycodone for CS#5. Defendant ERWIN's associate, defendant SHUBERT, subsequently drove CS#5 to a pharmacy approximately forty (40) miles from CS#5's home and gave money to CS#5 to pay the pharmacist for the medically unnecessary oxycodone prescription from defendant LAHHAM. CS#5 gave all of the tablets to defendant SHUBERT, who then paid CS#5 with \$250 in cash.

28. On or about May 3, 2010, under the direction of law enforcement agents, CS#5 conducted consensually recorded telephone conversations with defendant ERWIN in which defendant ERWIN directed CS#5 to meet defendant SHUBERT who would give CS#5 an oxycodone prescription from defendant LAHHAM, which CS#5 had not requested, then transport CS#5 to a pharmacy, give money to CS#5 to pay for the tablets, and subsequently sell a quantity of the tablets back to CS#5. Law enforcement agents observed defendant SHUBERT meet with CS#5 and take CS#5 to a pharmacy where CS#5 filled the oxycodone prescription from defendant LAHHAM. The entirety of the transaction with defendant SHUBERT was recorded on a digital audio recorder. CS#5, who was constantly under close surveillance, subsequently returned and met with law enforcement agents and provided 30 oxycodone 30mg tablets to them which were then entered into evidence.

Other Surveillance of DEFENDANTS

29. On or about May 11, 2009, law enforcement agents conducted surveillance of defendant LOPRESTI's office. At approximately 4:25 p.m., defendant ERWIN and CC#1 arrived by vehicle in the parking lot of defendant LOPRESTI's office and followed by a second vehicle. Defendant ERWIN and CC#1 exited their vehicle and entered defendant LOPRESTI's office.

a. At approximately 4:30 p.m., a male co-conspirator exited the second vehicle and entered defendant LOPRESTI's office.

b. At approximately 4:49 p.m., CC#1 exited defendant LOPRESTI's office and entered the second vehicle. At approximately 4:53 p.m., the male co-conspirator exited defendant LOPRESTI's office and returned to the second vehicle.

c. At approximately 5:00 p.m., a second male co-conspirator, who had previously entered the office, exited defendant LOPRESTI's office and entered the driver's seat of the second vehicle. CC#1 then exited the second vehicle and entered defendant ERWIN's vehicle.

d. At approximately 5:31 p.m., defendant ERWIN and CC#1 departed in defendant ERWIN's vehicle.

e. At approximately 6:20 p.m., the second vehicle that previously left defendant LOPRESTI's office arrived at a pharmacy in Old Bridge, New Jersey.

f. At approximately 6:25 p.m., defendant ERWIN's vehicle arrived at the same pharmacy in Old Bridge, New Jersey. After exiting the vehicle, defendant ERWIN and CC#1 entered the pharmacy.

g. At approximately 6:32 p.m., defendant ERWIN and CC#1 exited the pharmacy and departed in defendant ERWIN's vehicle.

30. On or about May 14, 2009, law enforcement agents conducted surveillance of defendant LOPRESTI's office. At approximately 3:00 p.m., defendant LOPRESTI arrived and entered her office.

a. At approximately 4:05 p.m., CC#1 arrived with defendant DIFABIO and a female co-conspirator and entered defendant LOPRESTI's office.

b. At approximately 4:25 p.m., CC#1, defendant DIFABIO, and the female co-conspirator exited defendant LOPRESTI's office and departed in a vehicle.

c. At approximately 5:06 p.m., CC#1, defendant DIFABIO, and the female co-conspirator arrived at a pharmacy in Old Bridge, New Jersey, and entered the pharmacy together.

d. At approximately 5:20 p.m., CC#1, defendant DIFABIO, and the female co-conspirator exited the pharmacy and departed together in the same vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for the female co-conspirator on May 14, 2009, was filled on May 14, 2009, at the pharmacy in Old Bridge, New Jersey.

31. On or about May 18, 2009, law enforcement agents conducted surveillance at defendant LOPRESTI's office. At approximately 3:00 p.m., defendant LOPRESTI arrived and entered her office.

a. At approximately 3:12 p.m., defendant SAMPSON walked into defendant LOPRESTI's office with defendant WALTON, and a male co-conspirator.

b. At approximately 3:14 p.m., defendant ERWIN arrived at defendant LOPRESTI's office with his child and a male co-conspirator. As defendant ERWIN approached the doorway to defendant LOPRESTI's office, he shook hands with defendant SAMPSON who had exited the door.

c. At approximately 3:27 p.m., defendant SAMPSON, defendant WALTON, and the male co-conspirator exited defendant LOPRESTI's office, followed at approximately 3:44 p.m., by defendant ERWIN, his young child and his father.

d. At approximately 4:30 p.m., CC#1 arrived at defendant LOPRESTI's office driving a vehicle with defendant SKORA, a male co-conspirator and a female co-conspirator. CC#1, defendant SKORA, and the male and female co-conspirators entered defendant LOPRESTI's office.

e. At approximately 4:06 p.m., defendant SAMPSON and defendant WALTON arrived at a pharmacy in Old Bridge, New Jersey.

f. At approximately 5:20 p.m., CC#1, defendant SKORA, and the male and female co-conspirators exited defendant LOPRESTI's office and departed.

g. At approximately 5:56 p.m., CC#1, defendant SKORA, and the male and female co-conspirators arrived at and entered the same pharmacy in Old Bridge, New Jersey.

i. A review of the pharmacy records revealed that the prescriptions for oxycodone written by defendant LOPRESTI for defendants WALTON, SKORA, and the male co-conspirator who arrived with defendant ERWIN on May 18, 2009, were filled on May 18, 2009.

32. On or about November 24, 2009, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 12:09 p.m., defendant NIES entered defendant LOPRESTI's office.

b. At approximately 12:35 p.m., defendant NIES exited defendant LOPRESTI's office.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant NIES on November 24, 2009, was filled on November 24, 2009.

33. On or about December 15, 2009, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 11:40 a.m., defendant NIES entered defendant LOPRESTI's office.

b. At approximately 12:05 p.m., defendant NIES exited defendant LOPRESTI's office.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant NIES on December 15, 2009, was filled on December 15, 2009.

34. On or about December 22, 2009, law enforcement agents conducted surveillance of defendant LOPRESTI's office. At approximately 8:58 a.m., defendant LOPRESTI and her assistant arrived. Defendant SHUBERT, who had arrived previously, met defendant LOPRESTI and her assistant and held open the door as the three of them entered the building.

a. At approximately 9:22 a.m., defendant SHUBERT exited defendant LOPRESTI's office and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant SHUBERT on December 22, 2009, was filled on December 22, 2009.

b. At approximately 12:41 p.m., defendant BUSHMAN arrived and entered defendant LOPRESTI's office.

c. At approximately 12:53 p.m., defendant BUSHMAN exited defendant LOPRESTI's office and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant BUSHMAN on December 22, 2009, was filled on December 22, 2009.

d. At approximately 12:26 p.m., defendant LEWICKI arrived and entered defendant LOPRESTI's office.

e. At approximately 1:03 p.m., defendant LEWICKI exited defendant LOPRESTI's office and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant LEWICKI on December 22, 2009, was filled on December 22, 2009.

f. At approximately 1:23 p.m., defendant GURAL arrived and entered defendant LOPRESTI's office.

g. At approximately 1:37 p.m., defendant GURAL exited defendant LOPRESTI's office and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant GURAL on December 22, 2009, was filled on December 22, 2009.

35. On or about January 7, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office. At approximately 8:59 a.m., defendant LOPRESTI entered the office building.

a. At approximately 1:33 p.m., defendant SAMPSON, driving a vehicle known by law enforcement to belong to defendant ERWIN, dropped off defendant MORRILL near the door of defendant LOPRESTI's office building. After defendant MORRILL entered the building defendant SAMPSON drove across the street and parked in the parking lot of a pharmacy. Defendant SAMPSON exited the vehicle and entered the pharmacy. A short time later, defendant SAMPSON returned to the vehicle.

b. At approximately 1:44 p.m., defendant MORRILL exited the building and walked across the street to where defendant SAMPSON was waiting. Together they departed in the vehicle. At the request of law enforcement, an officer of the Little Silver Police Department performed a routine motor vehicle stop of the vehicle defendant SAMPSON was driving and requested the identification of the occupants. Defendants SAMPSON and MORRILL provided identification to the police officer of their true identities and they were permitted to drive away.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant MORRILL on January 7, 2010, was filled on January 7, 2010.

36. On or about January 12, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 12:41 p.m., defendant NIES entered defendant LOPRESTI's office.

b. At approximately 1:03 p.m., defendant NIES exited defendant LOPRESTI's office.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant NIES on January 12, 2010, was filled on January 12, 2010.

c. At approximately 1:22 p.m., defendants LEWICKI, JOHNSON, and GURAL entered defendant LOPRESTI's office.

d. At approximately 1:32 p.m., defendant LEWICKI exited defendant LOPRESTI's office.

e. At approximately 1:34 p.m., defendant GURAL exited defendant LOPRESTI's office and walked to defendant LEWICKI's car.

f. At approximately 1:37 p.m., defendant JOHNSON exited defendant LOPRESTI's office and walked to defendant LEWICKI's car, and the three departed in the vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendants LEWICKI, JOHNSON, and GURAL on January 12, 2010, were filled on January 12, 2010.

37. On or about January 19, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office. At approximately 9:23 a.m., defendant LOPRESTI entered the office building.

a. At approximately 10:43 a.m., defendant BUSHMAN and defendant BAKER entered the building together.

b. At approximately 10:49 a.m., defendant BUSHMAN exited the building and was observed talking on his cell phone; he re-entered the building at approximately 10:51 a.m.

c. At approximately 11:01 a.m., defendants BUSHMAN and BAKER exited the building and departed in defendant BUSHMAN's vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendant BUSHMAN and defendant BAKER on January 19, 2010, were filled on January 19, 2010.

38. On or about January 28, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office. At approximately 9:24 a.m., defendant LOPRESTI entered the office building.

a. At approximately 11:24 a.m., defendant BUSHMAN entered the building.

b. At approximately 11:37 a.m., defendant BUSHMAN exited the building and departed in his vehicle.

c. At approximately 12:28 p.m., defendant MORRILL entered the building.

d. At approximately 12:39 p.m., defendant MORRILL exited the building and departed in his vehicle.

e. At approximately 1:11 p.m., defendant POHLIG entered the building.

f. At approximately 1:24 p.m., defendant POHLIG exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendant MORRILL and defendant POHLIG on January 28, 2010, were filled on January 28, 2010.

39. On or about February 1, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 11:12 a.m., defendant GALATI arrived and entered the building.

b. At approximately 11:33 a.m., defendant GALATI exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant GALATI was filled on February 1, 2010.

40. On or about February 8, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office. At approximately 9:18 a.m., defendant LOPRESTI entered the office building.

a. At approximately 11:56 a.m., defendant BUSHMAN and defendant BAKER entered defendant LOPRESTI's office.

b. At approximately 12:09 p.m., defendant BUSHMAN and defendant BAKER exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendant BUSHMAN and defendant BAKER on February 8, 2010, were filled on February 8, 2010.

41. On or about February 12, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 2:37 p.m., defendant BUSHMAN and a male co-conspirator entered defendant LOPRESTI's office.

b. At approximately 2:48 p.m., defendant BUSHMAN and the male co-conspirator exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant BUSHMAN, which was dated February 11, 2010, was filled on February 14, 2010.

42. On or about February 18, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 11:44 a.m., defendant BUSHMAN and a male co-conspirator entered defendant LOPRESTI's office.

b. At approximately 12:19 p.m., defendant BUSHMAN and the male co-conspirator exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendant BUSHMAN and the male co-conspirator on February 18, 2010, were filled on February 19, 2010.

c. At approximately 1:52 p.m., defendant GALATI and a female co-conspirator entered defendant LOPRESTI's office.

d. At approximately 2:04 p.m., defendant GALATI and the female co-conspirator exited defendant LOPRESTI's office and departed in a vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendant GALATI and the female co-conspirator on February 18, 2010, were filled on February 18, 2010.

e. At approximately 2:27 p.m., defendant JOHNSON and two female co-conspirators entered defendant LOPRESTI's office.

f. At approximately 2:39 p.m., defendant JOHNSON and the two female co-conspirators exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendant JOHNSON and the two female co-conspirators on February 18, 2010, were filled on February 18, 2010.

43. On or about February 22, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 1:11 p.m., defendant LEWICKI entered defendant LOPRESTI's office.

b. At approximately 1:18 p.m., defendant LEWICKI exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant LEWICKI on February 22, 2010, was filled on February 22, 2010.

44. On or about March 8, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 10:08 a.m., defendant SHUBERT entered defendant LOPRESTI's office.

b. At approximately 10:13 a.m., defendant DIFABIO entered defendant LOPRESTI's office.

c. At approximately 10:21 a.m., defendant SHUBERT exited the building.

d. At approximately 10:35 a.m., defendant DIFABIO exited the building and departed with defendant SHUBERT in a vehicle.

i. A review of the pharmacy records revealed that prescriptions for oxycodone written by defendant LOPRESTI for defendant SHUBERT and defendant DIFABIO on March 8, 2010, were filled on March 8, 2010.

45. On or about June 14, 2010, law enforcement agents conducted surveillance of defendant LOPRESTI's office.

a. At approximately 10:17 a.m., defendant SHUBERT entered defendant LOPRESTI's office.

b. At approximately 10:28 a.m., defendant SHUBERT exited the building and departed in a vehicle.

i. A review of the pharmacy records revealed that a prescription for oxycodone written by defendant LOPRESTI for defendant SHUBERT on June 14, 2010, was filled on June 14, 2010.

Information from defendant DOCKERY

46. On or about March 4, 2010, defendant DOCKERY was interviewed by law enforcement agents. Defendant DOCKERY provided the following information in substance and in part:

47. Defendant DOCKERY stated that CC#1 asked if she wanted to earn money by obtaining prescriptions from defendant LOPRESTI, filling the prescriptions, and giving the tablets to defendant ERWIN and CC#1. Defendant DOCKERY agreed to participate in the scheme. CC#1 contacted defendant LOPRESTI and made an appointment for defendant DOCKERY and four (4) other people. CC#1 then drove defendant DOCKERY to defendant LOPRESTI's office where CC#1 gave defendant DOCKERY \$250 to pay defendant LOPRESTI for her first visit with defendant LOPRESTI. Defendant DOCKERY met with defendant LOPRESTI and defendant LOPRESTI gave defendant DOCKERY a prescription for 120 oxycodone 30mg tablets at that time. The other four (4) persons for whom CC#1 made an appointment were also present at defendant LOPRESTI's office, but they had been escorted there by another co-conspirator.

48. Thereafter, defendant DOCKERY was provided \$150 by CC#1 for all subsequent visits to defendant LOPRESTI to obtain prescriptions for 120 oxycodone 30mg tablets and/or prescriptions for 60 OxyContin 40 mg tablets.

49. CC#1 paid defendant DOCKERY \$500 each time defendant DOCKERY filled a prescription for 120 oxycodone 30mg tablets and transferred all of the tablets to defendant ERWIN or CC#1.

50. CC#1 paid defendant DOCKERY \$1,000 each time defendant DOCKERY filled defendant LOPRESTI prescriptions for both 120 oxycodone 30mg tablets and 60 OxyContin 40 mg tablets and transferred all of the tablets to defendant ERWIN or CC#1.

51. Defendant ERWIN created fraudulent MRI reports on his computer and gave one to defendant DOCKERY to give to defendant LOPRESTI. When defendant DOCKERY brought her own MRI to defendant LOPRESTI, defendant LOPRESTI stated to her, "I can't read films." Defendant DOCKERY told defendant LOPRESTI she wanted oxycodone because she was in a car accident in 2005. Defendant LOPRESTI did not give defendant DOCKERY a physical examination.

52. Defendant ERWIN and CC#1 took defendant DOCKERY to a pharmacy in Old Bridge, New Jersey to fill the prescriptions. Defendant ERWIN and CC#1 have an agreement with the pharmacy in Old Bridge, New Jersey, in which they overpay the pharmacy by approximately \$100 for each prescription in an attempt to avoid detection by law enforcement.

53. Defendant LOPRESTI directed defendant ERWIN to fill defendant LOPRESTI's prescriptions at the pharmacy in Old Bridge, New Jersey.

54. Defendant ERWIN pays defendant LOPRESTI a few thousand dollars up front to pay for the people defendant ERWIN sends to defendant LOPRESTI to obtain prescriptions for oxycodone tablets.

55. Defendant DOCKERY's brother and sister go to defendant LOPRESTI to obtain prescriptions for oxycodone tablets, which they subsequently sell throughout Ocean County, New Jersey.

56. Defendant ERWIN told defendant DOCKERY that he has a friend who is an Ocean County Sheriff's Officer who helps him and his drug trafficking associates avoid law enforcement.

57. Defendant DOCKERY also provided the names of multiple persons who are involved in the scheme directed by defendant ERWIN and defendant LOPRESTI and who have obtained prescriptions for oxycodone tablets from defendant LOPRESTI for the benefit of the ERWIN Organization.

a. A review of the pharmacy records revealed that during the five-month period between April 2009 and August 2009, defendant LOPRESTI prescribed to defendant DOCKERY approximately 23 prescriptions for oxycodone in generic and brand-name tablets.

Information from CC#1

58. In or about July 2010, CC#1 was arrested on a federal complaint charging distribution and possession with intent to distribute oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(C). CC#1 subsequently agreed to cooperate with law enforcement agents. CC#1 provided the following information in substance and in part:

Defendant ERWIN and the ERWIN Organization

59. CC#1 acknowledged that CC#1 had been working for and at the direction of defendant ERWIN and his co-conspirators in the course of the illegal activities of the ERWIN Organization. CC#1 has known defendant ERWIN for a number of years and reported that defendant ERWIN has been leading and managing a large-scale oxycodone distribution ring the entire time of their relationship.

60. Defendant ERWIN utilizes physicians throughout New Jersey and in New York to collect prescriptions for oxycodone for which there is no medical necessity. Among the physicians knowingly involved in this illegal distribution ring are defendant LOPRESTI and defendant LAHHAM. Defendant ERWIN visits these physicians himself and pays the physicians for the medically unnecessary oxycodone prescriptions in his name and in the names of other people, who may or may not be present. Defendant ERWIN acquires the oxycodone for further distribution.

61. Defendant ERWIN uses multiple vehicles, registered to him and others, to transport persons to and from the physicians for the medically unnecessary prescriptions and to various pharmacies in New Jersey and New York.

62. Defendant ERWIN provides the money to purchase the oxycodone based upon the medically unnecessary prescriptions, generally for 120 tablets at 30mg each, and pays the individuals either with cash or oxycodone tablets, thereby keeping the remainder, which he sells for \$12 to \$30 each.

63. Defendant ERWIN has transported CC#1 in multiple vehicles to various physicians and to the pharmacies afterwards. Moreover, defendant ERWIN trusted CC#1 and paid CC#1 to recruit and bring customers to defendant LOPRESTI as well as directed CC#1 when to transport customers to the physicians and the pharmacies and which customers to transport.

64. Defendant ERWIN keeps records in a notebook of the customers he sends to the various physicians, including defendant LOPRESTI and defendant LAHHAM. Specifically, defendant ERWIN tracks when a customer visits a particular physician, the prescription provided by the physician, the pharmacy where the prescription is filled, and when that same customer can return to the physician for another prescription. CC#1 admitted keeping similar records in a notebook, at defendant ERWIN's insistence, for those customers that defendant ERWIN directed CC#1 to manage.

65. Defendant ERWIN has no legitimate employment.

66. Defendant ERWIN's only source of income is the proceeds of the illegal trafficking of oxycodone that he leads and manages, but that he uses the proceeds of his illegal trafficking to purchase businesses in attempt to launder and legitimize these illegal proceeds and his lifestyle.

67. Shortly after joining the ERWIN Organization, CC#1 learned that defendant ERWIN's closest partners in the ERWIN Organization were defendant SAMPSON and defendant WALTON. Defendants SAMPSON and WALTON regularly recruited and transported people to defendant LOPRESTI and defendant LAHHAM to obtain prescriptions for oxycodone tablets and also transported these people to fill the prescriptions at pharmacies. Defendant ERWIN directed CC#1 on occasion to transfer money and oxycodone tablets CC#1 collected for defendant ERWIN to defendant SAMPSON. Defendants SAMPSON and WALTON also obtained prescriptions for themselves for oxycodone tablets from defendant LOPRESTI and defendant LAHHAM. CC#1's rank or position in the ERWIN Organization is equal to or immediately below defendants SAMPSON and WALTON.

68. The other ranking members of the ERWIN Organization include, but are not limited to, defendants BUSHMAN, GALATI, NIES, SHUBERT, SKORA. Similar to the roles of defendants ERWIN, SAMPSON, WALTON and CC#1, these other defendants all recruited and transported people to defendant LOPRESTI and to pharmacies for the benefit of the ERWIN

Organization. They collected the tablets from the co-conspirators and turned over the tablets to defendants ERWIN, SAMPSON, WALTON, or CC#1. Many of them also obtained prescriptions for themselves for oxycodone tablets from defendant LOPRESTI and defendant LAHHAM.

69. Based on CC#1's participation in and knowledge of the ERWIN Organization, CC#1 identified multiple other persons who have assisted the ERWIN Organization and personally benefitted by obtaining prescriptions for oxycodone tablets from defendant LOPRESTI, which include but are not limited to: defendants BAKER, DIFABIO, DOCKERY, GURAL, JOHNSON, LEWICKI, MANN, MORRILL, POHLIG, and TERRANOVA.

70. CC#1 indicated that in addition to bringing defendant MANN to defendant LOPRESTI for prescriptions, CC#1 also sold defendant MANN hundreds of oxycodone tablets. These transactions often occurred in defendant MANN's office above one of the two restaurants he operates in Surf City, New Jersey, and that defendant MANN would resell these tablets from his restaurants.

Defendant LOPRESTI

71. Defendant LOPRESTI is fully aware of the scope of the ERWIN Organization.

72. Defendant LOPRESTI regularly writes oxycodone prescriptions for persons who have no medical need for oxycodone and often writes prescriptions for persons without conducting a medical examination and without the persons being present.

73. Defendant ERWIN's co-conspirators did not need to make an appointment to see defendant LOPRESTI. CC#1 brought people to defendant LOPRESTI when her office was mainly open on Mondays, Tuesdays, and Thursdays. Defendant LOPRESTI did not require defendant ERWIN's co-conspirators to fill out any paperwork regarding their office visit. All payments were made with cash.

74. Defendant ERWIN directed CC#1 to bring defendant LOPRESTI bottles of wine, muffins, donuts, and to give defendant LOPRESTI extra cash from time to time for the office visits of the people CC#1 brought to defendant LOPRESTI's office for defendant ERWIN. Defendant ERWIN stated it was important for him to keep defendant LOPRESTI "happy."

75. On at least two (2) occasions, defendant ERWIN gave defendant LOPRESTI envelopes containing approximately \$5,000 in cash. Defendant ERWIN also gave CC#1 envelopes of money and directed CC#1 to give them to defendant LOPRESTI to pay for his co-conspirators' future office visits. On at least one occasion, CC#1 handed the envelope containing the cash to defendant LOPRESTI's secretary who provided a receipt to CC#1.

76. In fact, defendant LOPRESTI regularly accepted cash payments from CC#1 for the oxycodone prescriptions when CC#1 brought customers to defendant LOPRESTI's office, and even provided CC#1 with a receipt for the cash so CC#1 could provide the receipt to defendant ERWIN as proof that defendant LOPRESTI received the money.

77. Defendant ERWIN brought CC#1 to defendant LOPRESTI's home where defendant LOPRESTI wrote oxycodone prescriptions for five (5) persons not present. The names of these five (5) persons were provided by defendant ERWIN and defendant LOPRESTI handed all of the prescriptions to defendant ERWIN. Defendant ERWIN handed \$1000 in cash to defendant LOPRESTI as payment for the prescriptions.

78. On more than one occasion CC#1 met defendant LOPRESTI at the rest area on the Garden State Parkway near Exit 100 and also went to defendant LOPRESTI's home two (2) times to pick up prescriptions for the ERWIN Organization. On one occasion defendant LOPRESTI called CC#1 on the Friday of Labor Day weekend in 2009 and told CC#1 she needed to make some money and asked CC#1 if CC#1 could meet her at the rest area of the Garden State Parkway, and CC#1 agreed. At that time defendant LOPRESTI sold to CC#1 six (6) prescriptions for oxycodone tablets. CC#1 paid defendant LOPRESTI \$1,200 for the six (6) prescriptions, which defendant LOPRESTI wrote in the name of CC#1 and defendant SHUBERT and four other co-conspirators who were not present.

Defendant LAHHAM

79. In or about June 2009, defendant ERWIN directed CC#1 to go to a doctor in New York with his friends, CC#2 and CC#3, in order to obtain prescriptions for oxycodone tablets. Defendant ERWIN told CC#1 that he and CC#3 were friends from high school.

a. CC#1 met CC#2 and CC#3 at the rest stop near Exit 100 on the Garden State Parkway. Accompanying CC#2 and CC#3 were two (2) other female subjects, one of whom crushed and snorted 10 oxycodone 30mg tablets in front of the others that day.

b. CC#2 drove all of them in CC#2's vehicle to the office of defendant LAHHAM in New York. At defendant LAHHAM's office, CC#3 paid defendant LAHHAM \$200 to write a prescription for oxycodone tablets for CC#1. Defendant LAHHAM did not order any diagnostic tests, X-Rays, or an MRI for CC#1 before giving CC#1 the prescription. Defendant LAHHAM also provided prescriptions to the other persons present. They all subsequently traveled to a pharmacy where CC#3 paid for all of their prescriptions to be filled.

80. During the following months of July and August 2009, defendant ERWIN obtained prescriptions from defendant LAHHAM in CC#1's name for oxycodone tablets without CC#1's prior knowledge or consent. CC#1 nonetheless had these prescriptions filled at the direction of defendant ERWIN.

81. On or about June 11, 2010, defendant ERWIN transported CC#1 to visit defendant LAHHAM in a motel room in Atlantic City, New Jersey. Defendant LAHHAM gave CC#1 prescriptions for 120 oxycodone 30mg tablets.

82. Thereafter, CC#1 with the help of another co-conspirator (hereinafter, "CC#4")² recruited 6 people for defendant ERWIN to bring to defendant LAHHAM in order to obtain prescriptions for oxycodone tablets. CC#1 and CC#4 transported these people to a motel in Atlantic City, New Jersey, where they met defendant ERWIN. Defendant ERWIN then escorted these people to defendant LAHHAM's room where they received the medically unnecessary prescriptions.

83. On or about June 17, 2010, CC#1 and CC#4 again met defendant ERWIN in the parking lot of the same motel. CC#1 stayed in the car as defendant ERWIN escorted CC#4 to defendant LAHHAM's room. A short time later, CC#4 returned to the car with a prescription from defendant LAHHAM for 120 oxycodone 30mg tablets. CC#4 subsequently filled the prescription and kept 20 of the tablets. CC#1 and CC#4 sold the remaining 100 tablets to their buyers.

84. Defendant LAHHAM provided the people with a minimal exam consisting only of checking their blood pressure and listening to their heartbeat.

85. Defendant ERWIN informed CC#1 that his people would only need to see defendant LAHHAM one time and would not be required to go back again. Thereafter, defendant ERWIN or CC#1 could obtain the prescriptions directly from defendant LAHHAM for these people.

86. Among the people recruited by CC#1 to obtain medically unnecessary prescriptions from defendant LAHHAM was defendant PUGGI.

87. Defendant PUGGI revealed to CC#1 that he travels to Florida during the first week of each month to obtain oxycodone tablets from doctors and pharmacies and then transports the oxycodone tablets back to Ocean County, New Jersey. CC#1 previously knew that defendant PUGGI distributed oxycodone tablets to local drug traffickers and users.

88. Defendant ERWIN demanded a portion of the tablets as his payment for allowing CC#1 and CC#4 into the scheme with defendant LAHHAM. Typically, from the 120 oxycodone 30mg tablets obtained, 20 of the tablets went to the customer or co-conspirator for their participation, and defendant ERWIN, CC#1 and CC#4 would then split the remaining 100 tablets, with defendant ERWIN getting 50 tablets.

²In or about July 2010, CC#4 was arrested on a federal complaint charging conspiracy to distribute and possess with intent to distribute oxycodone, a Schedule II controlled substance, contrary to Title 21, United States Code, Section 841(a)(1) and (b)(1)(C), in violation of Title 21, United States Code, Section 846.

89. On or about July 3, 2010, defendant ERWIN informed CC#1 that he paid \$6,000 to defendant LAHHAM for 30 prescriptions for oxycodone tablets. CC#1 bought 4 prescriptions for 120 oxycodone 30mg tablets from defendant LAHHAM on the same date.

90. Based on CC#1's participation in and knowledge of the ERWIN Organization, CC#1 identified multiple other persons who have assisted the ERWIN Organization and personally benefitted by obtaining prescriptions for oxycodone tablets from defendant LAHHAM, which include but are not limited to: defendants SAMPSON, WALTON, BAKER, BUSHMAN, DIFABIO, GALATI, LEWICKI, MORRILL, NIES, PUGGI, SHUBERT, SKORA, and TERRANOVA.

Information from CC#2 and CC#3

91. In or about May 2010, CC#2 and CC#3 were arrested on a federal complaint charging conspiracy to distribute and possess with intent to distribute oxycodone, a Schedule II controlled substance, contrary to Title 21, United States Code, Section 841(a)(1) and (b)(1)(C), in violation of Title 21, United States Code, Section 846. CC#2 and CC#3 agreed to cooperate with law enforcement agents. CC#2 has provided the following information in substance and in part.

92. CC#2 was introduced to defendant LAHHAM approximately 18 months before his arrest by defendant ERWIN. On this first visit to defendant LAHHAM, CC#2 went with defendant ERWIN, CC#3, defendant SAMPSON, and other associates of defendant ERWIN. The purpose of this trip to defendant LAHHAM's office was to obtain prescriptions for oxycodone tablets. At the time defendant LAHHAM used offices in Brooklyn, New York and the Bronx, New York.

93. Defendant LAHHAM did not require CC#2 or any other person to have an X-Ray or MRI prior to prescribing oxycodone tablets. On the first visit defendant LAHHAM only listened to CC#2's heart, measured blood pressure, and asked CC#2 to bend over. Thereafter, CC#2 visited defendant LAHHAM and obtained a prescription for oxycodone every 21 to 30 days.

94. In or about July or August 2009, defendant SHAKER, who CC#2 knew as defendant LAHHAM's driver, asked CC#2 if CC#2 wanted to buy blank prescriptions with defendant LAHHAM's name on them. CC#2 agreed and purchased eight (8) blank prescriptions for \$100 each. CC#2 forged defendant LAHHAM's signature on each of the prescriptions to obtain 120 oxycodone 30mg tablets (a total of 960 oxycodone tablets).

95. CC#2 met defendant SHAKER monthly and obtained between four (4) and eight (8) prescriptions. Defendant SHAKER sometimes sold the prescriptions to CC#2 on credit for later payment.

96. During the third visit to defendant LAHHAM, CC#2 asked defendant LAHHAM to also write prescriptions for oxycodone tablets for people not present. Defendant LAHHAM agreed and wrote such prescriptions. CC#2 paid defendant LAHHAM \$200 for each of the 3 or 4

prescriptions written for people CC#2 knew but who were not present. CC#2 continued to visit defendant LAHHAM on a monthly basis to purchase oxycodone prescriptions for himself and other persons who were not present.

97. CC#2, together with CC#3 and their associates, including defendant SAMPSON and others filled the prescriptions CC#2 purchased from defendant LAHHAM at various pharmacies.

98. On occasion, CC#2 sold the blank prescriptions obtained from defendant SHAKER to defendants ERWIN and SAMPSON for \$500 each.

99. Eventually, defendant LAHHAM began primarily meeting with CC#2 and defendants ERWIN and SAMPSON, and others, at hotels and fast food restaurants in the area of Atlantic City, New Jersey.

100. On or about May 13, 2010, at the direction of law enforcement agents, CC#2 contacted defendant LAHHAM and asked to meet him in order to procure medically unnecessary prescriptions for oxycodone. CC#2 and defendant LAHHAM agreed to meet at a hotel in Atlantic City, New Jersey. CC#2, alone, met defendant LAHHAM at a coffee shop located at the hotel. During the meeting, CC#2 received 3 oxycodone prescriptions in the name of CC#2 and two other people who were not present, from defendant LAHHAM. These prescriptions were Official New York State Prescriptions in the name of defendant LAHHAM with his office's pre-printed address, on which defendant LAHHAM crossed out the pre-printed telephone number and handwrote his cell phone number, along with the handwritten DEA number assigned to defendant LAHHAM. Defendant LAHHAM did not charge CC#2 for the prescriptions at that time. CC#2 had been equipped with a digital recorder and all of the conversations with defendant LAHHAM were recorded. This transaction also was witnessed by several law enforcement agents.

101. After the meeting with defendant LAHHAM, CC#2 met with defendant SHAKER, defendant LAHHAM's driver/associate, outside of the same hotel. Defendant SHAKER sold 6 blank Official New York State Prescriptions in the name of defendant LAHHAM with his office's pre-printed address to CC#2. During this meeting, defendant SHAKER discussed his prior sale of five (5) blank prescriptions to CC#2 and CC#2's outstanding balance owed to defendant SHAKER. Defendant SHAKER charged CC#2 \$100 per blank prescription. CC#2 had been equipped with a digital recorder and all of the conversations with defendant SHAKER were recorded. This transaction also was witnessed by several law enforcement agents.

102. On or about May 21, 2010, at the direction of law enforcement agents, CC#2 called defendant SHAKER and asked whether defendant SHAKER could sell an entire prescription pad which consists of 100 individual prescriptions. Defendant SHAKER agreed and directed CC#2 to meet him at a hotel in Atlantic City, New Jersey. Defendant SHAKER subsequently met and sold 52 blank prescriptions in the name of defendant LAHHAM to CC#2 for \$700. Defendant SHAKER also gave CC#2 a slip of paper on which he had written, according to defendant

SHAKER, a medical licensing number assigned to defendant LAHHAM for CC#2 to give to a pharmacist if CC#2 was questioned regarding the authenticity of the prescription in the name of defendant LAHHAM. CC#2 had been equipped with a digital recorder and all of the conversations with defendant SHAKER were recorded. The video recording shows defendant SHAKER had what appeared to be an entire pad, which he broke in half and sold one half to CC#2. The audio recording confirms this transaction.

103. On or about May 25, 2010, at the direction of law enforcement agents, CC#2 contacted defendant LAHHAM and asked to meet him to purchase prescriptions. Defendant LAHHAM agreed to meet CC#2 and advised that he was staying at a hotel in Atlantic City, New Jersey. CC#2 subsequently met defendant LAHHAM at a coffee shop located in that hotel. During the meeting, CC#2 purchased 3 oxycodone prescriptions in the name of CC#2 and two other people who were not present, from defendant LAHHAM. These prescriptions were Official New York State Prescriptions in the name of defendant LAHHAM with his office's pre-printed address, on which defendant LAHHAM crossed out the pre-printed telephone number and handwrote his cell phone number, along with the handwritten DEA number assigned to defendant LAHHAM. During this meeting, defendant LAHHAM and CC#2 left the coffee shop and went to defendant LAHHAM's car in the parking garage to get more prescriptions because defendant LAHHAM had only one prescription with him initially. CC#2 paid \$200 to defendant LAHHAM at that time. CC#2 had been equipped with a digital recorder and all of the conversations with defendant LAHHAM were recorded.

104. A short time after meeting with defendant LAHHAM, CC#2 met with defendant SHAKER outside of the hotel. Defendant SHAKER discussed his prior sale of blank prescriptions in the name of defendant LAHHAM to CC#2 and CC#2's outstanding balance owed to defendant SHAKER. CC#2 had been equipped with a digital recorder and all of the conversations with defendant SHAKER were recorded. This transaction also was witnessed by several law enforcement agents.

105. On or about May 27, 2010, at the direction of law enforcement agents, CC#2 conducted consensually recorded telephone conversations with defendant SHAKER. Defendant SHAKER told CC#2 that "Stephen", known to CC#2 as defendant SAMPSON, had recently met with defendant LAHHAM and had purchased 20 medically unnecessary oxycodone prescriptions for \$2,000 in various people's names from defendant LAHHAM.

106. On this same date, defendant ERWIN contacted CS#5 and advised that he had a prescription from defendant LAHHAM for 120 oxycodone 30mg for CS#5 to have filled. Defendant ERWIN wanted to arrange for CS#5 to acquire the tablets for defendant ERWIN. CS#5 had no communication with defendant LAHHAM for the medical necessity of this prescription, nor had CS#5 requested the prescription.

107. On or about June 15, 2010, at the direction of law enforcement, CC#3 contacted defendant LAHHAM and asked to meet to purchase prescriptions. Defendant LAHHAM agreed and

advised that he was staying at a hotel in Atlantic City, New Jersey. CC#3 subsequently met defendant LAHHAM at a coffee shop located in the hotel. During the meeting, CC#3 purchased 5 prescriptions in the name of CC#3 and four other people who were not present, from defendant LAHHAM. These prescriptions were Official New York State Prescriptions in the name of defendant LAHHAM with his office's pre-printed address, on which defendant LAHHAM crossed out the pre-printed telephone number and handwrote his cell phone number, along with the handwritten DEA number assigned to defendant LAHHAM. CC#3 paid \$300 to defendant LAHHAM at that time. CC#3 had been equipped with a digital recorder and all of the conversations with defendant LAHHAM were recorded. This transaction also was witnessed by several law enforcement agents.

108. A short time after meeting with defendant LAHHAM, CC#3 met with defendant SHAKER outside of the hotel. Defendant SHAKER discussed his prior sale of blank prescriptions in the name of defendant LAHHAM to CC#2 and CC#2's outstanding balance owed to defendant SHAKER. Defendant SHAKER agreed to sell 12 blank prescriptions in the name of defendant LAHHAM. CC#3 paid \$200 to defendant SHAKER at that time for the 12 blank prescriptions. CC#3 had been equipped with a digital recorder and all of the conversations with defendant SHAKER were recorded. This transaction also was witnessed by several law enforcement agents.

Pharmacy Records

109. Pursuant to Title 21, United States Code, Section 821, *et seq.*, and Title 21, Code of Federal Regulations, Section 1301, *et seq.*, pharmacies are required to maintain records of all prescriptions they fill. During the course of this investigation, however, the investigation has uncovered that certain pharmacies fail to maintain such required records and so the data provided fails to capture all of the medically unnecessary prescriptions distributed by defendants LOPRESTI and LAHHAM. Nonetheless, a review of prescriptions filled at various pharmacies in New Jersey, has revealed that thousands of prescriptions for oxycodone, authorized by defendant LOPRESTI and LAHHAM, have been filled during the course of their criminal venture with defendant ERWIN and others. The following information is offered to provide a sampling of the medically unnecessary prescriptions that some of the DEFENDANTS have been able to secure from defendants LOPRESTI and LAHHAM.

110. Defendant ERWIN

a. In addition to the information detailed above, a review of the pharmacy records revealed that defendant LOPRESTI prescribed to defendant ERWIN a total of approximately 12 prescriptions in 5 months (once during January, March and June 2009; twice in May 2009; thrice in July 2009; and four times in April 2009) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant ERWIN a total of approximately 25 prescriptions in 16 months (once during January, June, August, October, December 2009,

February, March, May, September, November and December 2010; twice in May and July 2009, January, April and July 2010; and four times in March 2009) for oxycodone in generic and brand-name tablets.

111. Defendant SAMPSON

a. Defendant LOPRESTI prescribed to defendant SAMPSON a total of approximately 7 prescriptions in 6 months (once during February, March, April, May, and July 2009; and twice in August 2009) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant SAMPSON prescriptions for oxycodone approximately 33 times during the 20-month period between January 2009 and August 2010.

112. Defendant BAKER

a. Defendant LOPRESTI prescribed to defendant BAKER prescriptions for oxycodone approximately 40 times during the 17-month period between May 2009 and September 2010.

b. Defendant LAHHAM prescribed to defendant BAKER a total of approximately 11 prescriptions in 9 months (once during March, April, May, June 2009, and January, March and August 2010; and twice in July and December 2009) for oxycodone in generic and brand-name tablets.

113. Defendant BUSHMAN

a. Defendant LOPRESTI prescribed to defendant BUSHMAN a total of approximately 14 prescriptions in 10 months (once during March, April, May, June, July, October, November, and December 2009; twice in January 2010; and thrice in February 2010) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant BUSHMAN a total of approximately 17 prescriptions in 12 months (once during October 2009, January, April, May, June and August, September, October 2010; twice in December 2009, March and July 2010; and thrice in February 2010) for oxycodone in generic and brand-name tablets.

114. Defendant DIFABIO

a. Defendant LOPRESTI prescribed to defendant DIFABIO a total of approximately 3 prescriptions in 3 months (once during July and August 2009, and March 2010) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant DIFABIO a total of approximately 9 prescriptions in 8 months (once during December 2009, January, February, March, April, May, June 2010, and twice in July 2010) for oxycodone in generic and brand-name tablets.

115. Defendant GALATI

a. Defendant LOPRESTI prescribed to defendant GALATI a total of approximately 20 prescriptions in 14 months (once during March, June, July, August, October 2009, April, August and September 2010; and twice in May, December 2009, January, February, March and July 2010) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant GALATI a total of approximately 15 prescriptions in 12 months (once during February, March, May, June, July 2009, February, March, April, and September 2010; and twice in May and July, August 2010) for oxycodone in generic and brand-name tablets.

116. Defendant GURAL

a. Defendant LOPRESTI prescribed to defendant GURAL a total of approximately 20 prescriptions in 18 months (once during February, March, June, July, October, November, December 2009, and January, February, April, May, June, July, August, September, and November 2010, and twice in May and September 2009) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant GURAL a total of approximately 10 prescriptions in 10 months (prescriptions for oxycodone once during November and December 2009, and January, February, March, April, May, June, July, and August 2010) for oxycodone in generic and brand-name tablets.

117. Defendant JOHNSON

a. Defendant LOPRESTI prescribed to defendant JOHNSON a total of approximately 4 prescriptions in 3 months (once during January and February 2010, and twice in December 2009) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant JOHNSON a total of approximately 12 prescriptions in 10 months (once during December 2009, January, March, April, May, June, August, and September 2010, and twice in February and July 2010) for oxycodone in generic and brand-name tablets.

118. Defendant LEWICKI

a. Defendant LOPRESTI prescribed to defendant LEWICKI a total of approximately 8 prescriptions in 7 months (once during May, July, December 2009, and January, March, and April 2010; and twice in February 2010) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant LEWICKI a total of approximately 23 prescriptions in 18 months (once during May, June, July, October, December 2009, January, April, May, June, August, September, October, December 2010; and twice in January, March 2009, February, March, May 2010) for oxycodone in generic and brand-name tablets.

119. Defendant MORRILL

a. Defendant LOPRESTI prescribed to defendant MORRILL a total of approximately 9 prescriptions in 8 months (once during July, October, November, December 2009, and February, March, April 2010, and twice in January 2010) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant MORRILL a total of approximately 17 prescriptions in 14 months (once during June, July, September, December 2009, January, February, March, April, June, July, September 2010, and twice in October 2009, May and August 2010) for oxycodone in generic and brand-name tablets.

120. Defendant NIES

a. Defendant LOPRESTI prescribed to defendant NIES a total of approximately 11 prescriptions in 9 months (once during June, July, August, September, November, December 2009, and January 2010, and twice in April and May 2009) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant NIES a total of approximately 11 prescriptions in 10 months (once during April, July 2009, March April, May, June, August, September and October 2010; and twice in May 2009) for oxycodone in generic and brand-name tablets.

121. Defendant POHLIG

a. Defendant LOPRESTI prescribed to defendant POHLIG prescriptions for oxycodone approximately 42 times during the 13-month period between April 2009 and April 2010.

122. Defendant PUGGI

a. Defendant LOPRESTI prescribed to defendant PUGGI prescriptions for oxycodone approximately 48 times during the 14-month period between July 2009 and August 2010.

b. Defendant LAHHAM prescribed to defendant PUGGI a total of approximately 2 prescriptions in 2 months (once during June and August 2010) for oxycodone in generic and brand-name tablets.

123. Defendant SHUBERT

a. Defendant LOPRESTI prescribed to defendant SHUBERT a total of approximately 17 prescriptions in 16 months (once during July, August, September, October, November, and December 2009, and January, February and April, May, June, July, August, September, and October 2010, and twice in March 2010) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant SHUBERT a total of approximately 10 prescriptions in 7 months (once during January, February, May and June 2009; and twice in December 2009, March and July 2010) for oxycodone in generic and brand-name tablets.

124. Defendant SKORA

a. Defendant LOPRESTI prescribed to defendant SKORA a total of approximately 6 prescriptions in 6 months (once during April, May 2009, and April, May, June, and August 2010) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant SKORA a total of approximately 12 prescriptions in 11 months (once during April, September, October, November 2009, January, March, April, May, July and November 2010; and twice in February 2010) for oxycodone in generic and brand-name tablets.

125. Defendant TERRANOVA

a. Defendant LOPRESTI prescribed to defendant TERRANOVA a total of approximately 8 prescriptions in 7 months (once during March, April, June, July, August and September 2009; and twice in May 2009) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant TERRANOVA a total of approximately 22 prescriptions in 18 months (once during January, March, May, June, August, September, October 2009, March, April, May, June, July, August and September 2010; and twice in February, July, December 2009, and February 2010) for oxycodone in generic and brand-name tablets.

126. Defendant WALTON

a. Defendant LOPRESTI prescribed to defendant WALTON a total of approximately 7 prescriptions in 7 months (once during March, April, May, June, July, August, and September 2009) for oxycodone in generic and brand-name tablets.

b. Defendant LAHHAM prescribed to defendant WALTON a total of approximately 11 prescriptions in 10 months (once during July, December 2009, January, February, April, May, June, July, and September 2010 and twice in August 2010) for oxycodone in generic and brand-name tablets.

127. Law enforcement agents obtained partial pharmacy records for prescriptions written by defendant LOPRESTI from January 2009 through December 2010. Those records, which do not capture the full extent of defendant LOPRESTI's prescriptions, reveal that during that period approximately 375,360 tablets of oxycodone of various strengths were issued by pharmacies pursuant to approximately 5,066 prescriptions written by defendant LOPRESTI.

128. Law enforcement agents obtained partial pharmacy records for prescriptions written by defendant LAHHAM from January 2009 through December 2010. Those records, which do not capture the full extent of defendant LAHHAM's prescriptions, reveal that during that period more than 162,251 tablets of oxycodone of various strengths were issued by pharmacies pursuant to approximately 1,320 prescriptions written by defendant LAHHAM.

129. Based upon my review of these documents and my knowledge of the investigation to date, and consistent with the information provided by the Confidential Sources and Co-Conspirators about DEFENDANTS, I believe these prescriptions were fraudulently obtained, and were not medically necessary.

Appendix D



U.S. Department of Justice

United States Attorney
District of New Jersey

RJG/PL AGR
2010R00301

402 E. State St., Room 430
Trenton, NJ 08608

609-989-2190

March 26, 2012

James R. Murphy, Esq.
947 State Road
Suite 205
Princeton, NJ 08540

Re: Plea Agreement with Christopher Erwin

Dear Mr. Murphy:

Cr 12-364-01(FLW)

This letter sets forth the plea agreement between your client, Christopher Erwin, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Christopher Erwin to a one-count Information, to be filed in this district, which charges that Christopher Erwin did knowingly and intentionally conspire to distribute and possess with intent to distribute oxycodone, a Schedule II controlled substance, contrary to Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), in violation of Title 21, United States Code, Section 846. If Christopher Erwin enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Christopher Erwin for his participation in a conspiracy to distribute and possess with intent to distribute oxycodone from January 2009 through December 2010, as set forth more specifically in the Information. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Christopher Erwin may be commenced against him, notwithstanding the expiration of the limitations period after Christopher Erwin signs the agreement.

Sentencing

The violation of 21 U.S.C. § 846 to which Christopher Erwin agrees to plead guilty carries a statutory maximum prison sentence of 20 years, and a statutory maximum fine equal to the greatest of: (1) \$1,000,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Christopher Erwin is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Christopher Erwin ultimately will receive.

Further, in addition to imposing any other penalty on Christopher Erwin, the sentencing judge: (1) will order Christopher Erwin to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Christopher Erwin to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Christopher Erwin, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) may deny Christopher Erwin certain statutorily defined benefits, pursuant to 21 U.S.C. §§ 862 and 862a; and (5) pursuant to 21 U.S.C. § 841, must require Christopher Erwin to serve a term of supervised release of at least 3 years, which will begin at the expiration of any term of imprisonment imposed. Should Christopher Erwin be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Christopher Erwin may be sentenced to not more than 2 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Christopher Erwin by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Christopher Erwin's activities and relevant conduct with respect to this case.

Stipulations

This Office and Christopher Erwin agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Christopher Erwin from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Christopher Erwin waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

Christopher Erwin agrees that as part of his acceptance of responsibility and pursuant to 21 U.S.C. § 853, Christopher Erwin will consent to the entry of a forfeiture money judgment in the amount of \$1,000,000.00 in United States currency (the "Forfeiture Money Judgment"). Defendant acknowledges that the \$1,000,000 is subject to forfeiture as property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of a narcotics violation.

Payment of the Forfeiture Money Judgment shall be made by certified or bank check, with the criminal docket number noted on the face of the check, payable to the United States Marshals Service. On or before the date he enters his plea of guilty pursuant to this agreement, Christopher Erwin shall cause said check to be hand-delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102.

If the Forfeiture Money Judgment is not paid on or before the date Christopher Erwin enters his plea of guilty pursuant to this agreement, interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Furthermore, if Christopher Erwin fails to pay any portion of the Forfeiture Money Judgment on or before the date of his guilty plea, Christopher Erwin consents to the forfeiture of any other property alleged to be subject to forfeiture in the Information, including substitute assets, in full or partial satisfaction of the money judgment, and remains responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full.

Christopher Erwin agrees to consent to the entry of orders of forfeiture for the Forfeiture Money Judgment and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Christopher Erwin understands that the Forfeiture Money Judgment is part of the sentence that may be imposed in this case and

waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

Christopher Erwin hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense(s) may result in him being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense(s) regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

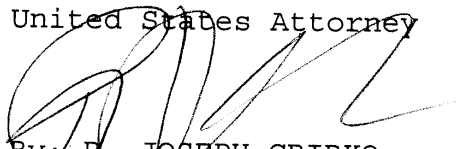
This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Christopher Erwin. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against Christopher Erwin.

No Other Promises

This agreement constitutes the plea agreement between Christopher Erwin and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: R. JOSEPH GRIBKO
Assistant U.S. Attorney

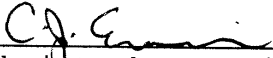
APPROVED:



Nelson S.T. Thayer, Jr.
Attorney In Charge, Trenton Office

I have received this letter from my attorney, James R. Murphy, Esq. I have read this letter. My attorney and I have discussed the letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. I understand the letter fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

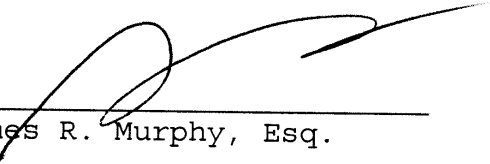
AGREED AND ACCEPTED:



Christopher Erwin

Date: 5-8-12

I have discussed with my client this letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. My client understands the letter fully and wants to plead guilty pursuant to this plea agreement.



James R. Murphy, Esq.

Date: 5/8/12

Plea Agreement With Christopher Erwin

Schedule A

1. This Office and Christopher Erwin recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Christopher Erwin nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Christopher Erwin within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and Christopher Erwin further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2011 applies in this case. The Guidelines dictate that, for calculation purposes, 1 gram of oxycodone is equivalent to 6700 grams of marijuana. U.S.S.G. § 2D1.1 n.10(E). The parties agree that Christopher Erwin is responsible for approximately 6,912 g of oxycodone, which is the equivalent of 46,310 kg of marijuana. Accordingly, the applicable guideline is U.S.S.G. § 2D1.1(c)(1). This guideline carries a Base Offense Level of 38.

3. Christopher Erwin was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. This results in an increase of 4 levels, pursuant to U.S.S.G. § 3B1.1 (a).

4. As of the date of this letter, Christopher Erwin has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Christopher Erwin's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

5. As of the date of this letter, Christopher Erwin has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Christopher Erwin enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in

addition Christopher Erwin's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, Christopher Erwin will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

6. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Christopher Erwin will be 39 (collectively, the "agreed total Guidelines offense level").

7. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

8. Christopher Erwin knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from a total Guidelines offense level of 39. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from a total Guidelines offense level of 39. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

9. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.

Appendix E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 12-364 (FLW)

1

UNITED STATES OF AMERICA	:	<u>TRANSCRIPT OF PLEA</u>
	:	
v.	:	
	:	<u>MAY 24, 2012</u>
CHRISTOPHER ERWIN,	:	
	:	
Defendant	:	
-----	:	

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FRED A L. WOLFSON, USDJ

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

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: R. JOSEPH GRIBKO, AUSA
On behalf of the Government

JAMES R. MURPHY, ESQUIRE
On behalf of the Defendant

* * * * *
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER
(609) 588-9516

C E R T I F I C A T I O N

PURSUANT TO SECTION 753, TITLE 28, USC, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court, defendant present.)

2 THE CLERK: All rise.

3 MR. GRIBKO: Good morning, your Honor.

4 Assistant United States Attorney Joseph Gribko
5 on behalf of the United States.

6 With me at counsel table is DEA Special Agent
7 Tim Beach.

8 MR. BEACH: Good morning, your Honor.

9 THE COURT: Good morning.

10 MR. MURPHY: Good morning, your Honor.

11 James R. Murphy representing Christopher Erwin
12 who is present to my right.

13 THE COURT: Thank you.

14 I understand that the parties have entered
15 into a plea agreement with regard to an Information
16 that is being filed against Mr. Erwin and that he
17 wishes to proceed with a Rule 11 hearing.

18 Is that correct, Mr. Murphy?

19 MR. MURPHY: That's correct, your Honor.

20 THE COURT: Would you please swear in the
21 defendant.

22 ///

23

24

25

1 **CHRISTOPHER ERWIN, sworn.**

2 **EXAMINATION BY THE COURT:**

3

4 Q. Mr. Erwin, do you understand that you are now
5 under oath and if you answer any of my questions
6 falsely your answers may later be used against you in
7 another prosecution for perjury or making a false
8 statement?

9 A. Yes.

10 Q. How old are you?

11 A. 48.

12 Q. What is your education?

13 A. Some college.

14 Q. Have you recently been treated for any mental
15 illness or addiction to narcotic drugs of any kind?

16 A. I've been treated for depression off and on most
17 of my adult life.

18 Q. Are you currently under treatment?

19 A. Yes.

20 Q. Are you taking any medications in that regard?

21 A. Lexapro, and I'm prescribed Valium, but I only
22 take it when I have a panic attack.

23 Q. In the last 24 hours, have you taken any drug,
24 any medication, or drunk any alcoholic beverage of any
25 kind?

1 A. I took Lexapro and Valium.

2 Q. When did you do so?

3 A. Last night before bed around 10 o'clock, 10:30.

4 Q. Do either of those drugs in any way impact your
5 ability to understand what we are doing here today?

6 A. No.

7 THE COURT: Mr. Murphy, you've had an
8 opportunity to speak with your client?

9 MR. MURPHY: Yes, we discussed that.

10 Actually, we went over the Rule 11 form. I've
11 added those drugs to the form, as well as discussed
12 whether it had any effect on him, and I'm convinced
13 they have no effect upon him, your Honor.

14 THE COURT: All right. I'll proceed.

15 BY THE COURT:

16 Q. Mr. Erwin, the oath that you have just taken
17 obliges you to provide me with truthful answers. So
18 if at any time you do not understand any question that
19 I ask you, let me know so I can try to make it clearer
20 for you.

21 So if you are at all uncertain about what I'm
22 asking, please speak up. Otherwise, I will assume you
23 understand my questions.

24 All right?

25 A. Okay.

1 Q. Have you received a copy of the Information that
2 is being filed against you, that is, the written
3 charge being made against you in this case?

4 A. Yes.

5 Q. Do you understand that the Information charges
6 essentially that from in or about January 2009,
7 through in or about December 2010, in Ocean County, in
8 the District of New Jersey, and elsewhere, that you
9 did knowingly and intentionally conspire to distribute
10 and to possess with intent to distribute oxycodone, a
11 Schedule II controlled substance, contrary to Title
12 21, United States Code, Sections 841(a)(1) and
13 (b)(1)(c), all in violation of Title 21, United States
14 Code, Section 846?

15 Do you understand the charge being made
16 against you in this case?

17 A. Yes.

18 Q. Have you fully discussed the charge and the case
19 in general with Mr. Murphy as your attorney?

20 A. Yes.

21 Q. Are you fully satisfied with the counsel,
22 representation, and advice given to you in this case
23 by Mr. Murphy?

24 A. Yes.

25 Q. Since this is proceeding by way of Information,

1 there are certain questions I'm going to ask you at
2 this time.

3 You have been charged with the commission of a
4 felony, but you have a constitutional right to be
5 charged by an Indictment of a grand jury. But you
6 could waive that right and consent to being charged by
7 Information of the United States Attorney.

8 Instead of an Indictment, this felony charge
9 against you has been brought by the United States
10 Attorney by the filing of an Information. Unless you
11 waive Indictment, you may not be charged with a felony
12 unless a grand jury finds by return of an Indictment
13 that there is probable cause to believe that a crime
14 has been committed and that you committed it.

15 If you do not waive Indictment, the government
16 may present the case to the grand jury and request it
17 to indict you. A grand jury is composed of at least
18 16 and not more than 23 persons and at least 12 grand
19 jurors must find that there is probable cause to
20 believe you committed the crime with which you are
21 charged before you may be indicted.

22 The grand jury might or might not indict you.
23 If you waive Indictment by the grand jury, the case
24 will proceed against you on the United States
25 Attorney's Information just as though you had been

1 indicted.

2 Mr. Erwin, have you discussed the matter of
3 waiving your right to Indictment by the grand jury
4 with your attorney?

5 A. Yes, I have, your Honor.

6 Q. Do you understand your right to Indictment by a
7 grand jury?

8 A. Yes.

9 Q. Have any threats or promises been made to induce
10 you to waive Indictment?

11 A. No.

12 Q. Do you wish to waive your right to Indictment by
13 a grand jury?

14 A. Yes.

15 THE COURT: Mr. Murphy, do you see any reason
16 why your client should not waive Indictment?

17 MR. MURPHY: No, I do not, your Honor.

18 THE COURT: At this time, if you have the
19 waiver of Indictment form, present it to your client.
20 If he agrees with it, he may sign it now in open
21 court.

22 MR. MURPHY: We have both signed the document,
23 your Honor.

24 THE COURT: Thank you. If you would hand it
25 up, please, Mr. Murphy.

1 (Document handed up to the Court.)

2 THE COURT: I find that the waiver is
3 knowingly and voluntarily made, it is accepted, and I
4 am now signing it as well, and we will proceed.

5 Thank you.

6 BY THE COURT:

7 Q. Mr. Erwin, is your willingness to plead guilty
8 the result of discussions that you or your attorney
9 have had with the attorney for the government?

10 A. Yes.

11 THE COURT: You may have a seat at this time.

12 Mr. Gribko, I would ask you to please
13 summarize the essential terms of the plea agreement.

14 MR. GRIBKO: Yes, your Honor.

15 The terms of the plea agreement are set forth
16 in a letter from my office to Mr. Murphy, dated March
17 26, 2012, supplemented by another letter of the same
18 date.

19 The gist of the plea agreement letter is that
20 if Mr. Erwin pleads guilty to the Information, which
21 has been provided to the Court, which provides that he
22 conspired to distribute oxycodone contrary to Title
23 21, United States Code, Sections 841(a)(1) and
24 (b)(1)(c), in violation of Title 21, Section 846, and
25 complies with the rest of the terms of the plea

1 agreement, the United States will not initiate any
2 further charges against Mr. Erwin for his
3 participation in the conspiracy to distribute and
4 possess with intent to distribute oxycodone from
5 January 2009 to December 2010.

6 The plea agreement has a Schedule A with
7 detailed Guideline stipulations and a waiver of appeal
8 if the sentence is within the Guideline level of 39.

9 The plea agreement also contains a substantial
10 forfeiture amount of a \$1 million money judgment.

11 That basically summarizes the plea agreement.

12 THE COURT: Thank you, Mr. Gribko.

13 Mr. Murphy, do you have the plea agreement at
14 counsel table?

15 MR. MURPHY: Yes, I have a copy of it, your
16 Honor.

17 THE COURT: If you would place that before
18 your client, please.

19 BY THE COURT:

20 Q. Mr. Erwin, you are being shown the plea bargain
21 letter in this case.

22 Have you read the entire plea agreement?

23 A. Yes.

24 Q. Have you had an opportunity to fully discuss the
25 agreement with your lawyer before you signed it?

1 A. Yes, I have.

2 Q. Please look at the agreement and let me know if
3 your signature appears there

4 A. Yes.

5 THE COURT: Mr. Murphy, does your signature
6 appear as defense counsel?

7 MR. MURPHY: Yes, your Honor.

8 THE COURT: Mr. Gribko, does a representative
9 of your office appear as well?

10 MR. GRIBKO: Yes, mine and my supervisor's.

11 THE COURT: Thank you.

12 BY THE COURT:

13 Q. Mr. Erwin, do you feel that with the
14 explanations and advice of your attorney that you
15 fully understand all of the terms of the plea bargain
16 letter?

17 A. Yes.

18 Q. That letter is supposed to set out all the
19 bargains, benefits, things that flow to you in
20 exchange for your willingness to plead guilty to the
21 Information.

22 Do you feel that the plea bargain letter sets
23 forth both accurately and completely all of the terms
24 of the plea bargain as you understand it?

25 A. Yes.

1 Q. Do you have any questions at all that you wish
2 to ask me or your attorney about what the plea bargain
3 letter means or what any of the words or phrases in
4 there mean?

5 A. No.

6 Q. Do you understand the terms of the plea
7 agreement?

8 A. Yes.

9 Q. Has anyone made any other or different promises
10 or assurances to you of any kind in an effort to
11 induce you to enter a plea of guilty in this case?

12 A. No.

13 Q. Has anyone attempted in any way to force you to
14 plead guilty in this case?

15 A. No.

16 Q. Are you pleading guilty of your own free will
17 because you are guilty?

18 A. Yes.

19 Q. Do you understand that the offense to which you
20 are pleading guilty is a felony offense?

21 A. Yes, I do, your Honor.

22 Q. If your plea is accepted, you will be adjudged
23 guilty of that offense and that adjudication may
24 deprive you of valuable civil rights, such as the
25 right to vote, the right to hold public office, the

1 right to serve on a jury, and the right to possess any
2 kind of firearm.

3 Do you understand those consequences?

4 A. Yes.

5 Q. Your plea agreement also provides that under
6 certain circumstances you are waiving or giving up
7 your right to file an appeal or collaterally attack
8 the sentence imposed in this case.

9 Are you familiar with those circumstances?

10 A. Yes.

11 Q. They are set forth in your plea agreement and in
12 Schedule A to the plea agreement, and I'm going to ask
13 you some questions in that regard at this time.

14 Are you aware that the law permits every
15 defendant, such as yourself, as well as the
16 government, to file an appeal of your sentence if
17 either you or the government believe that there had
18 been an error?

19 A. Yes.

20 Q. Do you also know that you have a right, if you
21 believe there has been an error, to file a collateral
22 challenge to your conviction or sentence under 28
23 U.S.C., Section 2255?

24 A. Yes.

25 Q. Do you understand that you give up your right to

1 appeal or otherwise challenge your sentence in the
2 situations set forth in your plea agreement?

3 A. Yes.

4 Q. Specifically, do you understand that if I impose
5 a term of imprisonment that falls within or below the
6 Guideline ranges set forth in Schedule A of your plea
7 agreement, and specifically that references a
8 Guideline offense level of 39, that you cannot appeal
9 challenging your sentence?

10 A. Yes, I do, your Honor.

11 Q. Do you also understand that if I impose a term
12 of imprisonment within or below those ranges by
13 whatever Guideline analysis I think appropriate, you
14 will not be able to file an appeal, a Section 2255
15 petition, writ, motion, or collateral attack
16 challenging your term of imprisonment or any other
17 aspect of your sentence?

18 A. Yes.

19 Q. Do you understand that your plea agreement only
20 allows you to challenge your sentence if I impose a
21 prison term that is above those ranges or to challenge
22 my determination of your criminal history category?

23 A. Yes.

24 Q. Do you understand that the United States cannot
25 appeal if your prison sentence is within or above the

1 range that results from a Guideline offense level of
2 39?

3 A. Yes.

4 Q. Do you understand that neither you nor the
5 United States can appeal claiming that I should not
6 have accepted your stipulations in the plea agreement?

7 A. I do have a question, to the last question.

8 Q. Yes.

9 A. So they could appeal it if you go below the
10 range but not above the range?

11 Q. Right, they cannot appeal if it's within the
12 range or above, but they could appeal if it's below.

13 A. Okay. I understand.

14 Q. All right.

15 Did you discuss with your attorney this waiver
16 of appeal and waiver of your right to file a
17 collateral attack?

18 A. Yes.

19 Q. Are you satisfied with the explanations that he
20 has provided to you?

21 A. Yes.

22 Q. At this time, I'm going to advise you of the
23 statute under which you have been charged and the
24 maximum penalties that you face.

25 Title 21, United States Code, Section 846

1 states that:

2 "Any person who attempts or conspires to
3 commit any offense defined in this subchapter, shall
4 be subject to the same penalties as those prescribed
5 for the offense, the commission of which was the
6 object of the attempt or conspiracy."

7 Then Title 21, United States Code, Section
8 8341(a) (1) provides as follows:

9 "Except as authorized by this subchapter, it
10 shall be unlawful for any person knowingly or
11 intentionally to manufacture, distribute, or dispense,
12 or possess with intent to manufacture, distribute, or
13 dispense a controlled substance."

14 The penalties are set forth in 841(b)(1)(C),
15 and I'm now going to describe the maximum penalties
16 for you:

17 It carries a statutory maximum penalty of 20
18 years imprisonment, a statutory maximum fine equal to
19 the greatest of \$1 million, or twice of gross amount
20 of any pecuniary gain that any persons derived from
21 the offense, or twice the gross amount of any
22 pecuniary loss sustained by any victims of the
23 offense.

24 In addition, any fines in excess of \$2500
25 imposed by the Court are subject to the payment of

1 interest.

2 You will also be ordered to pay a mandatory
3 special assessment of \$100 for the single count of
4 conviction, which must be paid on or before the date
5 of sentencing.

6 You may be ordered to give notice to any
7 victims of your offense.

8 You may be ordered to pay restitution to any
9 victims.

10 You may be denied certain statutorily defined
11 benefits pursuant to Sections 862 and 862(a) of Title
12 21.

13 In addition, the Court must impose a term of
14 supervised release of at least three years, which
15 would begin at the expiration of any term of
16 imprisonment imposed.

17 And if you are placed on a term of supervised
18 release and you subsequently violate any of the
19 conditions of that release before the term expires,
20 you may be sentenced to not more than two years
21 imprisonment in addition to any prison term previously
22 imposed and in addition to the statutory maximum term
23 of imprisonment that I have just outlined for you, and
24 in addition you may be required to serve an additional
25 term of supervised release.

1 Do you understand the penalties that you face?

2 A. Yes, I do, your Honor.

3 Q. At this time, I'm going to describe for you the
4 Sentencing Guidelines:

5 First, however, do you understand that the
6 United States Sentencing Guidelines are advisory and
7 not mandatory?

8 A. Yes.

9 Q. Therefore, do you understand the Court can
10 impose a sentence that is higher or lower than that
11 recommended by the Guidelines?

12 A. Yes, I do.

13 Q. Are you aware that the Sentencing Guidelines
14 take into account the actual conduct in which you
15 engaged, considers the victims of your offense, the
16 role that you played, and whether or not you have
17 engaged in any obstruction of justice or have accepted
18 responsibility for your acts?

19 A. Yes.

20 Q. Do you also understand that your criminal
21 history is an important factor in applying the
22 Sentencing Guidelines?

23 A. Yes, I do.

24 Q. Do you understand that until a Presentence
25 Report is completed, it is impossible for either me or

1 for your lawyer to know exactly what sentence range
2 may be required by the Guidelines?

3 A. Yes.

4 Q. Do you also understand that it may be necessary
5 to resolve disputed facts contained in the Presentence
6 Report and that also may affect the applicable
7 Guidelines and your sentence?

8 A. Yes.

9 Q. Have you discussed the Sentencing Guidelines
10 with your attorney?

11 A. Yes, I have.

12 Q. Has he explained to you the various
13 considerations that go into determining what
14 Guidelines shall be applied?

15 A. Yes.

16 Q. Has your attorney attempted to estimate for you
17 what he thinks the Guideline range may be in your case
18 based on the information that he currently has?

19 A. No, just my score, the 39 and the 20 years
20 maximum penalty.

21 Q. Well, in other words, he has estimated for you
22 where he thinks --

23 A. I thought you mean estimate the amount of time I
24 would get.

25 Q. No. He tried to estimate for you what he thinks

1 the Guideline range may be --

2 A. Yes.

3 Q. -- based on the offense level.

4 A. Okay.

5 Q. Correct?

6 A. Yes.

7 Q. But do you understand, however, that at this
8 point it may be impossible for him to make a
9 completely accurate assessment as to the Guideline
10 range which will actually apply in your case because
11 he does not yet have all the necessary information and
12 has not seen the Presentence Report?

13 A. Yes.

14 Q. Do you understand that you will not be able to
15 withdraw your plea on the ground that anyone's
16 prediction as to the Guideline range proved to be
17 inaccurate?

18 A. Yes.

19 Q. Do you further understand that the Court will
20 not be able to determine the Guideline sentence for
21 your case until after the Presentence Report has been
22 completed and you and the government have had an
23 opportunity to challenge the reported facts and the
24 application of the Guidelines recommended by the
25 probation officer?

1 A. Yes.

2 Q. Do you understand that the sentence imposed may
3 be different from any estimate your attorney may have
4 given you?

5 A. Yes.

6 Q. And do you realize that any stipulations or
7 agreements between you and the government as to what
8 the applicable facts are or what the Guidelines are,
9 are not binding on me if the Presentence Investigation
10 Report or other sources persuade me that they are
11 inaccurate?

12 A. Yes.

13 Q. Do you also understand that there is no parole
14 in the federal system and that if you are sentenced to
15 prison, you will not be released on parole prior to
16 the completion of the sentence that I actually impose
17 on you except for good time credits, if any?

18 A. Yes.

19 Q. While I am aware that you are a citizen of the
20 United States, I will ask you this next question out
21 of an abundance of caution:

22 Do you understand that if you were not a
23 citizen of the United States, your guilty plea to the
24 charged offense would likely result in your being
25 subject to immigration proceedings and removed from

1 the United States?

2 A. Yes.

3 Q. At this time, I'm going to describe certain
4 rights that you have:

5 Do you understand that you have a right to
6 plead not guilty to any offense charged against you
7 and to persist in that plea to a trial by jury?

8 A. Yes, I do.

9 Q. During a trial, you would also have the right to
10 the assistance of counsel for your defense, the right
11 to see and hear all the witnesses and have them
12 cross-examined in your defense, the right on your own
13 part to decline to testify unless you voluntarily
14 elected to do so in your own defense, and the right to
15 the issuance of subpoenas or compulsory process to
16 compel the attendance of witnesses to testify in your
17 defense.

18 Do you understand that you would have those
19 rights at a jury trial?

20 A. Yes.

21 Q. Also, at a jury trial, you would have the
22 benefit of the presumption of innocence and the Court
23 would instruct the jury that consistent with your
24 presumed innocence, they must look upon you as
25 innocent of all the charges against you and that

1 presumption continues during the jury deliberations
2 thereafter until such point in time, if it ever arrive
3 d, when a unanimous jury was satisfied that the
4 government had proved your guilt beyond a reasonable
5 doubt.

6 So, too, at a trial, you would have no duty to
7 testify or to introduce any evidence and I would
8 instruct the jury that they could not hold that
9 against you or consider it in any way.

10 Thus, at your trial, you would have no burden
11 of proving anything and the sole burden of proof would
12 be upon the government to prove each and every
13 essential element of the crime charged beyond a
14 reasonable doubt, and that burden would never shift
15 from the government at any time.

16 Mr. Erwin, do you understand that you have the
17 right to appointment of counsel if you could not
18 afford one for the trial and appeal if there were a
19 guilty verdict?

20 A. Yes.

21 Q. Do you further understand that by entering a
22 plea of guilty, if that plea is accepted by me, that
23 there will be no trial?

24 A. Yes, I do.

25 Q. Do you understand that you will have waived or

1 given up your right to a trial, as well as the other
2 rights associated with a trial, that I have just
3 described for you?

4 A. Yes.

5 Q. At this time, I'm going to describe the
6 essential elements of the crime of 21 U.S.C., Section
7 846, to which you are pleading guilty, and the
8 government would have to prove each and every one of
9 these essential elements beyond a reasonable doubt:

10 First, that two or more persons agreed to
11 distribute or possess with the intent to distribute a
12 controlled substance, in this case, oxycodone;

13 Second, that you were a party to or member of
14 that agreement;

15 And, third, that you joined the agreement or
16 conspiracy knowing of its objective to distribute, or
17 possess with the intent to distribute a controlled
18 substance, here, oxycodone, and intending to join
19 together with at least one other alleged conspirator
20 to achieve that objective, that is, that you and at
21 least one other alleged conspirator shared a unity of
22 purpose and the intent to achieve that objective?

23 A. Correct.

24 Q. You understand those essential elements, Mr.
25 Erwin?

1 A. Yes, I do.

2 Q. And you understand the government would have to
3 prove those beyond a reasonable doubt?

4 A. Yes.

5 Q. At this time, I'm going to ask you questions
6 about what you did in this matter:

7 From in or about January 2009, through in or
8 about December 2010, in New Jersey, and elsewhere, did
9 you conspire and agree with at least one other person
10 to distribute and to possess with intent to distribute
11 oxycodone?

12 A. Yes.

13 Q. More specifically, did you agree to distribute
14 and possess with the intent to distribute oxycodone
15 with other persons, but not limited to Hassan Lahham?

16 A. Yes, I did.

17 Q. Jacqueline Lopresti?

18 A. Yes.

19 Q. Stephen Sampson?

20 A. Yes.

21 Q. As well as others who have not been specifically
22 named by me here?

23 A. Yes.

24 Q. Did you actively participate in the agreement to
25 distribute and possess with the intent to distribute

1 oxycodone?

2 A. Yes, I did.

3 Q. And did you actively participate in carrying out
4 the agreement to distribute and possess with the
5 intent to distribute oxycodone?

6 A. Yes.

7 Q. Did you enter into this agreement knowingly and
8 voluntarily, that is, with the knowledge of the
9 agreement's objective to distribute and possess with
10 the intent to distribute oxycodone?

11 A. Yes.

12 Q. In the course of carrying out this conspiracy,
13 did you visit Dr. Hassan Lahham at offices in New York
14 with the purpose of obtaining medically unnecessary
15 prescriptions for oxycodone?

16 A. Yes, I did.

17 Q. In the course of carrying out this conspiracy,
18 did you visit and also meet with Dr. Hassan Lahham in
19 Atlantic City with the purpose of obtaining medically
20 unnecessary prescriptions for oxycodone?

21 A. Yes.

22 Q. In the course of carrying out this conspiracy,
23 did you visit Dr. Jacqueline Lopresti at offices in
24 Monmouth County with the purpose of obtaining
25 medically unnecessary prescriptions for oxycodone?

1 A. Yes.

2 Q. In the course of carrying out this conspiracy,
3 did you visit Dr. Jacqueline Lopresti outside of her
4 office with the purpose of obtaining medically
5 unnecessary prescriptions for oxycodone?

6 A. Yes.

7 Q. During these visits at various locations, did
8 Dr. Lahham and Dr. Lopresti provide you with
9 prescriptions for oxycodone for which there was no
10 medical necessity?

11 A. Yes.

12 Q. Were these medically unnecessary prescriptions
13 written in your name as well as in the names of other
14 people who were not present when you met with the
15 doctors?

16 A. Yes.

17 Q. In exchange for such medically unnecessary
18 oxycodone prescriptions, did you provide cash to Dr.
19 Lahham and Dr. Lopresti?

20 A. Yes, I did.

21 Q. Did you then obtain pills with the prescriptions
22 you obtained from Dr. Lahham and Dr. Lopresti from
23 various pharmacies?

24 A. Yes.

25 Q. Did you also obtain oxycodone pills from your

1 co-conspirators who you paid with cash or oxycodone
2 pills?

3 A. Yes, I did.

4 Q. Did you then sell those oxycodone pills to other
5 people?

6 A. Yes.

7 THE COURT: You may have a seat at this time.

8 Mr. Gribko, I would ask you to please
9 represent what the government would be prepared to
10 prove at trial if the case proceeded to trial so that
11 I may determine if there is an independent factual
12 basis for the plea.

13 MR. GRIBKO: Thank you, your Honor.

14 The United States represents to the Court that
15 it would have been able to establish beyond a
16 reasonable doubt through the testimony of witnesses,
17 including cooperators, co-conspirators, law
18 enforcement agents, and experts, as well as physical
19 evidence, including the pharmacy records, that the
20 defendant conspired to obtain prescriptions for
21 oxycodone from Dr. Lahham and Dr. Lopresti and
22 conspired to obtain actual oxycodone pills from
23 various pharmacies using those prescriptions which
24 were written in his name and the names of other people
25 who he conspired with. He then distributed those

1 oxycodone pills.

2 The United States further represents that the
3 Schedule II controlled substance illegally distributed
4 by defendant was in fact oxycodone, and the United
5 States would be prepared to prove that to a jury.

6 THE COURT: Thank you, Mr. Gribko.

7 BY THE COURT:

8 Q. Mr. Erwin, how do you now plead to the charge in
9 the Information, guilty or not guilty?

10 A. Guilty.

11 THE COURT: You may have a seat.

12 It is the finding of the Court in the case of
13 United States v. Christopher Erwin that the defendant
14 is competent and capable of entering an informed plea,
15 that he is aware of the nature of the charge and the
16 consequences of the plea, and that the plea of guilty
17 is a knowing and voluntary plea supported by an
18 independent basis in fact containing each of the
19 essential elements of the offense.

20 The plea is therefore accepted and the
21 defendant is now adjudged guilty of that offense.

22 Mr. Erwin, a written Presentence Report will
23 be prepared by the Probation Office to assist me in
24 sentencing. You will be asked to give information for
25 the report and your attorney may be present if you

1 wish.

2 You and your attorney will have the
3 opportunity to read the Presentence Report before the
4 sentencing hearing and file any objections to the
5 report before the sentencing hearing.

6 At the sentencing hearing you will have the
7 opportunity to speak in mitigation of your sentence
8 and your attorney will be given the opportunity to
9 speak on your behalf as well.

10 You will now be referred to the Probation
11 Office for a Presentence Investigation Report with
12 sentencing scheduled for?

13 THE CLERK: August 30th, 2012, at 10 a.m..

14 THE COURT: All right.

15 Mr. Erwin has been on pretrial release. Are
16 there any applications with regard to that bail?

17 MR. GRIBKO: No, your Honor, he has been
18 compliant with the terms of the pretrial release. The
19 government is not seeking any changes at this time.

20 THE COURT: All right.

21 And I have reviewed an updated report from
22 Pretrial Services that has indicated he has been
23 compliant.

24 You will remain on bail on the same terms that
25 have been in place, Mr. Erwin, throughout.

1 At this time, then, I will take the originals
2 of the documents I may not have received already, the
3 Information, the plea agreement, the Rule 11
4 application, and any other documents that you wish to
5 hand up at this time.

6 (Document(s) handed up to the Court.)

7 THE COURT: Anything else, counsel?

8 MR. GRIBKO: No, your Honor.

9 MR. MURPHY: No, your Honor.

10 THE COURT: Thank you.

11 THE CLERK: All rise.

12 (Proceedings are concluded.)

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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR
Certificate No. 675
Date: September 15, 2013

\$	841(a)(1 [2] - 6:12, 9:23 841(b)(1)(C [1] - 16:14 846 [4] - 6:14, 9:24, 15:25, 24:7 862 [1] - 17:11 862(a [1] - 17:11	13:5, 13:11, 13:12, 14:2, 14:7, 14:19, 15:6, 24:14, 24:15, 25:24, 26:4, 26:7, 31:3 agreement's [1] - 26:9 agreements [1] - 21:7 agrees [1] - 8:20 alcoholic [1] - 4:24 alleged [2] - 24:19, 24:21 allows [1] - 14:20 AMERICA [1] - 1:5 amount [4] - 10:10, 16:19, 16:21, 19:23 AN [1] - 2:8 analysis [1] - 14:13 answer [1] - 4:5 answers [2] - 4:6, 5:17 appeal [13] - 10:7, 13:7, 13:16, 14:1, 14:8, 14:14, 14:25, 15:5, 15:9, 15:11, 15:12, 15:16, 23:18 appear [2] - 11:6, 11:9 applicable [2] - 19:6, 21:8 application [2] - 20:24, 31:4 applications [1] - 30:16 applied [1] - 19:14 apply [1] - 20:10 applying [1] - 18:21 appointment [1] - 23:17 appropriate [1] - 14:13 arrived [1] - 23:3 aspect [1] - 14:17 assessment [2] - 17:3, 20:9 assist [1] - 29:23 assistance [1] - 22:10 Assistant [1] - 3:4 associated [1] - 24:2 assume [1] - 5:22 assurances [1] - 12:10 Atlantic [1] - 26:19 attack [4] - 4:22, 13:7, 14:15, 15:17 attempt [1] - 16:6 attempted [2] - 12:13, 19:16 attempts [1] - 16:2 attendance [1] - 22:16 Attorney [3] - 3:4, 7:7, 7:10 attorney [15] - 6:19, 8:4,	9:8, 9:9, 11:14, 12:2, 15:15, 19:10, 19:16, 21:3, 29:25, 30:2, 30:8, 32:13, 32:15 ATTORNEY [1] - 1:17 Attorney's [1] - 7:25 August [1] - 30:13 AUSA [1] - 1:18 authorized [1] - 16:9 aware [4] - 13:14, 18:13, 21:19, 29:15
0	A	B	
08608 [1] - 1:12	a.m. [1] - 30:13 ability [1] - 5:5 able [4] - 14:14, 20:14, 20:20, 28:15 ABOVE [1] - 2:10 ABOVE-ENTITLED [1] - 2:10 abundance [1] - 21:21 accepted [6] - 9:3, 12:22, 15:6, 18:17, 23:22, 29:20 account [1] - 18:14 ACCURATE [1] - 2:8 accurate [2] - 20:9, 32:8 accurately [1] - 11:23 achieve [2] - 24:20, 24:22 action [2] - 32:14, 32:16 actively [2] - 25:24, 26:3 acts [1] - 18:18 actual [2] - 18:14, 28:22 added [1] - 5:11 addiction [1] - 4:15 addition [5] - 16:24, 17:13, 17:21, 17:22, 17:24 additional [1] - 17:24 adjudged [2] - 12:22, 29:21 adjudication [1] - 12:23 adult [1] - 4:17 advice [2] - 6:22, 11:14 advise [1] - 15:22 advisory [1] - 18:6 affect [1] - 19:6 afford [1] - 23:18 Agent [1] - 3:6 agents [1] - 28:18 agree [2] - 25:9, 25:13 agreed [1] - 24:10 agreement [26] - 3:15, 9:13, 9:15, 9:19, 10:1, 10:6, 10:9, 10:11, 10:13, 10:22, 10:25, 11:2, 12:7,	b)(1)(c [2] - 6:13, 9:24 bail [2] - 30:16, 30:24 bargain [5] - 10:20, 11:15, 11:22, 11:24, 12:2 bargains [1] - 11:19 based [2] - 19:18, 20:3 basis [2] - 28:12, 29:18 BE [1] - 2:8 Beach [1] - 3:7 BEACH [1] - 3:8 bed [1] - 5:3 begin [1] - 17:15 behalf [4] - 1:18, 1:20, 3:5, 30:9 below [4] - 14:5, 14:12, 15:9, 15:12 benefit [1] - 22:22 benefits [2] - 11:19, 17:11 between [1] - 21:7 beverage [1] - 4:24 beyond [5] - 23:4, 23:13, 24:9, 25:3, 28:15 binding [1] - 21:9 brought [1] - 7:9 burden [3] - 23:10, 23:11, 23:14 BY [7] - 1:18, 4:2, 5:15, 9:6, 10:19, 11:12, 29:7	
1	1 [3] - 10:10, 16:8, 16:19 10 [2] - 5:3, 30:13 10:30 [1] - 5:3 11 [3] - 3:17, 5:10, 31:3 12 [1] - 7:18 12-364 [1] - 1:2 16 [1] - 7:18		
2	20 [2] - 16:17, 19:19 2009 [3] - 6:6, 10:5, 25:7 2010 [3] - 6:7, 10:5, 25:8 2012 [3] - 1:7, 9:17, 30:13 21 [8] - 6:12, 6:13, 9:23, 9:24, 15:25, 16:7, 17:12, 24:6 2255 [2] - 13:23, 14:14 23 [1] - 7:18 24 [2] - 1:7, 4:23 26 [1] - 9:17 28 [2] - 2:7, 13:22		
3	30th [1] - 30:13 39 [4] - 10:8, 14:8, 15:2, 19:19	C	
4	402 [1] - 1:12 48 [1] - 4:11		
6	609)588-9516 [1] - 1:25 675 [1] - 32:24		
7	753 [1] - 2:7		
8	8341(a [1] - 16:8		

case [16] - 6:3, 6:16, 6:18, 6:22, 7:16, 7:23, 10:21, 12:11, 12:14, 13:8, 19:17, 20:10, 20:21, 24:12, 28:10, 29:12 cash [2] - 27:18, 28:1 category [1] - 14:22 caution [1] - 21:21 CCR [3] - 1:24, 2:14, 32:23 certain [4] - 7:1, 13:6, 17:10, 22:3 Certificate [1] - 32:24 Certified [1] - 32:6 CERTIFIED [1] - 2:8 certify [2] - 32:7, 32:12 challenge [5] - 13:22, 14:1, 14:20, 14:21, 20:23 challenging [2] - 14:9, 14:16 changes [1] - 30:19 charge [6] - 6:3, 6:15, 6:18, 7:8, 29:8, 29:15 charged [9] - 7:3, 7:5, 7:6, 7:11, 7:21, 15:23, 21:24, 22:6, 23:13 charges [3] - 6:5, 10:2, 22:25 Christopher [2] - 3:11, 29:13 CHRISTOPHER [2] - 1:7, 4:1 circumstances [2] - 13:6, 13:9 citizen [2] - 21:19, 21:23 City [1] - 26:19 civil [1] - 12:24 claiming [1] - 15:5 CLARKSON [1] - 1:11 clearer [1] - 5:19 CLERK [3] - 3:2, 30:13, 31:11 client [4] - 5:8, 8:16, 8:19, 10:18 co [2] - 28:1, 28:17 co-conspirators [2] - 28:1, 28:17 Code [5] - 6:12, 6:14, 9:23, 15:25, 16:7 collateral [3] - 13:21, 14:15, 15:17	collaterally [1] - 13:7 college [1] - 4:13 commission [2] - 7:3, 16:5 commit [1] - 16:3 committed [3] - 7:14, 7:20 compel [1] - 22:16 competent [1] - 29:14 completed [2] - 18:25, 20:22 completely [2] - 11:23, 20:9 completion [1] - 21:16 compliant [2] - 30:18, 30:23 complies [1] - 9:25 composed [1] - 7:17 compulsory [1] - 22:15 concluded [1] - 31:12 conditions [1] - 17:19 conduct [1] - 18:14 consent [1] - 7:6 consequences [2] - 13:3, 29:16 consider [1] - 23:9 considerations [1] - 19:13 considers [1] - 18:15 consistent [1] - 22:23 conspiracy [7] - 10:3, 16:6, 24:16, 26:12, 26:17, 26:22, 27:2 conspirator [2] - 24:19, 24:21 conspirators [2] - 28:1, 28:17 conspire [2] - 6:9, 25:9 conspired [4] - 9:22, 28:20, 28:22, 28:25 conspires [1] - 16:2 constitutional [1] - 7:4 contained [1] - 19:5 containing [1] - 29:18 contains [1] - 10:9 continues [1] - 23:1 contrary [2] - 6:11, 9:22 controlled [5] - 6:11, 16:13, 24:12, 24:17, 29:3 conviction [2] - 13:22, 17:4 convinced [1] - 5:12	cooperators [1] - 28:17 copy [2] - 6:1, 10:15 Correct [1] - 20:5 correct [3] - 3:18, 3:19, 24:23 counsel [9] - 3:6, 6:21, 10:14, 11:6, 22:10, 23:17, 31:7, 32:13, 32:15 count [1] - 17:3 County [2] - 6:7, 26:24 course [4] - 26:12, 26:17, 26:22, 27:2 court [2] - 3:1, 8:21 Court [12] - 9:1, 9:21, 16:25, 17:13, 18:9, 20:19, 22:22, 28:14, 29:12, 31:6, 32:6 COURT [31] - 1:1, 1:24, 2:14, 3:9, 3:13, 3:20, 4:2, 5:7, 5:14, 5:15, 8:15, 8:18, 8:24, 9:2, 9:6, 9:11, 10:12, 10:17, 10:19, 11:5, 11:8, 11:11, 11:12, 28:7, 29:6, 29:7, 29:11, 30:14, 30:20, 31:7, 31:10 COURTHOUSE [1] - 1:11 credits [1] - 21:17 crime [4] - 7:13, 7:20, 23:13, 24:6 criminal [2] - 14:22, 18:20 CRIMINAL [1] - 1:2 cross [1] - 22:12 cross-examined [1] - 22:12	defined [2] - 16:3, 17:10 deliberations [1] - 23:1 denied [1] - 17:10 depression [1] - 4:16 deprive [1] - 12:24 derived [1] - 16:20 describe [4] - 16:15, 18:3, 22:3, 24:5 described [1] - 24:3 detailed [1] - 10:7 determination [1] - 14:22 determine [2] - 20:20, 28:11 determining [1] - 19:13 different [2] - 12:9, 21:3 discuss [2] - 10:24, 15:15 discussed [5] - 5:9, 5:11, 6:18, 8:2, 19:9 discussions [1] - 9:8 dispense [2] - 16:11, 16:13 disputed [1] - 19:5 distribute [21] - 6:9, 6:10, 9:22, 10:3, 10:4, 16:11, 16:12, 24:11, 24:16, 24:17, 25:10, 25:13, 25:14, 25:25, 26:4, 26:5, 26:9, 26:10 distributed [2] - 28:25, 29:3 DISTRICT [2] - 1:1, 1:1 District [1] - 6:8 doctors [1] - 27:15 document [2] - 8:22, 9:1 documents [3] - 31:2, 31:4, 31:6 doubt [5] - 23:5, 23:14, 24:9, 25:3, 28:16 Dr [12] - 26:13, 26:18, 26:23, 27:3, 27:8, 27:18, 27:19, 27:22, 28:21 drug [1] - 4:23 drugs [3] - 4:15, 5:4, 5:11 drunk [1] - 4:24 during [3] - 22:9, 23:1, 27:7 duty [1] - 23:6
D			
		date [3] - 9:18, 17:4, 32:10 Date [1] - 32:24 dated [1] - 9:16 DEA [1] - 3:6 December [3] - 6:7, 10:5, 25:8 decline [1] - 22:13 Defendant [2] - 1:8, 1:20 defendant [7] - 3:1, 3:21, 13:15, 28:20, 29:4, 29:13, 29:21 defense [5] - 11:6, 22:10, 22:12, 22:14, 22:17	

E EAST [1] - 1:12 education [1] - 4:12 effect [2] - 5:12, 5:13 effort [1] - 12:10 either [3] - 5:4, 13:17, 18:25 elected [1] - 22:14 element [1] - 23:13 elements [4] - 24:6, 24:9, 24:24, 29:19 elsewhere [2] - 6:8, 25:8 employee [2] - 32:13, 32:15 enforcement [1] - 28:18 engaged [2] - 18:15, 18:17 enter [2] - 12:11, 26:7 entered [1] - 3:14 entering [2] - 23:21, 29:14 entire [1] - 10:22 ENTITLED [1] - 2:10 equal [1] - 16:18 error [2] - 13:18, 13:21 ERWIN [2] - 1:7, 4:1 Erwin [17] - 3:11, 3:16, 4:4, 5:16, 8:2, 9:7, 9:20, 10:2, 10:20, 11:13, 23:16, 24:25, 29:8, 29:13, 29:22, 30:15, 30:25 ESQUIRE [1] - 1:19 essential [6] - 9:13, 23:13, 24:6, 24:9, 24:24, 29:19 essentially [1] - 6:6 establish [1] - 28:15 estimate [4] - 19:16, 19:23, 19:25, 21:3 estimated [1] - 19:21 evidence [2] - 23:7, 28:19 exactly [1] - 19:1 EXAMINATION [1] - 4:2 examined [1] - 22:12 except [2] - 16:9, 21:17 excess [1] - 16:24 exchange [2] - 11:20, 27:17 experts [1] - 28:18 expiration [1] - 17:15	expires [1] - 17:19 explained [1] - 19:12 explanations [2] - 11:14, 15:19 F face [2] - 15:24, 18:1 fact [2] - 29:4, 29:18 factor [1] - 18:21 facts [3] - 19:5, 20:23, 21:8 factual [1] - 28:11 falls [1] - 14:5 false [1] - 4:7 falsely [1] - 4:6 familiar [1] - 13:9 federal [1] - 21:14 felony [4] - 7:4, 7:8, 7:11, 12:20 file [6] - 13:7, 13:16, 13:21, 14:14, 15:16, 30:4 filed [2] - 3:16, 6:2 filing [1] - 7:10 financially [1] - 32:16 fine [1] - 16:18 finer [1] - 16:24 firearm [1] - 13:2 first [2] - 18:5, 24:10 FISHER [1] - 1:11 FISHMAN [1] - 1:17 flow [1] - 11:19 FLW [1] - 1:2 FOLLOWING [1] - 2:8 follows [1] - 16:8 FOR [1] - 1:1 force [1] - 12:13 foregoing [1] - 32:8 forfeiture [1] - 10:10 form [3] - 5:10, 5:11, 8:19 forth [7] - 9:15, 11:23, 13:11, 14:2, 14:6, 16:14, 32:11 FREDA [1] - 1:14 free [1] - 12:16 fully [4] - 6:18, 6:21, 10:24, 11:15 G gain [1] - 16:20 general [1] - 6:19	gist [1] - 9:19 given [4] - 6:22, 21:4, 24:1, 30:8 Government [1] - 1:18 government [13] - 7:15, 9:9, 13:16, 13:17, 20:22, 21:7, 23:4, 23:12, 23:15, 24:8, 25:2, 28:9, 30:19 grand [10] - 7:5, 7:12, 7:16, 7:17, 7:18, 7:22, 7:23, 8:3, 8:7, 8:13 greatest [1] - 16:19 Gribko [6] - 3:4, 9:12, 10:12, 11:8, 28:8, 29:6 GRIBKO [7] - 1:18, 3:3, 9:14, 11:10, 28:13, 30:17, 31:8 gross [2] - 16:19, 16:21 ground [1] - 20:15 Guideline [11] - 10:7, 10:8, 14:6, 14:8, 14:13, 15:1, 19:17, 20:1, 20:9, 20:16, 20:20 Guidelines [11] - 18:4, 18:6, 18:11, 18:13, 18:22, 19:2, 19:7, 19:9, 19:14, 20:24, 21:8 guilt [1] - 23:4 guilty [19] - 9:7, 9:20, 11:20, 12:11, 12:14, 12:16, 12:17, 12:20, 12:23, 21:23, 22:6, 23:19, 23:22, 24:7, 29:9, 29:10, 29:16, 29:21 H hand [2] - 8:24, 31:5 handed [2] - 9:1, 31:6 Hassan [3] - 25:15, 26:13, 26:18 hear [1] - 22:11 hearing [4] - 3:17, 30:4, 30:5, 30:6 hereby [1] - 32:7 hereinbefore [1] - 32:10 higher [1] - 18:10 history [2] - 14:22, 18:21 hold [2] - 12:25, 23:8 Honor [18] - 3:3, 3:8, 3:10, 3:19, 5:13, 8:5, 8:17, 8:23, 9:14, 10:16, 11:7, 12:21, 14:10, 18:2, 28:13, 30:17, 31:8, 31:9	HONORABLE [1] - 1:14 hours [1] - 4:23 I II [2] - 6:11, 29:3 illegally [1] - 29:3 illness [1] - 4:15 immigration [1] - 21:25 impact [1] - 5:4 important [1] - 18:21 impose [6] - 14:4, 14:11, 14:20, 17:13, 18:10, 21:16 imposed [5] - 13:8, 16:25, 17:16, 17:22, 21:2 impossible [2] - 18:25, 20:8 imprisonment [7] - 14:5, 14:12, 14:16, 16:18, 17:16, 17:21, 17:23 IN [1] - 2:9 inaccurate [2] - 20:17, 21:11 including [2] - 28:17, 28:19 independent [2] - 28:11, 29:18 indicated [1] - 30:22 indict [2] - 7:17, 7:22 indicted [2] - 7:21, 8:1 Indictment [12] - 7:5, 7:8, 7:11, 7:12, 7:15, 7:23, 8:3, 8:6, 8:10, 8:12, 8:16, 8:19 induce [2] - 8:9, 12:11 Information [11] - 3:15, 6:1, 6:5, 6:25, 7:7, 7:10, 7:25, 9:20, 11:21, 29:9, 31:3 information [3] - 19:18, 20:11, 29:24 informed [1] - 29:14 initiate [1] - 10:1 innocence [2] - 22:22, 22:24 innocent [1] - 22:25 instead [1] - 7:8 instruct [2] - 22:23, 23:8 intending [1] - 24:18 intent [11] - 6:10, 10:4, 16:12, 24:11, 24:17, 24:22, 25:10, 25:14,

25:25, 26:5, 26:10 intentionally [2] - 6:9, 16:11 interest [1] - 17:1 interested [1] - 32:16 introduce [1] - 23:7 Investigation [2] - 21:9, 30:11 IS [1] - 2:8 issuance [1] - 22:15	25:9 letter [8] - 9:16, 9:17, 9:19, 10:21, 11:16, 11:18, 11:22, 12:3 level [4] - 10:8, 14:8, 15:1, 20:3 Lexapro [2] - 4:21, 5:1 life [1] - 4:17 likely [1] - 21:24 limited [1] - 25:15 locations [1] - 27:7 look [2] - 11:2, 22:24 Lopresti [7] - 25:17, 26:23, 27:3, 27:8, 27:19, 27:22, 28:21 loss [1] - 16:22 lower [1] - 18:10	MR [15] - 3:3, 3:8, 3:10, 3:19, 5:9, 8:17, 8:22, 9:14, 10:15, 11:7, 11:10, 28:13, 30:17, 31:8, 31:9 MURPHY [9] - 1:19, 3:10, 3:19, 5:9, 8:17, 8:22, 10:15, 11:7, 31:9 Murphy [10] - 3:11, 3:18, 5:7, 6:19, 6:23, 8:15, 8:25, 9:16, 10:13, 11:5 must [4] - 7:19, 17:4, 17:13, 22:24 MY [1] - 2:9	17:7, 18:15, 20:3, 21:24, 22:6, 29:19, 29:21 Office [2] - 29:23, 30:11 office [4] - 9:16, 11:9, 12:25, 27:4 officer [1] - 20:25 offices [2] - 26:13, 26:23 OFFICIAL [2] - 1:24, 2:14 Official [1] - 32:5 old [1] - 4:10 one [5] - 23:18, 24:8, 24:19, 24:21, 25:9 open [2] - 3:1, 8:20 opportunity [6] - 5:8, 10:24, 20:23, 30:3, 30:7, 30:8 ordered [3] - 17:2, 17:6, 17:8 originals [1] - 31:1 otherwise [2] - 5:22, 14:1 outlined [1] - 17:23 outside [1] - 27:3 own [3] - 12:16, 22:12, 22:14 oxycodone [23] - 6:10, 9:22, 10:4, 24:12, 24:18, 25:11, 25:14, 26:1, 26:5, 26:10, 26:15, 26:20, 26:25, 27:5, 27:9, 27:18, 27:25, 28:1, 28:4, 28:21, 28:22, 29:1, 29:4
J		N	
Jacqueline [3] - 25:17, 26:23, 27:3 JAMES [1] - 1:19 James [1] - 3:11 January [3] - 6:6, 10:5, 25:7 JERSEY [2] - 1:1, 1:12 Jersey [3] - 6:8, 25:8, 32:7 join [1] - 24:18 joined [1] - 24:15 JOSEPH [1] - 1:18 Joseph [1] - 3:4 judgment [1] - 10:10 jurors [1] - 7:19 jury [18] - 7:5, 7:12, 7:16, 7:17, 7:22, 7:23, 8:3, 8:7, 8:13, 13:1, 22:7, 22:19, 22:21, 22:23, 23:1, 23:3, 23:8, 29:5 justice [1] - 18:17	M	name [2] - 27:13, 28:24 named [1] - 25:22 names [2] - 27:13, 28:24 narcotic [1] - 4:15 nature [1] - 29:15 necessary [2] - 19:4, 20:11 necessity [1] - 27:10 never [1] - 23:14 NEW [2] - 1:1, 1:12 New [4] - 6:8, 25:8, 26:13, 32:7 next [1] - 21:20 night [1] - 5:3 NO [1] - 1:2 NOTES [1] - 2:9 notice [1] - 17:6	
K		O	P
kind [4] - 4:15, 4:25, 12:10, 13:2 knowing [2] - 24:16, 29:17 knowingly [4] - 6:9, 9:3, 16:10, 26:7 knowledge [1] - 26:8	mandatory [2] - 17:2, 18:7 manufacture [2] - 16:11, 16:12 March [1] - 9:16 MATTER [1] - 2:10 matter [2] - 8:2, 25:6 maximum [6] - 15:24, 16:15, 16:17, 16:18, 17:22, 19:20 MAY [1] - 1:7 mean [2] - 12:4, 19:23 means [1] - 12:3 medical [1] - 27:10 medically [6] - 26:14, 26:19, 26:25, 27:4, 27:12, 27:17 medication [1] - 4:24 medications [1] - 4:20 meet [1] - 26:18 member [1] - 24:13 mental [1] - 4:14 met [1] - 27:14 might [2] - 7:22 million [2] - 10:10, 16:19 mine [1] - 11:10 mitigation [1] - 30:7 money [1] - 10:10 Monmouth [1] - 26:24 morning [4] - 3:3, 3:8, 3:9, 3:10 most [1] - 4:16 motion [1] - 14:15	o'clock [1] - 5:3 oath [2] - 4:5, 5:16 object [1] - 16:6 objections [1] - 30:4 objective [4] - 24:16, 24:20, 24:22, 26:9 obliges [1] - 5:17 obstruction [1] - 18:17 obtain [4] - 27:21, 27:25, 28:20, 28:22 obtained [1] - 27:22 obtaining [4] - 26:14, 26:19, 26:24, 27:4 Ocean [1] - 6:7 OF [4] - 1:1, 1:5, 2:9 offense [16] - 12:19, 12:20, 12:23, 14:8, 15:1, 16:3, 16:5, 16:21, 16:23,	paid [2] - 17:4, 28:1 panic [1] - 4:22 parole [2] - 21:13, 21:15 part [1] - 22:13 participate [2] - 25:24, 26:3 participation [1] - 10:3 parties [2] - 3:14, 32:14 party [1] - 24:13 PAUL [1] - 1:17 pay [2] - 17:2, 17:8 payment [1] - 16:25 pecuniary [2] - 16:20, 16:22 penalties [5] - 15:24, 16:4, 16:14, 16:15, 18:1 penalty [2] - 16:17, 19:20 people [3] - 27:14, 28:5,
L			
Lahham [7] - 25:15, 26:13, 26:18, 27:8, 27:19, 27:22, 28:21 last [3] - 4:23, 5:3, 15:7 law [2] - 13:14, 28:17 lawyer [2] - 10:25, 19:1 least [6] - 7:17, 7:18, 17:14, 24:19, 24:21,			

28:24 perjury [1] - 4:7 permits [1] - 13:14 persist [1] - 22:7 person [3] - 16:2, 16:10, 25:9 persons [4] - 7:18, 16:20, 24:10, 25:15 persuade [1] - 21:10 petition [1] - 14:15 pharmacies [2] - 27:23, 28:23 pharmacy [1] - 28:19 phrases [1] - 12:3 physical [1] - 28:18 pills [6] - 27:21, 27:25, 28:2, 28:4, 28:22, 29:1 place [3] - 10:17, 30:25, 32:10 placed [1] - 17:17 played [1] - 18:16 PLEA [1] - 1:5 plea [37] - 3:15, 9:13, 9:15, 9:19, 9:25, 10:6, 10:9, 10:11, 10:13, 10:20, 10:22, 11:15, 11:22, 11:24, 12:2, 12:6, 12:11, 12:22, 13:5, 13:11, 13:12, 14:2, 14:6, 14:19, 15:6, 20:15, 21:23, 22:7, 23:22, 28:12, 29:14, 29:16, 29:17, 29:20, 31:3 plead [5] - 9:7, 11:20, 12:14, 22:6, 29:8 pleading [3] - 12:16, 12:20, 24:7 pleads [1] - 9:20 point [2] - 20:8, 23:2 possess [11] - 6:10, 10:4, 13:1, 16:12, 24:11, 24:17, 25:10, 25:14, 25:25, 26:4, 26:9 prediction [1] - 20:16 prepared [3] - 28:9, 29:5, 29:23 prescribed [2] - 4:21, 16:4 prescriptions [10] - 26:15, 26:20, 26:25, 27:5, 27:9, 27:12, 27:18, 27:21, 28:20, 28:23 present [6] - 3:1, 3:12,	7:16, 8:19, 27:14, 29:25 Presentence [8] - 18:24, 19:5, 20:12, 20:21, 21:9, 29:22, 30:3, 30:11 presumed [1] - 22:24 presumption [2] - 22:22, 23:1 pretrial [2] - 30:15, 30:18 Pretrial [1] - 30:22 previously [1] - 17:21 prison [4] - 14:21, 14:25, 17:21, 21:15 probable [2] - 7:13, 7:19 probation [1] - 20:25 Probation [2] - 29:23, 30:10 proceed [4] - 3:17, 5:14, 7:24, 9:4 proceeded [1] - 28:10 proceeding [1] - 6:25 proceedings [3] - 21:25, 31:12, 32:9 process [1] - 22:15 promises [2] - 8:9, 12:9 proof [1] - 23:11 prosecution [1] - 4:7 prove [5] - 23:12, 24:8, 25:3, 28:10, 29:5 proved [2] - 20:16, 23:4 provide [3] - 5:17, 27:8, 27:18 provided [2] - 9:21, 15:20 provides [3] - 9:21, 13:5, 16:8 proving [1] - 23:11 public [1] - 12:25 purpose [5] - 24:22, 26:14, 26:19, 26:24, 27:4 pursuant [1] - 17:11 PURSUANT [1] - 2:7	14:21 read [2] - 10:22, 30:3 realize [1] - 21:6 reason [1] - 8:15 reasonable [5] - 23:4, 23:14, 24:9, 25:3, 28:16 received [2] - 6:1, 31:2 recently [1] - 4:14 recommended [2] - 18:11, 20:24 records [1] - 28:19 references [1] - 14:7 referred [1] - 30:10 regard [4] - 3:15, 4:20, 13:13, 30:16 relative [2] - 32:12, 32:15 release [6] - 17:14, 17:18, 17:19, 17:25, 30:15, 30:18 released [1] - 21:15 remain [1] - 30:24 removed [1] - 21:25 report [3] - 29:25, 30:5, 30:21 Report [8] - 18:25, 19:6, 20:12, 20:21, 21:10, 29:22, 30:3, 30:11 reported [1] - 20:23 REPORTER [2] - 1:24, 2:14 Reporter [2] - 32:6 represent [1] - 28:9 representation [1] - 6:22 representative [1] - 11:8 representing [1] - 3:11 represents [2] - 28:14, 29:2 request [1] - 7:16 required [2] - 17:24, 19:2 resolve [1] - 19:5 responsibility [1] - 18:18 rest [1] - 9:25 restitution [1] - 17:8 result [2] - 9:8, 21:24 results [1] - 15:1 return [1] - 7:12 reviewed [1] - 30:21 rights [4] - 12:24, 22:4, 22:19, 24:2 rise [2] - 3:2, 31:11 role [1] - 18:16 Rule [3] - 3:17, 5:10, 31:3 RUSSONIELLO [2] -	1:24, 2:14 Russoniello [2] - 32:5, 32:23
			S
			Sampson [1] - 25:19 satisfied [3] - 6:21, 15:19, 23:3 Schedule [5] - 6:11, 10:6, 13:12, 14:6, 29:3 scheduled [1] - 30:12 score [1] - 19:19 seat [3] - 9:11, 28:7, 29:11 second [1] - 24:13 Section [7] - 6:14, 9:24, 13:23, 14:14, 15:25, 16:7, 24:6 SECTION [1] - 2:7 Sections [3] - 6:12, 9:23, 17:11 see [2] - 8:15, 22:11 seeking [1] - 30:19 sell [1] - 28:4 sentence [16] - 10:8, 13:8, 13:16, 13:22, 14:1, 14:9, 14:17, 14:20, 14:25, 18:10, 19:1, 19:7, 20:20, 21:2, 21:16, 30:7 sentenced [2] - 17:20, 21:14 sentencing [6] - 17:5, 29:24, 30:4, 30:5, 30:6, 30:12 Sentencing [5] - 18:4, 18:6, 18:13, 18:22, 19:9 serve [2] - 13:1, 17:24 Services [1] - 30:22 set [7] - 9:15, 11:18, 13:11, 14:2, 14:6, 16:14, 32:10 sets [1] - 11:22 shall [3] - 16:3, 16:10, 19:14 shared [1] - 24:21 shift [1] - 23:14 shown [1] - 10:20 sign [1] - 8:20 signature [2] - 11:3, 11:5 signed [2] - 8:22, 10:25 signing [1] - 9:4 single [1] - 17:3
	Q		
	questions [6] - 4:5, 5:23, 7:1, 12:1, 13:13, 25:5		
	R		
	range [9] - 15:1, 15:10, 15:12, 19:1, 19:17, 20:1, 20:10, 20:16 ranges [3] - 14:6, 14:12,		

situations [1] - 14:2 sole [1] - 23:11 sources [1] - 21:10 special [1] - 17:3 Special [1] - 3:6 specifically [4] - 14:4, 14:7, 25:13, 25:21 State [1] - 32:7 STATE [1] - 1:12 statement [1] - 4:8 States [22] - 3:4, 3:5, 6:12, 6:13, 7:7, 7:9, 7:24, 9:23, 10:1, 14:24, 15:5, 15:25, 16:7, 18:6, 21:20, 21:23, 22:1, 28:14, 29:2, 29:5, 29:13, 32:5 states [1] - 16:1 STATES [4] - 1:1, 1:5, 1:11, 1:17 statute [1] - 15:23 statutorily [1] - 17:10 statutory [3] - 16:17, 16:18, 17:22 STENOGRAPHIC [1] - 2:9 stenographically [1] - 32:9 Stephen [1] - 25:19 stipulations [3] - 10:7, 15:6, 21:6 STREET [1] - 1:12 subchapter [2] - 16:3, 16:9 subject [3] - 16:4, 16:25, 21:25 subpoenas [1] - 22:15 subsequently [1] - 17:18 substance [5] - 6:11, 16:13, 24:12, 24:18, 29:3 substantial [1] - 10:9 summarize [1] - 9:13 summarizes [1] - 10:11 supervised [3] - 17:14, 17:17, 17:25 supervisor's [1] - 11:10 supplemented [1] - 9:17 supported [1] - 29:17 supposed [1] - 11:18 sustained [1] - 16:22 swear [1] - 3:20 sworn [1] - 4:1	system [1] - 21:14 T table [2] - 3:6, 10:14 term [11] - 14:5, 14:11, 14:16, 14:21, 17:13, 17:15, 17:17, 17:19, 17:21, 17:22, 17:25 terms [8] - 9:13, 9:15, 9:25, 11:15, 11:23, 12:6, 30:18, 30:24 testify [3] - 22:13, 22:16, 23:7 testimony [1] - 28:16 THE [35] - 1:1, 1:14, 2:7, 2:9, 3:2, 3:9, 3:13, 3:20, 4:2, 5:7, 5:14, 5:15, 8:15, 8:18, 8:24, 9:2, 9:6, 9:11, 10:12, 10:17, 10:19, 11:5, 11:8, 11:11, 11:12, 28:7, 29:6, 29:7, 29:11, 30:13, 30:14, 30:20, 31:7, 31:10, 31:11 thereafter [1] - 23:2 therefore [2] - 18:9, 29:20 thinks [3] - 19:17, 19:22, 19:25 third [1] - 24:15 threats [1] - 8:9 three [1] - 17:14 throughout [1] - 30:25 Tim [1] - 3:7 Title [7] - 6:11, 6:13, 9:22, 9:24, 15:25, 16:7, 17:11 TITLE [1] - 2:7 TO [2] - 2:7, 2:8 today [1] - 5:5 together [1] - 24:19 took [1] - 5:1 transcript [1] - 32:8 TRANSCRIPT [2] - 1:5, 2:8 TRANSCRIPTION [1] - 2:9 treated [2] - 4:14, 4:16 treatment [1] - 4:18 TRENTON [1] - 1:12 trial [12] - 22:7, 22:9, 22:19, 22:21, 23:6, 23:10, 23:18, 23:23,	24:1, 24:2, 28:10 tried [1] - 19:25 true [1] - 32:8 truthful [1] - 5:17 try [1] - 5:19 twice [2] - 16:19, 16:21 two [2] - 17:20, 24:10 U U.S [2] - 1:24, 2:14 U.S.C [2] - 13:23, 24:6 unanimous [1] - 23:3 uncertain [1] - 5:21 under [5] - 4:5, 4:18, 13:5, 13:22, 15:23 UNITED [4] - 1:1, 1:5, 1:11, 1:17 United [22] - 3:4, 3:5, 6:12, 6:13, 7:7, 7:9, 7:24, 9:23, 10:1, 14:24, 15:5, 15:25, 16:7, 18:6, 21:20, 21:23, 22:1, 28:14, 29:2, 29:4, 29:13, 32:5 unity [1] - 24:21 unlawful [1] - 16:10 unless [3] - 7:10, 7:12, 22:13 unnecessary [6] - 26:14, 26:20, 26:25, 27:5, 27:12, 27:17 up [8] - 5:22, 8:25, 9:1, 13:6, 13:25, 24:1, 31:5, 31:6 updated [1] - 30:21 USC [1] - 2:7 USDJ [1] - 1:14 V Valium [2] - 4:21, 5:1 valuable [1] - 12:24 various [4] - 19:12, 27:7, 27:23, 28:23 verdict [1] - 23:19 victims [4] - 16:22, 17:7, 17:9, 18:15 Vincent [2] - 32:5, 32:23 VINCENT [2] - 1:24, 2:14 violate [1] - 17:18 violation [2] - 6:13, 9:24 visit [4] - 26:13, 26:18, 26:23, 27:3	visits [1] - 27:7 voluntarily [3] - 9:3, 22:13, 26:8 voluntary [1] - 29:17 vote [1] - 12:25 W waive [7] - 7:6, 7:11, 7:15, 7:23, 8:10, 8:12, 8:16 waived [1] - 23:25 waiver [5] - 8:19, 9:2, 10:7, 15:15, 15:16 waiving [2] - 8:3, 13:6 willingness [2] - 9:7, 11:20 wish [4] - 8:12, 12:1, 30:1, 31:4 wishes [1] - 3:17 withdraw [1] - 20:15 witnesses [3] - 22:11, 22:16, 28:16 WOLFSON [1] - 1:14 words [2] - 12:3, 19:21 writ [1] - 14:15 written [4] - 6:2, 27:13, 28:24, 29:22 Y years [4] - 16:18, 17:14, 17:20, 19:19 York [1] - 26:13 yourself [1] - 13:15

Appendix F



U.S. Department of Justice

*United States Attorney
District of New Jersey*

R. Joseph Gribko
Assistant U.S. Attorney

Clarkson S. Fisher Federal Building
402 East State Street, Room 430
Trenton, New Jersey 08608

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RJG/COOP.AGR

**CONFIDENTIAL - NOT TO BE FILED
WITH THE CLERK'S OFFICE**

March 26, 2012

James R. Murphy, Esq.
947 State Road
Suite 205
Princeton, NJ 08540

Re: Cooperation Agreement with Christopher Erwin

Dear Mr. Murphy:

This letter sets forth the understandings between your client, Christopher Erwin, and the United States Attorney for the District of New Jersey ("this Office") concerning Christopher Erwin's cooperation with this Office. This cooperation agreement supplements the plea agreement dated March 26, 2012, between the same parties, which will be filed in open court (the "plea agreement"). The plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties.

Christopher Erwin and this Office agree that this cooperation agreement will be disclosed to the Court but not filed with the Clerk's Office. Christopher Erwin further agrees not to reveal his cooperation, or any information derived therefrom, to any third party (other than the Court) without prior consent of this Office.

Christopher Erwin and this Office further agree that this cooperation agreement is contingent upon the entry of a guilty plea by Christopher Erwin pursuant to the provisions of the plea agreement. In the event that Christopher Erwin does not enter a guilty plea pursuant to the provisions of the plea agreement, this Office will be released from its obligations under this cooperation agreement.

Scope of Cooperation

Christopher Erwin shall cooperate fully with this Office. As part of that obligation, Christopher Erwin shall truthfully disclose all information concerning all matters about which this Office and other Government agencies designated by this Office may inquire and shall not commit or attempt to commit any additional crimes. Christopher Erwin also agrees to be available at all reasonable times requested by representatives of the Government and shall truthfully testify in all proceedings, including grand jury and trial proceedings, as to any subject about which he is questioned. Furthermore, Christopher Erwin agrees to provide to this Office, upon request, all documents and other materials relating to matters about which this Office inquires.

Full cooperation includes participating, if requested, in affirmative investigative techniques, such as making telephone calls, tape recording conversations, and introducing law enforcement officials to other individuals. All such activity by Christopher Erwin must be conducted only at the express direction and under the supervision of this Office and federal law enforcement personnel.

If as part of this obligation to cooperate, Christopher Erwin provides self-incriminating statements, the statements shall be subject to the protections, terms, and conditions set forth in U.S.S.G. § 1B1.8 (a) & (b). Nothing, however, shall prevent the use of such statements in a prosecution for false statements, perjury, or obstruction of justice, or prevent the derivative use of such statements.

Informing the Court About Cooperation

The determination whether Christopher Erwin has fully complied with this agreement and provided substantial assistance to the Government rests solely in the discretion of this Office. If this Office determines in its sole discretion that Christopher Erwin has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offenses, this Office:

- (1) will move the sentencing judge, pursuant to Section 5K1.1 of the Sentencing Guidelines, to depart from the otherwise applicable guideline range. Whether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range is a matter committed solely to the discretion of the sentencing judge. Christopher Erwin may not withdraw his plea if

this Office determines that Christopher Erwin has not rendered substantial assistance or has not fully complied with the terms of this agreement, or if the Court refuses to grant in whole or in part the Government's motion for a downward departure.

Other Provisions

This cooperation agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement and Christopher Erwin's cooperation to the attention of other prosecuting offices, if requested to do so.

Breach of Agreement

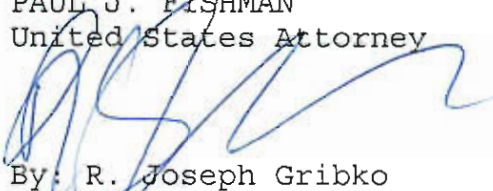
Should Christopher Erwin withdraw from or violate any provision of this cooperation agreement or the plea agreement, or commit or attempt to commit any additional federal, state, or local crimes, or intentionally give materially false, incomplete, or misleading testimony or information, this Office will be released from its obligations under this agreement and the plea agreement, including any obligation to file a motion under U.S.S.G. § 5K1.1, but Christopher Erwin may not withdraw the guilty plea entered into pursuant to the plea agreement. In addition, Christopher Erwin shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by Christopher Erwin, and all such information, statements, and leads therefrom may be used against Christopher Erwin. Any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by Christopher Erwin may be commenced, notwithstanding the expiration of the limitations period after Christopher Erwin signs the agreement. Christopher Erwin agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Christopher Erwin signs the agreement. With respect to any prosecution referred to in this agreement, Christopher Erwin further waives any right to claim that statements made by him before or after the execution of this agreement, including any statements made pursuant to any prior agreement between Christopher Erwin and this Office, or any leads from Christopher Erwin's statements, should be suppressed under that prior agreement or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), U.S.S.G. § 1B1.8, or otherwise.

No Other Promises

Christopher Erwin acknowledges that no additional promises, agreements or conditions have been made other than those set forth in this cooperation agreement and in the plea agreement, and none will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: R. Joseph Gribko
Assistant U.S. Attorney

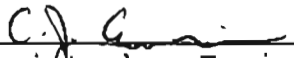
APPROVED:



Nelson S.T. Thayer, Jr.
Attorney In Charge, Trenton Office

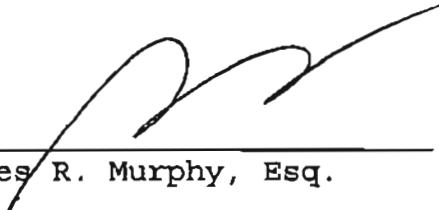
I have received this cooperation agreement from my attorney, James R. Murphy, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this cooperation agreement and acknowledge that the plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:



Christopher Erwin

Date: 5-8-12



James R. Murphy, Esq.

Date: 5/8/2012

Appendix G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 12-364 (FLW)

1

UNITED STATES OF AMERICA

v.

CHRISTOPHER ERWIN,
Defendant

:
: TRANSCRIPT OF
: SENTENCE
:
:
: JULY 25, 2013
:
:
:

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FRED A L. WOLFSON, USDJ

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

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: R. JOSEPH GRIBKO, AUSA
On behalf of the Government

JAMES R. MURPHY, ESQUIRE
On behalf of the Defendant

* * * * *
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER
(609) 588-9516

C E R T I F I C A T I O N

PURSUANT TO SECTION 753, TITLE 28, USC, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

A handwritten signature in cursive script, appearing to read "Vincent Russoniello".

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court, defendant present.)

2 THE CLERK: All rise.

3 THE COURT: Thank you.

4 I'll have the appearances. Everyone else may
5 be seated.

6 MR. GRIBKO: Good morning, your Honor.

7 Assistant United States Attorney Joseph Gribko
8 on behalf of the government; and with me at counsel
9 table is Tim Beach of the DEA.

10 MR. BEACH: Good morning, Judge.

11 THE COURT: Thank you.

12 MR. MURPHY: Good morning, your Honor.

13 James R. Murphy representing Christopher
14 Erwin, who is present to my right.

15 THE COURT: Thank you. Have a seat, please.

16 We are here for the sentencing of Mr. Erwin in
17 connection with his guilty plea to a count of
18 conspiracy to distribute and possess with intent to
19 distribute oxycodone.

20 Before we begin, Mr. Gribko, I understand that
21 you wish to note that there has been a consent order
22 with regard to a Superseding Information that will
23 include a forfeiture count consistent with the plea
24 stipulations and the prior agreements of counsel and
25 the defendant.

1 MR. GRIBKO: Yes, your Honor.

2 The Superseding Information to which the
3 parties have agreed only adds the notice provision.
4 It doesn't otherwise change the criminal conduct. And
5 of course the notice provision here is a formality
6 because the defendant received notice in the plea
7 agreement at the plea hearing and in entering the
8 consent judgment which was already submitted to the
9 Court.

10 He's also waived any compliance with Rule
11 32.2, which is the rule that requires that the notice
12 provision be set forth in the Superseding Information.
13 However, in an abundance of caution, since the rule
14 seems to require it, the parties are submitting it to
15 comply with 32.2.

16 THE COURT: All right.

17 MR. GRIBKO: And I'm submitting a stipulation
18 and a Superseding Information.

19 THE COURT: Thank you, Mr. Gribko.

20 I've received the Superseding Information as
21 well as the stipulation which has been signed by both
22 Mr. Murphy and Mr. Erwin.

23 I will sign it as well. The only change is
24 the forfeiture count which, as we said, has already
25 been agreed to, in any event.

1 We will proceed at this time.

2 I know that counsel have received the
3 Presentence Investigation Report. I have received
4 sentencing memoranda from both the government as well
5 as from defense counsel as well as a number of letters
6 on behalf of Mr. Erwin.

7 Mr. Murphy, have you had sufficient
8 opportunity to review the report with your client?

9 MR. MURPHY: Yes, I have your Honor.

10 There is only one issue left and I believe I
11 addressed that in a letter to the Court with regard to
12 a dismissal of a charge in municipal court that had a
13 reference to a weapon.

14 There was no weapon. I just ask that the
15 probation officer correct that in the final version. I
16 did that by letter to the Court.

17 THE COURT: I have the letter, but I think
18 that you are incorrect.

19 I have received a printout regarding the
20 criminal history and apparently -- I know your
21 argument was based on the fact your client didn't
22 think he was charged with a weapon, plus because you
23 indicated for the municipal court to have dismissed
24 it, it wouldn't have been.

25 In fact, what the record revealed, it was

1 referred to the Ocean County Prosecutor, it was
2 no-billed, and then sent back for a dismissal. It
3 clearly was referenced as an aggravated assault with a
4 weapon. I can show you the printout.

5 MR. MURPHY: That's not necessary, your Honor.

6 THE COURT: I know it added no points. It
7 makes no difference on the criminal history in that
8 regard, but as an arrest it is accurate.

9 MR. MURPHY: Thank you, your Honor.

10 THE COURT: Beyond that, are there any
11 objections to the report by the government?

12 MR. GRIBKO: None from the government, your
13 Honor.

14 THE COURT: Any objections from the defense?

15 MR. MURPHY: No, your Honor.

16 THE COURT: All right. You may have a seat.

17 Then I will begin by calculating the
18 Guidelines in this matter:

19 The base offense level based on the quantity
20 of drugs is a level 38.

21 Looking at adjustments for role in the
22 offense, pursuant to Sentencing Guideline 3B1.1(a), I
23 find that it is appropriate to have an upward
24 adjustment of four levels, since Mr. Erwin was clearly
25 an organizer, leader, and manager of more than five

1 individuals, and indeed he is at the top of this
2 conspiracy. The four levels will be added.

3 That brings it to an adjusted offense level of
4 42.

5 I find that he would qualify for the two-level
6 adjustment for acceptance of responsibility.

7 Mr. Gribko, are you moving for the additional
8 one level?

9 MR. GRIBKO: Yes, your Honor.

10 THE COURT: I will grant that, and, thus, the
11 offense level is a 39.

12 Turning to criminal history:

13 There are no criminal history points, and as a
14 result he is in a criminal history category of 1.

15 With a total offense level of 39 and a
16 criminal history category of 1, under the statute he
17 faces a maximum of 20 years imprisonment; while under
18 the Guidelines it would have been 262 to 327 months,
19 it is capped at 240 months because of the statutory
20 maximum of 20 years.

21 Probation under the statute is one to
22 five years; he is not eligible under the Guidelines.

23 Supervised release is at least three years;
24 the Guidelines is three years.

25 The fine under the statute is a maximum of

1 \$1 million; with a Guideline range of \$25,000 to \$1
2 million.

3 Restitution is not applicable here.

4 There is the mandatory special assessment of
5 \$100 for the single count of conviction.

6 Counsel, any disagreement with the ranges as I
7 have read them to you?

8 MR. GRIBKO: No, your Honor.

9 MR. MURPHY: No, your Honor.

10 THE COURT: I understand that the government
11 has an application for a departure and under 5K1.1.

12 MR. GRIBKO: Yes, your Honor.

13 The basis for that motion is set forth in the
14 government's letter to the Court of July 12th, 2013.

15 In essence, it states that Mr. Erwin came into
16 the U.S. Attorney's Office and provided detailed
17 information about the scheme and about the doctors'
18 connection to the scheme.

19 He went through records, gave a detailed
20 account, as only he as the leader of the scheme could,
21 and disclosed discussions and interactions he had with
22 the doctors, as only he, the leader of the scheme
23 could.

24 He was essentially truthful and he agreed to
25 testify against both the doctors in this case.

1 The fact that he who knew intimately the exact
2 nature of the relationship and knew all of the details
3 agreed to cooperate, was relayed to the doctors, and
4 it likely influenced their decision to plead guilty in
5 this case and both of of them did.

6 So at this point the government is
7 recommending a five-level downward departure, and that
8 would be a departure from the 39 down to a 34, just to
9 be clear because I know because of the cap there is
10 some -- there may be some question as to where to
11 start, but that is the downward departure the
12 government is seeking from the 39 to the 34, that
13 five-level downward departure.

14 THE COURT: Thank you.

15 I've considered the letter that you submitted,
16 and your motion, Mr. Gribko, as well as your comments,
17 and I'll make my findings with regard to the Torres
18 factors at this time.

19 As you've indicated, and as is apparent from
20 all that I have learned, Mr. Erwin was the leader of
21 this drug-trafficking scheme. As a result, obviously,
22 he was privy to the most information about it.

23 You have indicated that he did cooperate by
24 providing the government with information, including
25 medical files of conspirators, prescriptions,

1 reviewing them with you, that he agreed most
2 importantly to testify against the doctors, who
3 ultimately pled guilty, and that it was useful in
4 obtaining those guilty pleas.

5 The information he provided was corroborated
6 by documents, other information, and testimony that
7 was provided by other cooperators, and that therefore
8 was generally corroborated by your investigation.

9 You consider his cooperation to be important,
10 and it was timely, and as a result the Torres factors
11 are satisfied in that the information provided was
12 significant and useful. It was complete and reliable.
13 He did agree to testify as to the nature and extent.
14 There is no indication of a risk of harm. It is a
15 neutral factor; and it was timely.

16 As a result, I will grant the government's
17 motion for a 5K1.1 departure.

18 I've heard your recommendation, Mr. Gribko,
19 for a five-level departure. Certainly, you are aware
20 that we have spent the better part of this month
21 sentencing various individuals and I've provided
22 departures for a number of them pursuant to their
23 cooperation, and I'm well aware of the ranges that
24 have been given out based upon the kinds of
25 cooperation given.

1 While I do obviously have some concern given
2 Mr. Erwin's role, obviously he did provide information
3 that was important that perhaps others could not have
4 provided because only he could have been aware of as
5 the leader, and therefore I find it would merit the
6 five-level departure, which is a major significant in
7 my mind departure in this case for Mr. Erwin.

8 That would place him at a level 34. With a
9 criminal history category of 1, it places him at 151
10 to 188 months. To some extent almost a half departure
11 in time.

12 Are there any other applications for
13 departures or variances?

14 MR. GRIBKO: None from the government.

15 MR. MURPHY: None from the defense, your
16 Honor.

17 THE COURT: Then I'm ready to hear your
18 comments with regard to sentencing.

19 Mr. Murphy, I'll hear from you first.

20 MR. MURPHY: Yes, your Honor.

21 First of all, I believe your Honor should be
22 aware from the letters and the people in the courtroom
23 that there are people that believe, as I do, that
24 Chris is a salvageable human being.

25 He has had a strong outpouring of support not

1 only in the letters, but by the people who are here
2 present in court. All those people who wrote to your
3 Honor, as well as those present in court, recognize
4 the criminality that Chris in fact created by being
5 the leader of this operation.

6 Two letters do stand out in my mind for your
7 Honor's consideration, and they are by his wife
8 Allison whose candid comments I think do lay out her
9 feelings towards her husband with regard to how he has
10 in one level failed their marriage, but also
11 truthfully has been a strong parent and father of
12 their child, as well as a letter by an individual who
13 had an addiction problem and who Chris, as she points
14 out, attempted to help even though she was getting
15 oxycodone from him.

16 Mrs. Erwin and Ms. Hugg are willing to make
17 brief statements with regard to their situation with
18 regard to their husband and their friend after I've
19 finished my comments, your Honor.

20 He has been on pretrial release for two years
21 without any problems. Chris' crime never could have
22 happened if it wasn't for the two doctors and
23 particularly involved in this particular matter.

24 He doesn't have the ability to write
25 prescriptions. Am I attempting to belie the fact of

1 his participation and his active leadership in this
2 conspiracy? No.

3 However, he can't write a prescription and
4 from the Presentence Report your Honor can in fact
5 read that Dr. Lopresti for a two-year period from the
6 period between 2009 and December 2010 wrote
7 prescriptions, over 5,000 prescriptions for 275,000
8 tabs of oxycodone. Dr. Lahham for the same period
9 wrote 1300 prescriptions for 162,000 tabs of
10 oxycodone.

11 Chris cooperated almost immediately after his
12 arrest. His cooperation did lead to the pleas by Drs.
13 Lopresti and Lahham. He met with the government, as
14 your Honor has granted the 5K, but he did meet with
15 the government on numerous occasions, gave them all
16 the information he had, and relayed any and all
17 information that they requested.

18 There was other information he provided with
19 regard to other matters that didn't involve the
20 doctors that may have not led anywhere, but he was
21 ready, willing, and able to assist in any endeavor the
22 government wished him to.

23 He does take full responsibility for his
24 actions. Chris can give reasons as to what put him in
25 this particular situation, the loss of his dream job,

1 the financial failures of his business endeavors, and
2 in the end it was his decision to break the law. He
3 clearly recognizes that. Oddly enough Chris' only
4 financial success in the last however so years has
5 been his involvement with the oxycodone conspiracy.

6 He now realizes that none of his criminal
7 activity was worth it. Chris clearly realizes that he
8 hurt himself, his family, his son, Collin, who he
9 loves dearly who is 6-year-old and who he is the
10 primary caretaker for.

11 As noted in every letter received by your
12 Honor by every person who wrote about Chris, they show
13 and describe his abiding love of his son, Collin, and
14 his fear of exactly what will occur when he quite
15 properly is sentenced to a jail term as your Honor I
16 believe must in this particular situation.

17 I just wish your Honor would consider under
18 all the attendant circumstances as required by the
19 sentencing, 3553(a), what in fact an appropriate
20 sentence would be.

21 Your Honor should consider, as you are well
22 aware under the statute, a sentence that is sufficient
23 but not greater than necessary to achieve the purposes
24 of sentencing.

25 As you pointed out, Chris' Guideline numbers

1 are off the charts. He did face a maximum sentence of
2 20 years or 240 months.

3 I only as counsel have the benefit of Dr.
4 Lahham's sentence by your Honor of 9 years. Dr.
5 Lopresti awaits her sentence. But if cooperation is
6 to be rewarded, your Honor, I must respectfully
7 request that you consider the sentences given to Dr.
8 Lahham and what you eventually may give Dr. Lopresti
9 when you consider the appropriate sentence under the
10 Booker analysis for my client.

11 I further request that your Honor allow my
12 client to self-surrender to the Federal Bureau of
13 Prisons, and that you make a recommendation that Chris
14 be sentenced to a facility, if possible, at or near
15 his family here in New Jersey.

16 The recommendation for the self-surrender
17 allows him to be classified at a lower level as your
18 Honor is undoubtedly aware.

19 My hope would have been that your Honor could
20 sentence Mr. Erwin to a sentence lower than either
21 doctor because, while he was the leader of this
22 organization, they were certainly the catalysts that
23 provided the prescriptions to allow the pills to be
24 sold and distributed.

25 His wife would like to make a brief statement

1 as well as Dara Hugg, your Honor.

2 THE COURT: I'll hear from them at this time,
3 and then I'm in assuming Mr. Erwin wants to speak.
4 Correct?

5 MR. MURPHY: Yes he does, your Honor.

6 THE COURT: Provide your full name, please.

7 MS. ALLISON ERWIN: Allison Erwin.

8 Hello, your Honor. Thank you for the
9 opportunity to say something.

10 I know you've gotten my letter, and thank you
11 very much for reading it, so I won't take up too much
12 time. But I did want to personally explain that the
13 man who behaved in the way that brought him to this
14 court today is not the man that he has been for
15 20 years. It's not the man that he has been certainly
16 since the day he got arrested.

17 The day he got arrested I was seeing panic.
18 He was calm. It was over. It was finally over for
19 him. Over the past two years, he's explained it to me
20 and I've come to terms with his explanation that he
21 panicked, made horrible decisions, and then that panic
22 sort of turned to a certain amount of greed, and a
23 certain amount of descending into this world, and then
24 after a certain point he became trapped.

25 Once the realization of the reality of what

1 this was doing to young people in the community, it
2 hit him. But at that point he was in too deep as he
3 explained it to me. He couldn't get out if he tried
4 because they knew too much about him.

5 And in the end my sense is that, and he
6 explained it to me, that it was finally over and that
7 he would have to take what's coming to him and he
8 understands that.

9 He is not going to talk to you about not
10 taking responsibility. In fact, to the contrary, he's
11 going to talk about taking responsible for it. He is
12 humbled. He is changed. Is he flawed? Yes,
13 obviously, or we wouldn't be here. But over the
14 two years I've come to terms with his explanation.

15 What he is in addition to the things that you
16 have seen on paper that he has done, every father in
17 this court of course loves their child, but the bond
18 between Chris and Collin is something I've never seen.

19 It used to make me jealous, actually, it used
20 to make me a little bit jealous because I would be
21 going to work and sometimes when Collin would get a
22 boo-boo he would run to daddy instead of mommy and
23 that hurt a little bit. But in the end, it was one of
24 his parents and I had to sort of accept that, but it
25 was hard.

1 As a working mom leaving him home was only
2 bearable because he was with his other parent, his
3 daddy, and that made it a little bit easier to take.
4 Collin is the most well-adjusted, sweetest, wonderful
5 child in the world and a big part of that is because
6 of how Chris is with him.

7 I'm not going to go into the devastation. We
8 can all imagine what that is and I don't think I can
9 get through it if I tried. So I would just hope that
10 your Honor would consider that.

11 The people behind me here today are all here
12 in support of Chris. They are my family members and
13 my friends and Chris' family members his friends.
14 They are neighbors.

15 They are people who have been in our lives for
16 years, all of whom as I talked to them over the last
17 few years have had the same sort of continuum of
18 reaction, anger, fear, resentment, frustration over
19 Chris.

20 But in the end, at the end of the day, they
21 are here for him because they understand that the man
22 that they knew and the man that he has been since the
23 day he got arrested is not the man who behaved in the
24 way that is on paper in front of your your Honor.

25 I don't think any of us is asking for

1 forgiveness, I know Chris isn't, but only for
2 consideration of the man he was both before and after.

3 I would respectfully ask you for leniency and
4 for as much mercy as you see appropriate for the
5 father that he is to the sweetest little boy in the
6 world and the value that he has to all of our lives.

7 Thank you.

8 THE COURT: Thank you, Mrs. Erwin.

9 MR. MURPHY: Ms. Hugg.

10 MS. DARRA HUGG: Hi, your Honor. My name is
11 Darra Hugg.

12 I just want to restate what was in my letter.
13 Obviously, I'm nervous. I am a recovering drug
14 addict. And I don't think anybody sitting in this
15 room can say that without Chris I probably wouldn't be
16 here.

17 The whole time that I used -- he was selling
18 the pills, I would beg him for them, as did 80 percent
19 of the addicts. We would beg and plead, please,
20 please, and every day he would beg me to get off of
21 the drug, every single day.

22 And about two years ago I listened to him. I
23 did get off the drug. He's helped me build my life
24 back. He's helped my daughter. My daughter and his
25 son are best of friends and honestly I don't know

1 where I would be without him.

2 That's all I wanted to say. Thank you.

3 THE COURT: Thank you, Ms. Hugg.

4 MR. MURPHY: Mr. Erwin?

5 THE COURT: You can stay right there. There
6 is a microphone right there.

7 THE DEFENDANT: Okay.

8 Thank you for the opportunity to address the
9 Court. I will not insult anyone by using this time to
10 make excuses for my behavior. I take complete
11 responsibility for my actions.

12 But while there is no excuses for putting
13 myself in the position to devastate my son and my
14 family and ruining my own life, there are reasons, and
15 I hope taking a moment to explain these reasons will
16 allow you to understand that the actions that brought
17 me before this Court are not reflections of how the
18 way I live my life and they are also nowhere near the
19 person I had been since I was arrested.

20 In my early twenties, my parents went through
21 an ugly divorce and I had a terrible breakup with who
22 at the time I thought was the love of my life and I
23 became totally self-destructive.

24 At that time I was a criminal justice major in
25 college, on the waiting list for the San Diego Police

1 Department, with aspirations of a career in law
2 enforcement. But I became totally self-destructive.
3 I know the points aren't there, but you are aware of
4 the earlier, and I got arrested.

5 At that point, I didn't care what happened to
6 me. I think it's one of those things. I've always
7 had emotional problems and I went to a psychiatrist in
8 my teens, panic and depressed, whatever, you know, and
9 that led me to some sort of self-destructive behavior
10 which even when it was happening I didn't care. The
11 arrest of the person at 24, he might as well be a
12 different person than the arrest now.

13 When I got out of prison the first time, I
14 worked two jobs, walked, hitchhiked, took busses,
15 cabs, and eventually it led to a career at a newspaper
16 as a sports-writer which was my dream job because I
17 loved sports. I played athletics through high school
18 and some college.

19 The paper was a local paper, the Asbury Park
20 Press. It was bought by a large corporation. And if
21 you've ever seen a movie where a corporation overtakes
22 a small company and just guts it and mistreats people,
23 it was very similar to that.

24 Eventually, they fired one of my -- a lady on
25 Christmas Eve over the phone and she committed

1 suicide. Maybe within 3 to 6 months after, I wrote a
2 letter to corporate Human Resources saying that it was
3 despicable the way they treated people. It led to my
4 termination. I might as well have fired myself.

5 After that because of my previous conviction
6 in the '80s, I was unable to get another job. I was
7 applying at Home Depot. For a \$1.99, they could run
8 your background check. So I couldn't secure
9 employment.

10 My wife makes a decent living. We didn't have
11 a baby until later in life. We got married in our
12 mid-thirties. But a lot of it was to do because we
13 wanted to be financially stable and provide for the --
14 the key argument in most relationships are money. So
15 we waited to have the baby until we were financially
16 set, and unfortunately at the time Collin was an
17 in-vitro baby, so that was a little expense in itself.

18 I lost my job. I couldn't secure another one.
19 I had an investment property that was supposed to pay
20 for the in-vitro. I got involved with a family
21 member, my sister. She reneged on the deal and I was
22 paying two mortgages for 10 months. Not I, our family
23 together, and I went through my 401K and everything
24 and I was broke, and I got desperate and stupid and I
25 started this downward spiral.

1 I started selling marijuana thinking I would
2 just sell it to people over 30 years old and older and
3 it just -- one thing led to another and I was caught
4 in it.

5 And initially when I got involved with the
6 pills, I wasn't aware that they were like heroin. I
7 thought pills were for kids that wouldn't go to the
8 city to buy weed or coke. I didn't realize that it
9 was such an epidemic. I thought like sleeping pills.
10 Eventually -- I'm not going to insult you -- a month
11 or so into it I realized it. But greed and I guess
12 the thrill of the power kind of kept me in.

13 And when my wife says, you know, I was
14 trapped, I'm sure you probably rolled your eyes and
15 think that -- I figured there was such a paper trail
16 with this and the people involved are so vindictive
17 that you almost had to keep your enemies closer
18 than -- keep your friends close and your enemies
19 closer.

20 So it was like to appease people just so they
21 wouldn't tell on me and in the end I was told on
22 anyway. But that was the consideration in continuing
23 my involvement. It went on, my prices, what I sold
24 the pills for was just like I was almost giving them
25 away to -- not almost giving them away.

1 But if they had a street value of \$25, I was
2 selling them for like \$8 to \$10, you know, and I was
3 blowing money in casinos and I just got caught up in
4 the whole life style.

5 I know I got away from my notes. I'm sorry.

6 I know you have the responsibility to hand
7 down a sentence that protects society and punishes
8 those. My explanation and letters you have received
9 about me will help you to eliminate that I'm not a
10 danger to society.

11 My absence will not only devastate my young
12 son, but also significantly impact my wife who is able
13 to work as hard as she does as a primary earner in our
14 family because of my ability to help considerably with
15 childcare.

16 I certainly don't need to tell you or anyone
17 in this court what a Scrooge on society pills are. In
18 fact, my church has even started a public service
19 Awareness Program about it and I spoke to the
20 monsignor and offered to be a guest speaker or perhaps
21 a resource for the Awareness Program. It fits right
22 into my desire to do something to help combat this
23 problem among young people who have their whole lives
24 ahead of them.

25 I remember watching Scared Straight as a kid

1 and being terrified. I think that with the current
2 drugs and Governor Christie's report being an
3 epidemic, but this is white suburbia. I don't think
4 you can scare the kids straight. I think you have to
5 reason them straight maybe and I think that I could do
6 that.

7 I have always connected with young people.
8 I'm the guy who plays wiffle ball and
9 pick-up-basketball games with the kids in the
10 neighborhood. I'm pretty immature, like I'm a
11 Johnny-goofball, so I relate well to kids.

12 In closing, I would like to thank U.S.
13 Attorney Gribko and Morasco -- am I saying that
14 correct -- and the DEA for treating me with such
15 professionalism, and especially the two Tims, one is
16 in the court and the other one isn't. The day of the
17 arrest they hid their guns and let my wife and son
18 leave. It was really meaningful to me. I totally
19 appreciate that.

20 That's it. Thank you.

21 THE COURT: Thank you Mr. Erwin.

22 Mr. Gribko.

23 MR. GRIBKO: Your Honor, the government is of
24 course seeking a lengthy sentence in this case. In
25 fact, we are seeking not just a sentence within the

1 range, but the top of the range of 188 months.

2 The reasons for that are that Mr. Erwin wasn't
3 just part of this conspiracy; he was this conspiracy.
4 He created this whole conspiracy. He created addicts.
5 He took people who he knew to be addicted to drugs and
6 made them greater addicts, made them beholding to him
7 to get pills from doctors so that he could make money.

8 For every Ms. Hugg there are -- you've seen 20
9 something defendants in this case, 20 something
10 addicts who worked for Mr. Erwin. There were more,
11 there were many more, who were uncharged, and even
12 Ms. Hugg I believe, and she can correct me if I'm
13 wrong, went to Dr. Lahham with Mr. Erwin.

14 He created these people. He made them into
15 addicts, greater addicts than they were. He used them
16 and he made them into criminals. They are not victims
17 in the usual sense. They are criminals. But they are
18 criminals because Mr. Erwin used them.

19 He was this conspiracy. Every single script
20 came through him. It was his idea. He ran it. He's
21 more culpable than the doctors even because he knew
22 exactly what was going on. He knew exactly what these
23 people were doing with the scripts.

24 The doctors may have had an idea that these
25 people, many of whom had medical problems, had some

1 use of the drugs or were addicted to the drugs.
2 They've admitted that. But he knew exactly what was
3 going on. He knew that these people weren't even
4 getting the drugs. They were getting a small portion
5 and then they had to buy the rest back from him at a
6 higher price.

7 This wasn't even just pure greed. It was well
8 beyond that. It was not something desperate. It
9 wasn't anything stupid. It wasn't driven just by some
10 small financial decision. He made huge amounts of
11 money on this case. The street value of these pills
12 is astronomical and he was getting them a hundred at a
13 time every time he brought an addict to a doctor.

14 I want to briefly address his son because it's
15 been brought up sometimes.

16 The fact of the matter is, he's going to miss
17 a big chunk of Collin's life, no matter what the Court
18 does here. Even if the Court were to give him a
19 significant break, which I don't believe you should,
20 it was his decision to do so. It was his decision to
21 do this. He knows he's going to miss his life.

22 That should not be a reason for downwardly
23 varying in any way. As the best case scenario here,
24 even if this Court were to significantly go down,
25 Collin would be an adult by the time he gets out of

1 jail.

2 Finally, I want to end on one note and that is
3 the defendant's criminal history. He has zero
4 criminal history points which is astonishing because
5 he is the same person despite what he says now that
6 dealt drugs in 1988 and was given a significant
7 sentence at that time. It is the same person who did
8 a burglary back at that time.

9 He is the same person. This lapse of time
10 only caused him to not be a career offender here.
11 He's the same guy. He did it then, he did it now, and
12 unless a significance sentence is imposed he may even
13 do it again.

14 Your Honor, I don't have anything further.
15 The government is requesting the top of the range.

16 THE COURT: Thank you Mr. Gribko.

17 I'll proceed with my comments pursuant to the
18 3553(a) factors, and I'll begin with the nature and
19 circumstances of the offense.

20 I've had the opportunity over this last month
21 to speak often, several times a day, in fact, doing
22 all the sentencings that I have been doing of the
23 individuals who were involved in this conspiracy.
24 I've talked about oxycodone. I've talked about the
25 effect of this conspiracy on individuals.

1 And finally today I sentence you, Mr. Erwin,
2 who, yes, was the creator, originator of the scheme,
3 the leader of the scheme.

4 I will tell you, as well, that having seen a
5 number of the individuals who were your -- we've used
6 the term -- runners, those who were the addicts that
7 were brought to Dr. Lahham's office or brought to Dr.
8 Lopresti's office or brought to Atlantic City casinos
9 to meet with Dr. Lahham in his hotel room to get
10 prescriptions, those addicts are at the bottom of
11 society, many of them, little to their name, and you
12 used and abused them.

13 I think appropriately when Mr. Gribko said
14 they are now criminals, in a certain way they were
15 also victims. They were victimized by you creating
16 the scheme and using their weakness, their addiction
17 to perpetrate this crime. Some of them had no
18 criminal history at all, not just because of a lapse
19 of time, but they hadn't committed another crime.
20 Others may have. Now, they are all criminals and
21 addicts, some recovering.

22 You've indicated in your remarks today that
23 you finally recognize the effects of oxycodone. I
24 don't want to have my intelligence insulted, Mr.
25 Erwin. I don't think you ever didn't know what the

1 effects of oxycodone were. There is nobody out there
2 these days who doesn't understand the addictive powers
3 of painkillers. It's been in the news for years.
4 It's out there.

5 So your initial involvement, as you point out,
6 yes, was it agreed, was it you panicked -- I'm not
7 sure of the words -- panic turned to greed, you knew
8 what you were doing. You knew these were highly
9 addictive drugs. It wasn't after a month that you
10 learned it. You made your decisions deliberately. In
11 fact, it's the only way it works, because when you
12 supply an addictive drug, people want more.

13 This was widespread. I can't believe the
14 number of individuals that were involved in
15 effectuating this scheme, how many went to Lahham, to
16 Lopresti, that you brought there, that you instructed
17 others to drive them there, and come out with these
18 prescriptions, take them to the pharmacist, get them,
19 sell them on the street, and sell some of them back to
20 these same individuals or give them some of the pills,
21 and that was the reason they were in on this, to get
22 the pills and support their habit.

23 It is becoming unfortunately a drug of choice
24 of many, so highly addictive, so highly destructive.
25 You were a significant cog in the problem. You

1 created it, you maintained it, and maintained it for a
2 substantial period of time.

3 And to say you didn't know how to get out
4 because they knew too much about you and you would be
5 caught, you were going to get caught anyway at some
6 point. You didn't want to stop.

7 You tell me that you went to casinos. You
8 were gambling. You even used the word "power" in your
9 remarks, not just greed, but power. Doesn't that stop
10 you even to think about saying the idea of being
11 "powerful" in a drug conspiracy? It is appalling.

12 Some of those remarks will also go to the
13 history and characteristics are, but I'll get to be in
14 a moment.

15 The need for deterrence. You've already
16 referenced, and you've got no criminal history points
17 because it was back in 88 and the sentence was
18 completed in the '90s, but you've told me about why
19 you got involved in self-destructive behavior back in
20 1988.

21 You were convicted back then of burglary. You
22 were involved in a large conspiracy to distribute
23 cocaine. You received a very substantial state
24 sentence, 10 years, parole ineligibility of
25 four years. That says a lot because I know in the

1 state system those kinds of lengthy sentences are not
2 given out for first time offenders and that kind of
3 parole ineligibility. This was a large scheme.

4 Indeed, at least one or two of the individuals
5 I've already sentenced were also charged in that
6 scheme. You knew who to recruit, I guess. But the
7 prior conviction and receiving such a substantial
8 custodial term did not deter you years later from
9 committing this crime and heading up another
10 conspiracy.

11 Deterrence, yes, is a concern for this Court
12 as to you. Also, a general deterrence that the public
13 realize that committing this kind of crime will be
14 dealt with seriously and severely by the Court.

15 Turning to your history and characteristics.
16 I've already referenced the prior criminal matter. I
17 do note, it is documented in the report, that you've
18 had certain emotional issues over many years, anxiety
19 and depression and you've dealt with some mental
20 health providers in that regard.

21 But you had a stable marriage. You finally
22 had had a child and much is being made of the
23 relationship with your child. I do not in any way
24 doubt that you have been or attempted to be a good
25 father to your son and that there is a special

1 relationship.

2 You, though, involved yourself in this crime
3 after your son was born. You can't say it was a
4 wake-up call and you wanted out of this when your son
5 was born. You had that son when you committed these
6 acts. You knew what you were doing and you knew what
7 you were jeopardizing.

8 Unfortunately, Mr. Erwin, there is no kind way
9 to say it: You are a drug dealer. You were a drug
10 dealer in '88. You were a drug dealer in this decade.

11 I can tell you having sentenced over the last
12 20 plus years drug dealers many of them are wonderful
13 fathers. There are two lives. It doesn't surprise
14 me. I've seen it many times.

15 And while I have received many letters from
16 family, friends, community, you are an individual who
17 was educated, some college, were a writer, a sports
18 writer for a while, and certainly within the community
19 you've shown a good side.

20 But as I've said many times, and you are not
21 the exception, when I see someone who commits these
22 kinds of acts, there are two different people shown,
23 one that may be shown to your family and community and
24 the other when you engage in the criminal activity at
25 exactly the same time that you are out there playing

1 on the street with the kids.

2 And you are out there working a conspiracy to
3 distribute oxycodone to some of those young people,
4 not the ones you are playing with, but others, and
5 that's someone's child. Whether it was the children
6 or the adults that ultimately ended up with them, they
7 will now live with those addictions and how to recover
8 from them and that's a life-long problem, life-long.

9 Disparity of sentencing. Mr. Murphy, I take
10 great exception to your comment that he should receive
11 no more or less than the doctors in this case. He is
12 different than the doctors, yes. Do you need a doctor
13 to write the script? Yes.

14 They weren't necessarily familiar with all of
15 the extent of this conspiracy. He was. He
16 orchestrated it, he manipulated everyone in that
17 regard, and he found the doctors who were the easy
18 marks: Who do I think can write those prescriptions?
19 And I'll bring these people in and I'll pay them. And
20 those doctors, by the way, did not have convictions.
21 Mr. Erwin does.

22 So when I consider all the 3553(a) factors,
23 there is no doubt in my mind, but for the break that
24 the government has given on the 5K, I would have been
25 happy sending Mr. Erwin to even a higher sentence, the

1 top of the Guidelines is totally and absolutely
2 sufficient but not greater than necessary, the
3 188 months. That is what I will sentence him to.

4 I'll also impose a term of three years of
5 supervised release.

6 There will be an alcohol, drug testing, and
7 treatment provision, a mental health treatment, and
8 because of his disclosure with regard to gambling, I
9 am going to have a gambling restriction as well.

10 Sentence is as follows:

11 It is the judgment of the Court that the
12 defendant, Christopher Erwin, is hereby committed to
13 the custody of the Bureau of Prisons to be imprisoned
14 for a term of 188 months.

15 Upon release from imprisonment, defendant
16 shall be placed on supervised release for a term of
17 three years. Within 72 hours of release from the
18 custody of the Bureau of Prisons, defendant shall
19 report in person to the Probation Office in the
20 district to which he is released.

21 While on supervised release, defendant shall
22 not commit another federal, state, or local crime,
23 shall be prohibited from possessing a firearm or other
24 dangerous device, shall not possess an illegal
25 controlled substance, and shall comply with the other

1 standard conditions that have been adopted by the
2 Court.

3 Defendant must submit to one drug test within
4 15 days of commencement of supervised release and at
5 least two tests thereafter as determined by the
6 probation officer.

7 As I have indicated, the following special
8 conditions will apply: Alcohol, drug testing, and
9 treatment, mental health treatment, and the gambling
10 exclusion provisions.

11 I find defendant does not have the ability to
12 pay a fine. I will waive the fine in this case.

13 It is ordered that the defendant shall pay to
14 the United States a total special assessment of \$100,
15 which is due immediately.

16 I'll allow a voluntary surrender, and I'll
17 recommend a facility as close as possible to his
18 family.

19 Finally, I advise the parties of their right
20 to appeal this sentence.

21 Anything else, counsel?

22 MR. GRIBKO: No, your Honor.

23 MR. MURPHY: No, your Honor.

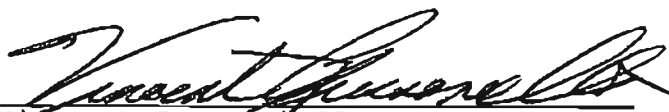
24 THE CLERK: All rise.

25 (Proceedings are concluded.)

C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.


Vincent Russoniello, CCR
Certificate No. 675
Date: 9-13-13

\$	38 [1] - 6:20 39 [4] - 7:11, 7:15, 9:8, 9:12 3B1.1(a [1] - 6:22	achieve [1] - 14:23 action [2] - 37:14, 37:16 actions [3] - 13:24, 20:11, 20:16 active [1] - 13:1 activity [2] - 14:7, 33:24 acts [2] - 33:6, 33:22 added [2] - 6:6, 7:2 addict [2] - 19:14, 27:13 addicted [2] - 26:5, 27:1 addiction [2] - 12:13, 29:16 addictions [1] - 34:7 addictive [4] - 30:2, 30:9, 30:12, 30:24 addicts [9] - 19:19, 26:4, 26:6, 26:10, 26:15, 29:6, 29:10, 29:21 addition [1] - 17:15 additional [1] - 7:7 address [2] - 20:8, 27:14 addressed [1] - 5:11 adds [1] - 4:3 adjusted [2] - 7:3, 18:4 adjustment [2] - 6:24, 7:6 adjustments [1] - 6:21 admitted [1] - 27:2 adopted [1] - 36:1 adult [1] - 27:25 adults [1] - 34:6 advise [1] - 36:19 aggravated [1] - 6:3 ago [1] - 19:22 agree [1] - 10:13 agreed [6] - 4:3, 4:25, 8:24, 9:3, 10:1, 30:6 agreement [1] - 4:7 agreements [1] - 3:24 ahead [1] - 24:24 alcohol [2] - 35:6, 36:8 Allison [2] - 12:8, 16:7 ALLISON [1] - 16:7 allow [4] - 15:11, 15:23, 20:16, 36:16 allows [1] - 15:17 almost [5] - 11:10, 13:11, 23:17, 23:24, 23:25 AMERICA [1] - 1:5 amount [2] - 16:22, 16:23 amounts [1] - 27:10 AN [1] - 2:9	analysis [1] - 15:10 anger [1] - 18:18 anxiety [1] - 32:18 anyway [2] - 23:22, 31:5 appalling [1] - 31:11 apparent [1] - 9:19 appeal [1] - 36:20 appearances [1] - 3:4 appease [1] - 23:20 applicable [1] - 8:3 application [1] - 8:11 applications [1] - 11:12 apply [1] - 36:8 applying [1] - 22:7 appreciate [1] - 25:19 appropriate [4] - 6:23, 14:19, 15:9, 19:4 appropriately [1] - 29:13 argument [2] - 5:21, 22:14 arrest [5] - 6:8, 13:12, 21:11, 21:12, 25:17 arrested [5] - 16:16, 16:17, 18:23, 20:19, 21:4 Asbury [1] - 21:19 aspirations [1] - 21:1 assault [1] - 6:3 assessment [2] - 8:4, 36:14 assist [1] - 13:21 Assistant [1] - 3:7 assuming [1] - 16:3 astounding [1] - 28:4 astronomical [1] - 27:12 athletics [1] - 21:17 Atlantic [1] - 29:8 attempted [2] - 12:14, 32:24 attempting [1] - 12:25 attendant [1] - 14:18 ATTORNEY [1] - 1:17 Attorney [2] - 3:7, 25:13 attorney [2] - 37:13, 37:15 Attorney's [1] - 8:16 AUSA [1] - 1:18 awaits [1] - 15:5 aware [8] - 10:18, 10:23, 11:4, 11:22, 14:22, 15:18, 21:3, 23:6 Awareness [2] - 24:19, 24:21
\$1.99 [1] - 22:7 \$10 [1] - 24:2 \$100 [2] - 8:5, 36:14 \$25 [1] - 24:1 \$25,000 [1] - 8:1	401K [1] - 22:23 402 [1] - 1:12 42 [1] - 7:4		
.	5		
'80s [1] - 22:6 '88 [1] - 33:10 '90s [1] - 31:18	5,000 [1] - 13:7 5K [2] - 13:14, 34:24 5K1.1 [2] - 8:11, 10:17		
0	6		
08608 [1] - 1:12	6 [1] - 22:1 6-year-old [1] - 14:9 609)588-9516 [1] - 1:25 675 [1] - 37:24		
1	7		
1 [5] - 7:14, 7:16, 8:1, 11:9 10 [2] - 22:22, 31:24 12-364 [1] - 1:2 12th [1] - 8:14 1300 [1] - 13:9 15 [1] - 36:4 151 [1] - 11:9 162,000 [1] - 13:9 188 [4] - 11:10, 26:1, 35:3, 35:14 1988 [2] - 28:6, 31:20	72 [1] - 35:17 753 [1] - 2:8		
	8		
	8 [1] - 24:2 80 [1] - 19:18 88 [1] - 31:17		
2	9		
20 [7] - 7:17, 7:20, 15:2, 16:15, 26:8, 26:9, 33:12 2009 [1] - 13:6 2010 [1] - 13:6 2013 [2] - 1:7, 8:14 24 [1] - 21:11 240 [2] - 7:19, 15:2 25 [1] - 1:7 262 [1] - 7:18 275,000 [1] - 13:7 28 [1] - 2:8	9 [1] - 15:4		
	A		
	abiding [1] - 14:13 ability [3] - 12:24, 24:14, 36:11 able [2] - 13:21, 24:12 ABOVE [1] - 2:11 ABOVE-ENTITLED [1] - 2:11 absence [1] - 24:11 absolutely [1] - 35:1 abundance [1] - 4:13 abused [1] - 29:12 accept [1] - 17:24 acceptance [1] - 7:6 account [1] - 8:20 accurate [2] - 6:8, 37:8 ACCURATE [1] - 2:9		
3			
3 [1] - 22:1 30 [1] - 23:2 32.2 [2] - 4:11, 4:15 327 [1] - 7:18 34 [3] - 9:8, 9:12, 11:8 3553(a [3] - 14:19, 28:18, 34:22			

B			
baby [3] - 22:11, 22:15, 22:17 background [1] - 22:8 ball [1] - 25:8 base [1] - 8:19 based [3] - 5:21, 6:19, 10:24 basis [1] - 8:13 basketball [1] - 25:9 BE [1] - 2:9 Beach [1] - 3:9 BEACH [1] - 3:10 bearable [1] - 18:2 became [3] - 16:24, 20:23, 21:2 becoming [1] - 30:23 beg [3] - 19:18, 19:19, 19:20 begin [3] - 3:20, 6:17, 28:18 behalf [4] - 1:18, 1:20, 3:8, 5:6 behaved [2] - 16:13, 18:23 behavior [3] - 20:10, 21:9, 31:19 behind [1] - 18:11 beholding [1] - 26:6 belle [1] - 12:25 benefit [1] - 15:3 best [2] - 19:25, 27:23 better [1] - 10:20 between [2] - 13:6, 17:18 beyond [2] - 6:10, 27:8 big [2] - 18:5, 27:17 billed [1] - 6:2 bit [3] - 17:20, 17:23, 18:3 blowing [1] - 24:3 bond [1] - 17:17 boo [2] - 17:22 boo-boo [1] - 17:22 Booker [1] - 15:10 born [2] - 33:3, 33:5 bottom [1] - 29:10 bought [1] - 21:20 boy [1] - 19:5 break [3] - 14:2, 27:19, 34:23 breakup [1] - 20:21 brief [2] - 12:17, 15:25	briefly [1] - 27:14 bring [1] - 34:19 brings [1] - 7:3 broke [1] - 22:24 brought [8] - 16:13, 20:16, 27:13, 27:15, 29:7, 29:8, 30:16 build [1] - 19:23 Bureau [3] - 15:12, 35:13, 35:18 burglary [2] - 28:8, 31:21 business [1] - 14:1 busses [1] - 21:14 buy [2] - 23:8, 27:5 BY [1] - 1:18	characteristics [2] - 31:13, 32:15 charge [1] - 5:12 charged [2] - 5:22, 32:5 charts [1] - 15:1 check [1] - 22:8 child [6] - 12:12, 17:17, 18:5, 32:22, 32:23, 34:5 childcare [1] - 24:15 children [1] - 34:5 choice [1] - 30:23 Chris [14] - 11:24, 12:4, 12:13, 13:11, 13:24, 14:7, 14:12, 15:13, 17:18, 18:6, 18:12, 18:19, 19:1, 19:15 Chris' [4] - 12:21, 14:3, 14:25, 18:13 Christie's [1] - 25:2 Christmas [1] - 21:25 CHRISTOPHER [1] - 1:7 Christopher [2] - 3:13, 35:12 chunk [1] - 27:17 church [1] - 24:18 circumstances [2] - 14:18, 28:19 City [1] - 29:8 city [1] - 23:8 CLARKSON [1] - 1:11 classified [1] - 15:17 clear [1] - 9:9 clearly [4] - 6:3, 6:24, 14:3, 14:7 CLERK [2] - 3:2, 36:24 client [4] - 5:8, 5:21, 15:10, 15:12 close [2] - 23:18, 36:17 closer [2] - 23:17, 23:19 closing [1] - 25:12 cocaine [1] - 31:23 cog [1] - 30:25 coke [1] - 23:8 college [3] - 20:25, 21:18, 33:17 Collin [7] - 14:8, 14:13, 17:18, 17:21, 18:4, 22:18, 27:25 Collin's [1] - 27:17 combat [1] - 24:22 coming [1] - 17:7 commencement [1] - 38:4	comment [1] - 34:10 comments [5] - 9:16, 11:18, 12:8, 12:19, 28:17 commit [1] - 35:22 commits [1] - 33:21 committed [4] - 21:25, 28:19, 33:5, 35:12 committing [2] - 32:9, 32:13 community [4] - 17:1, 33:18, 33:18, 33:23 company [1] - 21:22 complete [2] - 10:12, 20:10 completed [1] - 31:18 compliance [1] - 4:10 comply [2] - 4:15, 35:25 concern [2] - 11:1, 32:11 concluded [1] - 36:25 conditions [2] - 36:1, 36:8 conduct [1] - 4:4 connected [1] - 25:7 connection [2] - 3:17, 8:18 consent [2] - 3:21, 4:8 consider [7] - 10:9, 14:17, 14:21, 15:7, 15:9, 18:10, 34:22 considerably [1] - 24:14 consideration [3] - 12:7, 19:2, 23:22 considered [1] - 9:15 consistent [1] - 3:23 conspiracy [15] - 3:18, 7:2, 13:2, 14:5, 26:3, 26:4, 26:19, 28:23, 28:25, 31:11, 31:22, 32:10, 34:2, 34:15 conspirators [1] - 9:25 continuing [1] - 23:22 continuum [1] - 18:17 contrary [1] - 17:10 controlled [1] - 35:25 convicted [1] - 31:21 conviction [3] - 8:5, 22:5, 32:7 convictions [1] - 34:20 cooperate [2] - 9:3, 9:23 cooperated [1] - 13:11 cooperation [5] - 10:9, 10:23, 10:25, 13:12,
	C		
	cabs [1] - 21:15 calculating [1] - 6:17 calm [1] - 16:18 candid [1] - 12:8 cap [1] - 9:9 capped [1] - 7:19 care [2] - 21:5, 21:10 career [3] - 21:1, 21:15, 28:10 caretaker [1] - 14:10 case [9] - 8:25, 9:5, 11:7, 25:24, 26:9, 27:11, 27:23, 34:11, 36:12 casinos [3] - 24:3, 29:8, 31:7 catalysts [1] - 15:22 category [3] - 7:14, 7:16, 11:9 caught [4] - 23:3, 24:3, 31:5 caused [1] - 28:10 caution [1] - 4:13 CCR [3] - 1:24, 2:14, 37:23 certain [5] - 16:22, 16:23, 16:24, 29:14, 32:18 certainly [5] - 10:19, 15:22, 16:15, 24:16, 33:18 Certificate [1] - 37:24 Certified [1] - 37:6 CERTIFIED [1] - 2:9 certify [2] - 37:7, 37:12 change [2] - 4:4, 4:23 changed [1] - 17:12		

15:5 cooperators [1] - 10:7 corporate [1] - 22:2 corporation [2] - 21:20, 21:21 correct [4] - 5:15, 16:4, 25:14, 26:12 corroborated [2] - 10:5, 10:8 counsel [9] - 3:8, 3:24, 5:2, 5:5, 8:6, 15:3, 36:21, 37:13, 37:15 count [4] - 3:17, 3:23, 4:24, 8:5 County [1] - 6:1 course [3] - 4:5, 17:17, 25:24 COURT [24] - 1:1, 1:25, 2:15, 3:3, 3:11, 3:15, 4:16, 4:19, 5:17, 6:6, 6:10, 6:14, 6:16, 7:10, 8:10, 9:14, 11:17, 16:2, 16:6, 19:8, 20:3, 20:5, 25:21, 28:16 Court [15] - 4:9, 5:11, 5:16, 8:14, 20:9, 20:17, 27:17, 27:18, 27:24, 32:11, 32:14, 35:11, 36:2, 37:6 court [9] - 3:1, 5:12, 5:23, 12:2, 12:3, 16:14, 17:17, 24:17, 25:16 COURTHOUSE [1] - 1:11 courtroom [1] - 11:22 created [5] - 12:4, 26:4, 26:14, 31:1 creating [1] - 29:15 creator [1] - 29:2 crime [7] - 12:21, 29:17, 29:19, 32:9, 32:13, 33:2, 35:22 CRIMINAL [1] - 1:2 criminal [16] - 4:4, 5:20, 6:7, 7:12, 7:13, 7:14, 7:16, 11:9, 14:6, 20:24, 28:3, 28:4, 29:18, 31:16, 32:16, 33:24 criminality [1] - 12:4 criminals [5] - 26:16, 26:17, 26:18, 29:14, 29:20 culpable [1] - 26:21 current [1] - 25:1	custodial [1] - 32:8 custody [2] - 35:13, 35:18 D daddy [2] - 17:22, 18:3 danger [1] - 24:10 dangerous [1] - 35:24 Dara [1] - 16:1 DARRA [1] - 19:10 Darra [1] - 19:11 date [1] - 37:10 Date [1] - 37:24 daughter [2] - 19:24 days [2] - 30:2, 36:4 DEA [2] - 3:9, 25:14 deal [1] - 22:21 dealer [3] - 33:9, 33:10 dealers [1] - 33:12 dealt [3] - 28:6, 32:14, 32:19 dearly [1] - 14:9 decade [1] - 33:10 December [1] - 13:6 decent [1] - 22:10 decision [5] - 9:4, 14:2, 27:10, 27:20 decisions [2] - 16:21, 30:10 deep [1] - 17:2 defendant [10] - 3:1, 3:25, 4:6, 35:12, 35:15, 35:18, 35:21, 36:3, 36:11, 36:13 Defendant [2] - 1:8, 1:20 DEFENDANT [1] - 20:7 defendant's [1] - 28:3 defendants [1] - 26:9 defense [3] - 5:5, 6:14, 11:15 deliberately [1] - 30:10 Department [1] - 21:1 departure [10] - 8:11, 9:7, 9:8, 9:11, 9:13, 10:17, 10:19, 11:6, 11:7, 11:10 departures [2] - 10:22, 11:13 Depot [1] - 22:7 depressed [1] - 21:8 depression [1] - 32:19 descending [1] - 16:23	describe [1] - 14:13 desire [1] - 24:22 desperate [2] - 22:24, 27:8 despicable [1] - 22:3 despite [1] - 28:5 destructive [5] - 20:23, 21:2, 21:9, 30:24, 31:19 detailed [2] - 8:16, 8:19 details [1] - 9:2 deter [1] - 32:8 determined [1] - 36:5 deterrence [3] - 31:15, 32:11, 32:12 devastate [2] - 20:13, 24:11 devastation [1] - 18:7 device [1] - 35:24 Diego [1] - 20:25 difference [1] - 6:7 different [3] - 21:12, 33:22, 34:12 disagreement [1] - 8:6 disclosed [1] - 8:21 disclosure [1] - 35:8 discussions [1] - 8:21 dismissal [2] - 5:12, 6:2 dismissed [1] - 5:23 disparity [1] - 34:9 distribute [4] - 3:18, 3:19, 31:22, 34:3 distributed [1] - 15:24 district [1] - 35:20 DISTRICT [2] - 1:1, 1:1 divorce [1] - 20:21 doctor [3] - 15:21, 27:13, 34:12 doctors [13] - 8:22, 8:25, 9:3, 10:2, 12:22, 13:20, 26:7, 26:21, 26:24, 34:11, 34:12, 34:17, 34:20 doctors' [1] - 8:17 documented [1] - 32:17 documents [1] - 10:8 done [1] - 17:16 doubt [2] - 32:24, 34:23 down [3] - 9:8, 24:7, 27:24 downward [4] - 9:7, 9:11, 9:13, 22:25 downwardly [1] - 27:22 Dr [10] - 13:5, 13:8, 15:3,	15:4, 15:7, 15:8, 26:13, 29:7, 29:9 dream [2] - 13:25, 21:16 drive [1] - 30:17 driven [1] - 27:9 Drs [1] - 13:12 drug [14] - 9:21, 19:13, 19:21, 19:23, 30:12, 30:23, 31:11, 33:9, 33:10, 33:12, 35:6, 36:3, 36:8 drug-trafficking [1] - 9:21 drugs [8] - 6:20, 25:2, 26:5, 27:1, 27:4, 28:6, 30:9 due [1] - 36:15 E early [1] - 20:20 earner [1] - 24:13 easier [1] - 18:3 EAST [1] - 1:12 easy [1] - 34:17 educated [1] - 33:17 effect [1] - 28:25 effects [2] - 29:23, 30:1 effectuating [1] - 30:15 either [1] - 15:20 eligible [1] - 7:22 eliminate [1] - 24:9 emotional [2] - 21:7, 32:18 employee [2] - 37:13, 37:15 employment [1] - 22:9 end [7] - 14:2, 17:5, 17:23, 18:20, 23:21, 28:2 endeavor [1] - 13:21 endeavors [1] - 14:1 ended [1] - 34:8 enemies [2] - 23:17, 23:18 enforcement [1] - 21:2 engage [1] - 33:24 entering [1] - 4:7 ENTITLED [1] - 2:11 epidemic [2] - 23:9, 25:3 ERWIN [2] - 1:7, 16:7 Erwin [25] - 3:14, 3:16, 4:22, 5:6, 6:24, 8:15,

9:20, 11:7, 12:16, 15:20, 16:3, 16:7, 19:8, 20:4, 25:21, 26:2, 26:10, 26:13, 26:18, 29:1, 29:25, 33:8, 34:21, 34:25, 35:12 Erwin's [1] - 11:2 especially [1] - 25:15 ESQUIRE [1] - 1:19 essence [1] - 8:15 essentially [1] - 8:24 Eve [1] - 21:25 event [1] - 4:25 eventually [4] - 15:8, 21:15, 21:24, 23:10 exact [1] - 9:1 exactly [5] - 14:14, 26:22, 27:2, 33:25 exception [2] - 33:21, 34:10 exclusion [1] - 36:10 excuses [2] - 20:10, 20:12 expense [1] - 22:17 explain [2] - 16:12, 20:15 explained [3] - 16:19, 17:3, 17:6 explanation [3] - 16:20, 17:14, 24:8 extent [3] - 10:13, 11:10, 34:15 eyes [1] - 23:14	fathers [1] - 33:13 fear [2] - 14:14, 18:18 federal [1] - 35:22 Federal [1] - 15:12 feelings [1] - 12:9 few [1] - 18:17 figured [1] - 23:15 files [1] - 9:25 final [1] - 5:15 finally [7] - 16:18, 17:6, 28:2, 29:1, 29:23, 32:21, 36:19 financial [3] - 14:1, 14:4, 27:10 financially [3] - 22:13, 22:15, 37:16 findings [1] - 9:17 fine [3] - 7:25, 36:12 finished [1] - 12:19 firearm [1] - 35:23 fired [2] - 21:24, 22:4 first [4] - 11:19, 11:21, 21:13, 32:2 FISHER [1] - 1:11 FISHMAN [1] - 1:17 fits [1] - 24:21 five [6] - 6:25, 7:22, 9:7, 9:13, 10:19, 11:6 five-level [4] - 9:7, 9:13, 10:19, 11:6 flawed [1] - 17:12 FLW [1] - 1:2 following [1] - 36:7 FOLLOWING [1] - 2:9 follows [1] - 35:10 FOR [1] - 1:1 foregoing [1] - 37:8 forfeiture [2] - 3:23, 4:24 forgiveness [1] - 19:1 formality [1] - 4:5 forth [3] - 4:12, 8:13, 37:11 four [3] - 6:24, 7:2, 31:25 FREDA [1] - 1:14 friend [1] - 12:18 friends [5] - 18:13, 19:25, 23:18, 33:16 front [1] - 18:24 frustration [1] - 18:18 full [2] - 13:23, 16:6	G gambling [4] - 31:8, 35:8, 35:9, 36:9 games [1] - 25:9 general [1] - 32:12 generally [1] - 10:8 given [7] - 10:24, 10:25, 11:1, 15:7, 28:8, 32:2, 34:24 goofball [1] - 25:11 government [15] - 3:8, 5:4, 6:11, 6:12, 8:10, 9:6, 9:12, 9:24, 11:14, 13:13, 13:15, 13:22, 25:23, 28:15, 34:24 Government [1] - 1:18 government's [2] - 8:14, 10:16 Governor [1] - 25:2 grant [2] - 7:10, 10:16 granted [1] - 13:14 great [1] - 34:10 greater [4] - 14:23, 26:6, 26:15, 35:2 greed [5] - 16:22, 23:11, 27:7, 30:7, 31:9 GRIBKO [11] - 1:18, 3:6, 4:1, 4:17, 6:12, 7:9, 8:8, 8:12, 11:14, 25:23, 36:22 Gribko [10] - 3:7, 3:20, 4:19, 7:7, 9:16, 10:18, 25:13, 25:22, 28:16, 29:13 guess [2] - 23:11, 32:6 guest [1] - 24:20 Guideline [3] - 6:22, 8:1, 14:25 Guidelines [5] - 6:18, 7:18, 7:22, 7:24, 35:1 guilty [4] - 3:17, 9:4, 10:3, 10:4 guns [1] - 25:17 guts [1] - 21:22 guy [2] - 25:8, 28:11	harm [1] - 10:14 heading [1] - 32:9 health [3] - 32:20, 35:7, 36:9 hear [3] - 11:17, 11:19, 16:2 heard [1] - 10:18 hearing [1] - 4:7 hello [1] - 16:8 help [4] - 12:14, 24:9, 24:14, 24:22 helped [2] - 19:23, 19:24 hereby [2] - 35:12, 37:7 hereinbefore [1] - 37:10 heroin [1] - 23:6 hi [1] - 19:10 hid [1] - 25:17 high [1] - 21:17 higher [2] - 27:6, 34:25 highly [3] - 30:8, 30:24 himself [1] - 14:8 history [13] - 5:20, 6:7, 7:12, 7:13, 7:14, 7:16, 11:9, 28:3, 28:4, 29:18, 31:13, 31:16, 32:15 hit [1] - 17:2 hitchhiked [1] - 21:14 home [1] - 18:1 Home [1] - 22:7 honestly [1] - 19:25 Honor [38] - 3:6, 3:12, 4:1, 5:9, 6:5, 6:9, 6:13, 6:15, 7:9, 8:8, 8:9, 8:12, 11:16, 11:20, 11:21, 12:3, 12:19, 13:4, 13:14, 14:12, 14:15, 14:17, 14:21, 15:4, 15:6, 15:11, 15:18, 15:19, 16:1, 16:5, 16:8, 18:10, 18:24, 19:10, 25:23, 28:14, 36:22, 36:23 Honor's [1] - 12:7 HONORABLE [1] - 1:14 hope [3] - 15:19, 18:9, 20:15 horrible [1] - 16:21 hotel [1] - 29:9 hours [1] - 35:17 huge [1] - 27:10 Hugg [5] - 16:1, 19:11, 20:3, 26:8, 26:12 hugg [2] - 12:16, 19:9 HUGG [1] - 19:10
F face [1] - 15:1 faces [1] - 7:17 facility [2] - 15:14, 36:17 fact [13] - 5:21, 5:25, 9:1, 12:4, 12:25, 13:4, 14:19, 17:10, 24:18, 25:25, 27:18, 28:21, 30:11 factor [1] - 10:15 factors [4] - 9:18, 10:10, 28:18, 34:22 failed [1] - 12:10 failures [1] - 14:1 familiar [1] - 34:14 family [11] - 14:8, 15:15, 18:12, 18:13, 20:14, 22:20, 22:22, 24:14, 33:16, 33:23, 36:18 father [4] - 12:11, 17:16, 19:5, 32:25		H habit [1] - 30:22 half [1] - 11:10 hand [1] - 24:6 happy [1] - 34:25 hard [2] - 17:25, 24:13	

Human [1] - 22:2 human [1] - 11:24 humbled [1] - 17:12 hundred [1] - 27:12 hurt [2] - 14:8, 17:23 husband [2] - 12:9, 12:18	Intelligence [1] - 29:24 Intent [1] - 3:18 Interactions [1] - 8:21 Interested [1] - 37:16 intimately [1] - 9:1 Investigation [1] - 5:3 Investigation [1] - 10:8 Investment [1] - 22:19 involve [1] - 13:19 Involved [9] - 12:23, 22:20, 23:5, 23:16, 28:23, 30:14, 31:19, 31:22, 33:2 involvement [3] - 14:5, 23:23, 30:5 IS [1] - 2:9 issue [1] - 5:10 Issues [1] - 32:18 itself [1] - 22:17	33:22 knows [1] - 27:21	living [1] - 22:10 local [2] - 21:19, 35:22 looking [1] - 6:21 Lopresti [5] - 13:5, 13:13, 15:5, 15:8, 30:16 Lopresti's [1] - 29:8 loss [1] - 13:25 lost [1] - 22:18 love [2] - 14:13, 20:22 loved [1] - 21:17 loves [2] - 14:9, 17:17 lower [2] - 15:17, 15:20
I	J	L	M
Idea [3] - 26:20, 26:24, 31:10 Illegal [1] - 35:24 Imagine [1] - 18:8 Immature [1] - 25:10 Immediately [2] - 13:11, 36:15 Impact [1] - 24:12 important [2] - 10:9, 11:3 importantly [1] - 10:2 impose [1] - 35:4 Imposed [1] - 28:12 Imprisoned [1] - 35:13 Imprisonment [2] - 7:17, 35:15 IN [1] - 2:10 in-vitro [2] - 22:17, 22:20 Include [1] - 3:23 Including [1] - 9:24 Incorrect [1] - 5:18 Indeed [2] - 7:1, 32:4 Indicated [5] - 5:23, 9:19, 9:23, 29:22, 36:7 Indication [1] - 10:14 Individual [2] - 12:12, 33:16 Individuals [8] - 7:1, 10:21, 28:23, 28:25, 29:5, 30:14, 30:20, 32:4 Ineligibility [2] - 31:24, 32:3 Influenced [1] - 9:4 Information [5] - 3:22, 4:2, 4:12, 4:18, 4:20 Information [10] - 8:17, 9:22, 9:24, 10:5, 10:6, 10:11, 11:2, 13:16, 13:17, 13:18 Initial [1] - 30:5 Instead [1] - 17:22 Instructed [1] - 30:16 Insult [2] - 20:9, 23:10 Insulted [1] - 29:24	jail [2] - 14:15, 28:1 James [1] - 3:13 JAMES [1] - 1:19 jealous [2] - 17:19, 17:20 Jeopardizing [1] - 33:7 Jersey [2] - 15:15, 37:7 JERSEY [2] - 1:1, 1:12 job [4] - 13:25, 21:16, 22:6, 22:18 Jobs [1] - 21:14 Johnny [1] - 25:11 Johnny-goofball [1] - 25:11 Joseph [1] - 3:7 JOSEPH [1] - 1:18 Judge [1] - 3:10 Judgment [2] - 4:8, 35:11 JULY [1] - 1:7 July [1] - 8:14 justice [1] - 20:24	lady [1] - 21:24 Lahham [6] - 13:8, 13:13, 15:8, 26:13, 29:9, 30:15 Lahham's [2] - 15:4, 29:7 lapse [2] - 28:9, 29:18 large [3] - 21:20, 31:22, 32:3 last [4] - 14:4, 18:16, 28:20, 33:11 law [2] - 14:2, 21:1 lay [1] - 12:8 lead [1] - 13:12 leader [8] - 6:25, 8:20, 8:22, 9:20, 11:5, 12:5, 15:21, 29:3 leadership [1] - 13:1 learned [2] - 9:20, 30:10 least [3] - 7:23, 32:4, 36:5 leave [1] - 25:18 leaving [1] - 18:1 led [5] - 13:20, 21:9, 21:15, 22:3, 23:3 left [1] - 5:10 lengthy [2] - 25:24, 32:1 leniency [1] - 19:3 less [1] - 34:11 letter [10] - 5:11, 5:16, 5:17, 8:14, 9:15, 12:12, 14:11, 16:10, 19:12, 22:2 letters [6] - 5:5, 11:22, 12:1, 12:6, 24:8, 33:15 level [14] - 6:19, 6:20, 7:3, 7:5, 7:8, 7:11, 7:15, 9:7, 9:13, 10:19, 11:6, 11:8, 12:10, 15:17 levels [2] - 6:24, 7:2 life [10] - 19:23, 20:14, 20:18, 20:22, 22:11, 24:4, 27:17, 27:21, 34:8 life-long [2] - 34:8 likely [1] - 9:4 list [1] - 20:25 listened [1] - 19:22 live [2] - 20:18, 34:7 lives [4] - 18:15, 19:6, 24:23, 33:13	maintained [2] - 31:1 major [2] - 11:6, 20:24 man [7] - 16:13, 16:14, 16:15, 18:21, 18:22, 18:23, 19:2 manager [1] - 6:25 mandatory [1] - 8:4 manipulated [1] - 34:16 marijuana [1] - 23:1 marks [1] - 34:18 marriage [2] - 12:10, 32:21 married [1] - 22:11 MATTER [1] - 2:11 matter [5] - 6:18, 12:23, 27:16, 27:17, 32:16 matters [1] - 13:19 maximum [4] - 7:17, 7:20, 7:25, 15:1 meaningful [1] - 25:18 medical [2] - 9:25, 26:25 meet [2] - 13:14, 29:9 member [1] - 22:21 members [2] - 18:12, 18:13 memoranda [1] - 5:4 mental [3] - 32:19, 35:7, 36:9 mercy [1] - 19:4 merit [1] - 11:5 met [1] - 13:13 microphone [1] - 20:6 mild [1] - 22:12 mid-thirties [1] - 22:12 might [2] - 21:11, 22:4 million [2] - 8:1, 8:2 mind [3] - 11:7, 12:6, 34:23

miss [2] - 27:16, 27:21 mistreats [1] - 21:22 mom [1] - 18:1 moment [2] - 20:15, 31:14 mommy [1] - 17:22 money [4] - 22:14, 24:3, 28:7, 27:11 monsignor [1] - 24:20 month [4] - 10:20, 23:10, 28:20, 30:9 months [9] - 7:18, 7:19, 11:10, 15:2, 22:1, 22:22, 28:1, 35:3, 35:14 Morasco [1] - 25:13 morning [3] - 3:8, 3:10, 3:12 mortgages [1] - 22:22 most [4] - 9:22, 10:1, 18:4, 22:14 motion [3] - 8:13, 9:16, 10:17 movie [1] - 21:21 moving [1] - 7:7 MR [23] - 3:6, 3:10, 3:12, 4:1, 4:17, 5:9, 6:5, 6:9, 6:12, 6:15, 7:9, 8:8, 8:9, 8:12, 11:14, 11:15, 11:20, 16:5, 19:9, 20:4, 25:23, 36:22, 36:23 MS [2] - 16:7, 19:10 municipal [2] - 5:12, 5:23 Murphy [5] - 3:13, 4:22, 5:7, 11:19, 34:9 MURPHY [13] - 1:19, 3:12, 5:9, 6:5, 6:9, 6:15, 8:9, 11:15, 11:20, 16:5, 19:9, 20:4, 36:23 must [3] - 14:16, 15:6, 36:3 MY [1] - 2:10	34:12 neighborhood [1] - 25:10 neighbors [1] - 18:14 nervous [1] - 19:13 neutral [1] - 10:15 never [2] - 12:21, 17:18 NEW [2] - 1:1, 1:12 New [2] - 15:15, 37:7 news [1] - 30:3 newspaper [1] - 21:15 NO [1] - 1:2 no-billed [1] - 8:2 nobody [1] - 30:1 none [4] - 6:12, 11:14, 11:15, 14:8 note [3] - 3:21, 28:2, 32:17 noted [1] - 14:11 notes [1] - 24:5 NOTES [1] - 2:10 notice [4] - 4:3, 4:5, 4:6, 4:11 nowhere [1] - 20:18 number [4] - 5:5, 10:22, 29:5, 30:14 numbers [1] - 14:25 numerous [1] - 13:15	older [1] - 23:2 once [1] - 16:25 one [15] - 5:10, 7:8, 7:21, 12:10, 17:23, 21:6, 21:24, 22:18, 23:3, 25:15, 25:16, 28:2, 32:4, 33:23, 36:3 ones [1] - 34:4 open [1] - 3:1 operation [1] - 12:5 opportunity [4] - 5:8, 16:9, 20:8, 28:20 orchestrated [1] - 34:16 order [1] - 3:21 ordered [1] - 36:13 organization [1] - 15:22 organizer [1] - 6:25 originator [1] - 29:2 otherwise [1] - 4:4 outpouring [1] - 11:25 overtakes [1] - 21:21 own [1] - 20:14 oxycodone [9] - 3:19, 12:15, 13:8, 13:10, 14:5, 28:24, 29:23, 30:1, 34:3	people [23] - 11:22, 11:23, 12:1, 12:2, 17:1, 18:11, 18:15, 21:22, 22:3, 23:2, 23:16, 23:20, 24:23, 25:7, 28:5, 28:14, 26:23, 26:25, 27:3, 30:12, 33:22, 34:3, 34:19 percent [1] - 19:18 perhaps [2] - 11:3, 24:20 period [4] - 13:5, 13:6, 13:8, 31:2 perpetrate [1] - 29:17 person [8] - 14:12, 20:19, 21:11, 21:12, 28:5, 28:7, 28:9, 35:19 personally [1] - 16:12 pharmacist [1] - 30:18 phone [1] - 21:25 pick [1] - 25:9 pick-up-basketball [1] - 25:9 pills [11] - 15:23, 19:18, 23:6, 23:7, 23:9, 23:24, 24:17, 26:7, 27:11, 30:20, 30:22 place [2] - 11:8, 37:10 placed [1] - 35:16 places [1] - 11:9 played [1] - 21:17 playing [2] - 33:25, 34:4 plays [1] - 25:8 plea [4] - 3:17, 3:23, 4:6, 4:7 plead [2] - 9:4, 19:19 pleas [2] - 10:4, 13:12 pled [1] - 10:3 plus [2] - 5:22, 33:12 point [6] - 9:6, 16:24, 17:2, 21:5, 30:5, 31:6 pointed [1] - 14:25 points [6] - 6:6, 7:13, 12:13, 21:3, 28:4, 31:16 Police [1] - 20:25 portion [1] - 27:4 position [1] - 20:13 possess [2] - 3:18, 35:24 possessing [1] - 35:23 possible [2] - 15:14, 36:17 power [3] - 23:12, 31:8, 31:9 powerful [1] - 31:11
N		P	
name [3] - 16:6, 19:10, 29:11 nature [3] - 9:2, 10:13, 28:18 near [2] - 15:14, 20:18 necessarily [1] - 34:14 necessary [3] - 6:5, 14:23, 35:2 need [3] - 24:16, 31:15,	objections [2] - 6:11, 6:14 obtaining [1] - 10:4 obviously [5] - 9:21, 11:1, 11:2, 17:13, 19:13 occasions [1] - 13:15 occur [1] - 14:14 Ocean [1] - 6:1 oddly [1] - 14:3 OF [4] - 1:1, 1:5, 2:10 offender [1] - 28:10 offenders [1] - 32:2 offense [6] - 6:19, 6:22, 7:3, 7:11, 7:15, 28:19 offered [1] - 24:20 office [2] - 29:7, 29:8 Office [2] - 8:16, 35:19 officer [2] - 5:15, 36:6 Official [1] - 37:5 OFFICIAL [2] - 1:25, 2:15 often [1] - 28:21 old [1] - 23:2	painkillers [1] - 30:3 panic [4] - 16:17, 16:21, 21:8, 30:7 panicked [2] - 16:21, 30:6 paper [5] - 17:16, 18:24, 21:19, 23:15 parent [2] - 12:11, 18:2 parents [2] - 17:24, 20:20 Park [1] - 21:19 parole [2] - 31:24, 32:3 part [3] - 10:20, 18:5, 26:3 participation [1] - 13:1 particular [3] - 12:23, 13:25, 14:16 particularly [1] - 12:23 parties [4] - 4:3, 4:14, 36:19, 37:14 past [1] - 16:19 PAUL [1] - 1:17 pay [4] - 22:19, 34:19, 36:12, 36:13 paying [1] - 22:22	

powers [1] - 30:2 prescription [1] - 13:3 prescriptions [9] - 9:25, 12:25, 13:7, 13:9, 15:23, 29:10, 30:18, 34:18 present [4] - 3:1, 3:14, 12:2, 12:3 Presentence [2] - 5:3, 13:4 Press [1] - 21:20 pretrial [1] - 12:20 pretty [1] - 25:10 previous [1] - 22:5 price [1] - 27:8 prices [1] - 23:23 primary [2] - 14:10, 24:13 printout [2] - 5:19, 6:4 prison [1] - 21:13 Prisons [3] - 15:13, 35:13, 35:18 privy [1] - 9:22 probation [3] - 5:15, 7:21, 36:6 Probation [1] - 35:19 problem [4] - 12:13, 24:23, 30:25, 34:8 problems [3] - 12:21, 21:7, 26:25 proceed [2] - 5:1, 28:17 proceedings [2] - 36:25, 37:9 professionalism [1] - 25:15 Program [2] - 24:19, 24:21 prohibited [1] - 35:23 properly [1] - 14:15 property [1] - 22:19 Prosecutor [1] - 6:1 protects [1] - 24:7 provide [3] - 11:2, 16:6, 22:13 provided [8] - 8:18, 10:5, 10:7, 10:11, 10:21, 11:4, 13:18, 15:23 providers [1] - 32:20 providing [1] - 9:24 provision [4] - 4:3, 4:5, 4:12, 35:7 provisions [1] - 36:10 psychiatrist [1] - 21:7 public [2] - 24:18, 32:12	punishes [1] - 24:7 pure [1] - 27:7 purposes [1] - 14:23 pursuant [3] - 8:22, 10:22, 28:17 PURSUANT [1] - 2:8 put [1] - 13:24 putting [1] - 20:12 Q qualify [1] - 7:5 quantity [1] - 6:19 quite [1] - 14:14 R ran [1] - 26:20 range [4] - 8:1, 26:1, 28:15 ranges [2] - 8:8, 10:23 reaction [1] - 18:18 read [2] - 8:7, 13:5 reading [1] - 16:11 ready [2] - 11:17, 13:21 reality [1] - 16:25 realization [1] - 16:25 realize [2] - 23:8, 32:13 realized [1] - 23:11 realizes [2] - 14:6, 14:7 really [1] - 25:18 reason [3] - 25:5, 27:22, 30:21 reasons [4] - 13:24, 20:14, 20:15, 26:2 receive [1] - 34:10 received [9] - 4:6, 4:20, 5:2, 5:3, 5:19, 14:11, 24:8, 31:23, 33:15 receiving [1] - 32:7 recognize [2] - 12:3, 29:23 recognizes [1] - 14:3 recommend [1] - 36:17 recommendation [3] - 10:18, 15:13, 15:16 recommending [1] - 9:7 record [1] - 5:25 records [1] - 8:19 recover [1] - 34:7 recovering [2] - 19:13, 29:21 recruit [1] - 32:6 reference [1] - 5:13	referenced [3] - 6:3, 31:16, 32:16 referred [1] - 6:1 reflections [1] - 20:17 regard [12] - 3:22, 5:11, 6:8, 9:17, 11:18, 12:9, 12:17, 12:18, 13:19, 32:20, 34:17, 35:8 regarding [1] - 5:19 relate [1] - 25:11 relationship [3] - 9:2, 32:23, 33:1 relationships [1] - 22:14 relative [2] - 37:12, 37:15 relayed [2] - 9:3, 13:16 release [8] - 7:23, 12:20, 35:5, 35:15, 35:16, 35:17, 35:21, 36:4 released [1] - 35:20 reliable [1] - 10:12 remarks [3] - 29:22, 31:9, 31:12 remember [1] - 24:25 reneged [1] - 22:21 Report [2] - 5:3, 13:4 report [5] - 5:8, 6:11, 25:2, 32:17, 35:19 REPORTER [2] - 1:25, 2:15 Reporter [2] - 37:8 representing [1] - 3:13 request [2] - 15:7, 15:11 requested [1] - 13:17 requesting [1] - 28:15 require [1] - 4:14 required [1] - 14:18 requires [1] - 4:11 resentment [1] - 18:18 resource [1] - 24:21 Rasources [1] - 22:2 respectfully [2] - 15:6, 19:3 responsibility [5] - 7:8, 13:23, 17:10, 20:11, 24:6 responsible [1] - 17:11 rest [1] - 27:5 restate [1] - 19:12 restitution [1] - 8:3 restriction [1] - 35:9 result [4] - 7:14, 9:21, 10:10, 10:16 revealed [1] - 5:25	review [1] - 5:8 reviewing [1] - 10:1 rewarded [1] - 15:8 rise [2] - 3:2, 36:24 risk [1] - 10:14 role [2] - 6:21, 11:2 rolled [1] - 23:14 room [2] - 19:15, 29:9 ruining [1] - 20:14 Rule [1] - 4:10 rule [2] - 4:11, 4:13 run [2] - 17:22, 22:7 runners [1] - 29:6 RUSSONIELLO [2] - 1:24, 2:14 Russoniello [3] - 2:14, 37:5, 37:23 S S/Vincent [1] - 2:14 salvageable [1] - 11:24 San [1] - 20:25 satisfied [1] - 10:11 scare [1] - 25:4 Scared [1] - 24:25 scenario [1] - 27:23 scheme [11] - 8:17, 8:18, 8:20, 8:22, 9:21, 29:2, 29:3, 29:16, 30:15, 32:3, 32:6 school [1] - 21:17 script [2] - 26:19, 34:13 scripts [1] - 26:23 Scrooge [1] - 24:17 seat [2] - 3:15, 6:16 seated [1] - 3:5 SECTION [1] - 2:8 secure [2] - 22:8, 22:18 see [2] - 19:4, 33:21 seeing [1] - 16:17 seeking [3] - 9:12, 25:24, 25:25 self [6] - 15:12, 15:16, 20:23, 21:2, 21:9, 31:19 self-destructive [4] - 20:23, 21:2, 21:9, 31:19 self-surrender [2] - 15:12, 15:16 sell [3] - 23:2, 30:19 selling [3] - 19:17, 23:1, 24:2 sending [1] - 34:25

sense [2] - 17:5, 26:17 sent [1] - 6:2 sentence [20] - 14:20, 14:22, 15:1, 15:4, 15:5, 15:9, 15:20, 24:7, 25:24, 25:25, 28:7, 28:12, 29:1, 31:17, 31:24, 34:25, 35:3, 35:10, 36:20 SENTENCE [1] - 1:6 sentenced [4] - 14:15, 15:14, 32:5, 33:11 sentences [2] - 15:7, 32:1 Sentencing [1] - 6:22 sentencing [7] - 3:16, 5:4, 10:21, 11:18, 14:19, 14:24, 34:9 sentencings [1] - 28:22 seriously [1] - 32:14 service [1] - 24:18 set [4] - 4:12, 8:13, 22:16, 37:10 several [1] - 28:21 severely [1] - 32:14 shall [7] - 35:16, 35:18, 35:21, 35:23, 35:24, 35:25, 36:13 show [2] - 6:4, 14:12 shown [3] - 33:19, 33:22, 33:23 side [1] - 33:19 sign [1] - 4:23 signed [1] - 4:21 significance [1] - 28:12 significant [5] - 10:12, 11:6, 27:19, 28:6, 30:25 significantly [2] - 24:12, 27:24 similar [1] - 21:23 single [3] - 8:5, 19:21, 26:19 sister [1] - 22:21 sitting [1] - 19:14 situation [3] - 12:17, 13:25, 14:16 sleeping [1] - 23:9 small [3] - 21:22, 27:4, 27:10 society [4] - 24:7, 24:10, 24:17, 29:11 sold [2] - 15:24, 23:23 someone [1] - 33:21 sometimes [2] - 17:21,	27:15 son [11] - 14:8, 14:13, 19:25, 20:13, 24:12, 25:17, 27:14, 32:25, 33:3, 33:4, 33:5 sorry [1] - 24:5 sort [4] - 16:22, 17:24, 18:17, 21:9 speaker [1] - 24:20 special [4] - 8:4, 32:25, 36:7, 36:14 spent [1] - 10:20 spiral [1] - 22:25 sports [3] - 21:16, 21:17, 33:17 sports-writer [1] - 21:16 stable [2] - 22:13, 32:21 stand [1] - 12:6 standard [1] - 36:1 start [1] - 9:11 started [3] - 22:25, 23:1, 24:18 State [1] - 37:7 state [3] - 31:23, 32:1, 35:22 STATE [1] - 1:12 statement [1] - 15:25 statements [1] - 12:17 States [3] - 3:7, 36:14, 37:5 states [1] - 8:15 STATES [4] - 1:1, 1:5, 1:11, 1:17 statute [4] - 7:16, 7:21, 7:25, 14:22 statutory [1] - 7:19 stay [1] - 20:5 STENOGRAPHIC [1] - 2:10 stenographically [1] - 37:9 stipulation [2] - 4:17, 4:21 stipulations [1] - 3:24 stop [2] - 31:6, 31:9 Straight [1] - 24:25 straight [2] - 25:4, 25:5 STREET [1] - 1:12 street [4] - 24:1, 27:11, 30:19, 34:1 strong [2] - 11:25, 12:11 stupid [2] - 22:24, 27:9 style [1] - 24:4	submit [1] - 36:3 submitted [2] - 4:8, 9:15 submitting [2] - 4:14, 4:17 substance [1] - 35:25 substantial [3] - 31:2, 31:23, 32:7 suburbia [1] - 25:3 success [1] - 14:4 sufficient [3] - 5:7, 14:22, 35:2 suicide [1] - 22:1 Superseding [5] - 3:22, 4:2, 4:12, 4:18, 4:20 supervised [5] - 7:23, 35:5, 35:16, 35:21, 36:4 supply [1] - 30:12 support [3] - 11:25, 18:12, 30:22 supposed [1] - 22:19 surprise [1] - 33:13 surrender [3] - 15:12, 15:16, 36:16 sweetest [2] - 18:4, 19:5 system [1] - 32:1	they've [1] - 27:2 thinking [1] - 23:1 thirties [1] - 22:12 three [4] - 7:23, 7:24, 35:4, 35:17 thrill [1] - 23:12 Tim [1] - 3:9 timely [2] - 10:10, 10:15 Tims [1] - 25:15 TITLE [1] - 2:8 TO [2] - 2:8, 2:9 today [4] - 16:14, 18:11, 29:1, 29:22 together [1] - 22:23 took [2] - 21:14, 26:5 top [4] - 7:1, 26:1, 28:15, 35:1 Torres [2] - 9:17, 10:10 total [2] - 7:15, 36:14 totally [4] - 20:23, 21:2, 25:18, 35:1 towards [1] - 12:9 trafficking [1] - 9:21 trail [1] - 23:15 TRANSCRIPT [2] - 1:5, 2:9 transcript [1] - 37:8 TRANSCRIPTION [1] - 2:10 trapped [2] - 16:24, 23:14 treated [1] - 22:3 treating [1] - 25:14 treatment [4] - 35:7, 36:9 TRENTON [1] - 1:12 tried [2] - 17:3, 18:9 true [1] - 37:8 truthful [1] - 8:24 truthfully [1] - 12:11 turned [2] - 16:22, 30:7 turning [2] - 7:12, 32:15 twenties [1] - 20:20 two [15] - 7:5, 12:6, 12:20, 12:22, 13:5, 16:19, 17:14, 19:22, 21:14, 22:22, 25:15, 32:4, 33:13, 33:22, 36:5 two-level [1] - 7:5 two-year [1] - 13:5
T			
table [1] - 3:9 tabs [2] - 13:8, 13:9 teens [1] - 21:8 term [6] - 14:15, 29:6, 32:8, 35:4, 35:14, 35:16 termination [1] - 22:4 terms [2] - 16:20, 17:14 terrible [1] - 20:21 terrified [1] - 25:1 test [1] - 36:3 testify [3] - 8:25, 10:2, 10:13 testimony [1] - 10:6 testing [2] - 35:6, 36:8 tests [1] - 36:5 THE [28] - 1:1, 1:14, 2:8, 2:10, 3:2, 3:3, 3:11, 3:15, 4:16, 4:19, 5:17, 6:6, 6:10, 6:14, 6:16, 7:10, 8:10, 9:14, 11:17, 16:2, 16:6, 19:8, 20:3, 20:5, 20:7, 25:21, 28:16, 36:24 thereafter [1] - 36:5 therefore [2] - 10:7, 11:5			
U			
U.S [4] - 1:25, 2:15, 8:16,			

25:12 ugly [1] - 20:21 ultimately [2] - 10:3, 34:6 unable [1] - 22:6 uncharged [1] - 26:11 under [9] - 7:16, 7:17, 7:21, 7:22, 7:25, 8:11, 14:17, 14:22, 15:9 undoubtedly [1] - 15:18 unfortunately [3] - 22:16, 30:23, 33:8 UNITED [4] - 1:1, 1:5, 1:11, 1:17 United [3] - 3:7, 36:14, 37:5 unless [1] - 28:12 up [7] - 16:11, 24:3, 25:9, 27:15, 32:9, 33:4, 34:6 upward [1] - 6:23 USC [1] - 2:8 USDJ [1] - 1:14 useful [2] - 10:3, 10:12 usual [1] - 26:17	weed [1] - 23:8 well-adjusted [1] - 18:4 white [1] - 25:3 whole [4] - 19:17, 24:4, 24:23, 26:4 widespread [1] - 30:13 wife [6] - 12:7, 15:25, 22:10, 23:13, 24:12, 25:17 wiffle [1] - 25:8 willing [2] - 12:16, 13:21 wish [2] - 3:21, 14:17 wished [1] - 13:22 WOLFSON [1] - 1:14 wonderful [2] - 18:4, 33:12 word [1] - 31:8 words [1] - 30:7 works [1] - 30:11 world [3] - 16:23, 18:5, 19:6 worth [1] - 14:7 write [4] - 12:24, 13:3, 34:13, 34:18 writer [3] - 21:16, 33:17, 33:18 wrote [5] - 12:2, 13:6, 13:9, 14:12, 22:1
V	Y
value [3] - 19:6, 24:1, 27:11 variances [1] - 11:13 various [1] - 10:21 varying [1] - 27:23 version [1] - 5:15 victimized [1] - 29:15 victims [2] - 26:16, 29:15 Vincent [2] - 37:5, 37:23 VINCENT [2] - 1:24, 2:14 vindictive [1] - 23:16 vitro [2] - 22:17, 22:20 voluntary [1] - 36:16	year [1] - 13:5 years [24] - 7:17, 7:20, 7:22, 7:23, 7:24, 12:20, 14:4, 15:2, 15:4, 16:15, 16:19, 17:14, 18:16, 18:17, 19:22, 23:2, 30:3, 31:24, 31:25, 32:8, 32:18, 33:12, 35:4, 35:17 young [5] - 17:1, 24:11, 24:23, 25:7, 34:3 yourself [1] - 33:2
W	Z
waited [1] - 22:15 waiting [1] - 20:25 waive [1] - 36:12 waived [1] - 4:10 wake [1] - 33:4 wake-up [1] - 33:4 walked [1] - 21:14 wants [1] - 16:3 watching [1] - 24:25 weakness [1] - 29:16 weapon [4] - 5:13, 5:14, 5:22, 6:4	zero [1] - 28:3

Appendix H

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY

3 UNITED STATES OF AMERICA

4
5 Vs. CRIMINAL NO.
6 CHRISTOPHER ERWIN, 12-364 (PGS)
7 DEFENDANT

8 **APRIL 15, 2016**
9 CLARKSON S. FISHER COURTHOUSE
10 402 EAST STATE STREET
11 TRENTON, NEW JERSEY 08608

12 B E F O R E: THE HONORABLE PETER G. SHERIDAN
13 U.S. DISTRICT COURT JUDGE
14 DISTRICT OF NEW JERSEY

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

16 PAUL J. FISHMAN, U.S. ATTORNEY
17 BY: R. JOSEPH GRIBKO, ESQUIRE
18 ASSISTANT U.S. ATTORNEY
19 FOR THE GOVERNMENT

20 THE DAVIS LAW FIRM, LLC
21 BY: MARK G. DAVIS, ESQUIRE
22 FOR THE DEFENDANT

23 **RE-SENTENCING HEARING**

24 Certified as true and correct as required
25 by Title 28, U.S.C. Section 753
/S/ Francis J. Gable
FRANCIS J. GABLE, C.S.R., R.M.R.
OFFICIAL U.S. REPORTER
(856) 889-4761

*United States District Court
Trenton, New Jersey*

1 THE COURT: This is United States versus Erwin.

2 Could we enter appearances? We'll start with the Government.

3 MR. GRIBKO: Good afternoon, your Honor, Assistant

4 United States Attorney Joseph Gribko on behalf of the

00:03 5 Government.

6 THE COURT: Good afternoon, Mr. Gribko.

7 MR. DAVIS: Good afternoon, your Honor, Mark Davis

8 on behalf of Mr. Erwin, who's present in court.

9 THE COURT: Good afternoon, Mr. Davis.

00:03 10 So, this is the -- Mr. Erwin appealed his prior

11 sentence that was entered by Judge Wolfson, and the Government

12 brought up the fact that under the terms of his plea agreement

13 he wasn't allowed to appeal. And then the Third Circuit

14 seemed to agree with that and remanded the case for

00:03 15 re-sentencing, and then it was reassigned to me.

16 Mr. Gribko, does that adequately set forth where we

17 are?

18 MR. GRIBKO: Yes, your Honor, that is the procedural

19 history of the case. I should note that though normally, and

00:04 20 I think you're going to get to this in a moment, the defendant

21 would be re-sentenced pursuant to the guidelines that were in

22 place at the time of his original sentencing, there has been

23 retroactive two point reduction which I think plays into going

24 forward which took place in the interim as well. I assume

00:04 25 you're going to get to that, but I wanted to put that in --

1 THE COURT: That's a good point. So the offense
2 level now with this two point reduction is a 37, and the
3 criminal history category is a 1; right?

4 MR. GRIBKO: That is correct, your Honor, assuming
00:04 5 we compress this into one proceeding. It's a little unclear
6 in the case law whether we should sentence him pursuant to the
7 old guidelines and then have him then given the benefit
8 downward afterwards, but I believe that we're all in agreement
9 that we're just essentially compressing this into one
00:05 10 proceeding.

11 MR. DAVIS: I would agree with that, yes.

12 THE COURT: All right. So no one disagrees with
13 that; right?

14 MR. GRIBKO: No, it's a little unclear from the case
00:05 15 law, but I think that's the procedure we're using and no one
16 is disagreeing with it.

17 THE COURT: Well, probation brought up the fact that
18 there was this two point reduction due to the change in the
19 guidelines with regard to the amount of drugs involved, so he
00:05 20 went down to a 37, so I was going to use that as the guideline
21 level. And his criminal history category is a 1, so the
22 guideline level on that is 210 to 262 if I'm not mistaken.

23 MR. GRIBKO: Yes, your Honor.

24 THE COURT: But it's capped at 240 under the
00:05 25 statute; right?

1 MR. GRIBKO: Yes, your Honor.

2 THE COURT: So we still start at the maximum
3 sentence could be at 240. Are there any -- so I suppose we're
4 sentencing at the level of 240 months with a criminal history
5 category of 1. Are there any other points that we should know
6 or objections to sentencing at that level?

7 MR. DAVIS: Not from the defense, your Honor, no.

8 THE COURT: All right. How about with regard to the
9 Government, any motions?

10 MR. GRIBKO: The Government is not making any
11 motions for a downward departure, as indicated by what we said
12 in the Third Circuit, and that is because Mr. Erwin has
13 breached the plea agreement we are now re-sentencing him
14 without benefit of a 5K1.1 motion.

15 THE COURT: All right. Mr. Davis, do you wish to be
16 heard on sentencing?

17 MR. DAVIS: Yes, your Honor. Also I wanted to note
18 to the Court that Mr. Erwin's wife is here, Allison Erwin, and
19 she had asked if she can just have a few moments --

20 THE COURT: She can

21 MR. DAVIS: Okay. Judge, as I indicated in the memo
22 that I submitted on behalf of Mr. Erwin this is an interesting
23 position that I find himself in. I don't think I've ever been
24 put in this position before with respect to sentencing
25 because, you know, the Government is asking for a variance

1 here and we agree, a variance is appropriate here. And it's
2 appropriate because of the substantial cooperation that Mr.
3 Erwin has provided and the Government benefitted from.

4 And, you know, the Government concededly said that
00:07 5 the cooperation was important, and I would go a step further
6 and say that that cooperation provided by Mr. Erwin was not
7 only complete and important, it was vital, it was essential
8 because he was the first to cooperate of the -- of his
9 co-defendants, and every single person after pled guilty.

00:08 10 There was no trial in this case, and I would go as
11 far as the say it was because of the cooperation of Mr. Erwin
12 who -- who the Court has found and the Government has claimed
13 is the leader of the organization, of the scheme that was
14 found to have existed.

00:08 15 So, we do believe that the cooperation, although not
16 advanced in a 5K1 motion and presented to the Court that way,
17 it should still be considered and given its due weight because
18 of -- it's an appropriate consideration under Section 3553.

00:09 19 I also -- Judge, I want to point out that this was
20 -- I understand that deterrence is an issue in this sentencing
21 because Mr. Erwin did in fact breach his agreements with the
22 Government, and he did that knowing that there were certain
23 consequences. But as I indicated in writing that his decision
24 to do that was not simply to thumb his nose at the Government
00:09 25 or the Court. He believed he had a meritorious grievance and

1 wanted to raise that because he felt his rights were being --
2 had been violated. And it's -- so I think it's important to
3 know that this wasn't something that was just defiance without
4 any rhyme or reason or respect for the Court or the plea
5 process, because that's far from true.

6 And Mr. Erwin, who would also like to address the
7 Court, will speak to that very briefly. But it was -- it was
8 something he felt he needed to do. And that even though the
9 Government would have to spend some resources to address -- or
10 to respond before the Third Circuit, that again they had
11 already received the benefit of the bargain between himself
12 and the Government. So, he didn't see it as invalidating what
13 the Government had already received in exchange for his
14 cooperation.

15 So Judge, again, I'm trying to be very careful about
16 what I say to the Court and on the record, because I don't
17 want to be the reason that Mr. Erwin finds himself again in
18 violation of his agreement, because the Court is aware that he
19 did agree not to argue for a downward variance, and even
20 though the Government is asking for one and saying even though
21 we're asking for you, you cannot ask for anything additional
22 to that.

23 I think that based on what we've represented in the
24 memorandum and also in the outpouring of support that is in
25 the letters we provided to the Court from family and friends,

1 you know, the totality of all those sentiments expressed in
2 writing I think expresses to the Court exactly what kind of
3 person Mr. Erwin is and has been, notwithstanding his
4 criminality and his conduct.

00:11 5 So, you know, I just ask that the Court take into
6 consideration everything that's already been submitted which I
7 know your Honor has done.

8 And could we have Mr. Erwin provide his remarks --
9 THE COURT: You may.

00:12 10 MR. DAVIS: -- at this time?

11 THE COURT: That's fine.

12 THE DEFENDANT: Thank you for reading my letter. I
13 didn't -- I didn't knowingly breach the plea for appeal, I was
14 confused; I thought that the statutory maximum of 240 months,
00:12 15 all reductions including acceptance of responsibility would
16 start there. So when they started at a level 42 taking three
17 points off for acceptance, it just confused me, so that's why
18 I proceeded with the appeal. And I don't -- that's just
19 really it. I'm sorry.

00:12 20 THE COURT: All right, thank you.

21 And how about Mrs. Erwin.

22 ALLISON ERWIN: Hello.

23 THE COURT: Good afternoon. State your name, and
24 spell your last name, and then you can speak.

00:12 25 ALLISON ERWIN: If I can. I'm a little shaky.

1 Allison Erwin, E-r-w-i-n. I just wanted to come up for a
2 moment, and I understand that the parameters that we're here
3 for are narrow, and I certainly don't want make to anything
4 worse either, but I just wanted to say out loud that it's my
5 hope and the hope of his family that -- that now that we're
6 here today, that perhaps there will be some perspective that
7 time allows for.

8 I suspect everyone here has a different opinion
9 about what -- what that means or what a proportional response
10 to a crime is, and I wouldn't presume to say that it's my
11 place to tell anyone what is that, that's what you have the
12 guidelines for and that's why you all have your careers and
13 your wisdom.

14 I'm just really here to advocate for an eight-year
15 old boy who can't advocate for himself. He found out earlier
16 than he should have that people are flawed and that people
17 make mistakes, and I'm not certainly belittling them in any
18 way what the mistakes were made. And for whatever it's worth
19 I just want the Court to know that in addition to apologizing
20 for what he did and taking ownership of it and cooperating
21 instantly, that Chris apologized to his own son too.

22 We didn't sweep this under the rug, we used this as
23 an opportunity to parent together and to explain that actions
24 have consequences. And it was a painful lesson, but it's one
25 that's necessary and it's one I don't think you're ever too

1 young to learn. And it would have been easy to pretend it
2 didn't happen or the claim another reason or to make up an
3 excuse why daddy isn't here, but we didn't do that.

4 What we didn't do is explain to him how long his
00:14 5 father was going to away from him. Up until now we've been
6 able to say oh we don't know baby and we're not sure, you
7 know, we're still working things out but don't you worry about
8 it. So we haven't been able to answer that question.

9 And I know it's not the same thing but it's the only
00:14 10 connection I can make, and much like a parent I know you need
11 to administer justice in a way that deters and that has
12 respect for the law, and I -- I would not argue with that.

13 And I'm just here to humbly ask you on behalf of the sweetest
14 eight-year old boy in the whole world that whatever is within
00:15 15 your power and whatever is within your judgment to do that you
16 would consider that factor and the ownership that he has taken
17 of his mistake, so that when it comes time we do need to
18 answer that question how long, we can answer it in a way that
19 hopefully won't crush a boy who doesn't deserve it, and
00:15 20 whatever way you can consider.

21 THE COURT: All right, thank you.

22 ALLISON ERWIN: Thank you.

23 MR. DAVIS: We have nothing further, your Honor.

24 THE COURT: All right. Mr. Gribko?

00:15 25 MR. GRIBKO: Your Honor. It's the Government's

1 position that -- that a variance, a small variance in this
2 case is appropriate. And I set that forth in my letter. I
3 don't want to make this presenting any longer than it already
4 is; it's a difficult position I think for everybody involved
5 here, given the way things shook out.

6 Unfortunately it wasn't just an accident or
7 confusion by Mr. Erwin on this thing. His attorneys were
8 advised that this was the outcome that would have happened if
9 he breached the plea agreement and that's why we're here. And
10 the Third Circuit was fairly clear in this that this is a
11 deterrence that needs to be made, and unfortunately Mr. Erwin
12 decided that he was going to run the risk of being the person
13 who was held out as why don't breach your plea deals, and why
14 you don't appeal sentences inappropriately. He chose to do
15 that knowingly. He was warned through his first attorney, he
16 was warned through this second attorney, and unfortunately
17 that's why we're here. And I do appreciate Mr. Davis' plight
18 in that he can't argue for anything at this point, but that's
19 -- that's why we're here.

20 As far as Mr. Erwin's cooperation, he was given a
21 big break and the Government admits that he should get a break
22 here as well, but he was given a big break because -- because
23 it was given in the form of a 5K motion. Because he was
24 cooperating with the Government, he was living up to his plea
25 deal, and the Government gave him a deal.

1 But at the same time that cooperation has to be put
2 in context. He didn't bring any new -- the Government didn't
3 bring any new prosecutions because of him. The Government
4 didn't require him to testify at trial. So, while he did
5 cooperate, and that cooperation was important as was set forth
6 in our earlier letter, given that he thereafter breached the
7 plea agreement, nothing more than a 10 month variance is
8 appropriate in the Government's eyes in this case.

9 So given that we are here to redo a 188 month
10 sentence, a 12 month increase in that is certainly not
11 inappropriate. In fact, giving anything less than some
12 increase over that would be inappropriate given the Third
13 Circuit's decision in this case, which sent it back
14 specifically for it to be re-sentenced in connection with the
15 breach of the plea agreement. There has to be some remedy for
16 that breach of the plea agreement, which is the Third
17 Circuit's opinion spoke of at length.

18 So for those reasons -- I won't go into the 3553(a)
19 factors at length, I know your Honor has read the motion
20 papers here, and the summary of the argument before Judge
21 Wolfson and Judge Wolfson's opinion and the Third Circuit
22 opinion, and there's no real reason to go through each and
23 every one of them as we often times do in this case. I will
24 just focus on the reason we're here doing this again, and that
25 is because there needs to be some remedy for the breach of the

1 plea agreement.

2 The other 3553 factors are set forth in ample --
3 amply in my letter and in Judge Wolfson's opinion, and they
4 weigh in favor of a high sentence here. The only thing that
5 cuts against a high sentence here is his cooperation, and
6 unfortunately for him that is undercut by his breach of the
7 plea agreement.

8 THE COURT: Thank you.

9 Any other comments, Mr. Davis?

10 MR. DAVIS: No, your Honor. Thank you.

11 THE COURT: All right. So I should let you know
12 I've read the entire file and I've read the letters that --
13 most of them are addressed to Judge Wolfson, but I read
14 through these letters as well; I've read the entire
15 presentence report; and I've gone through some of the
16 calculations with probation officer in determining how we look
17 at this.

18 But, at any rate, it seems to me that Mr. Erwin,
19 he's before the Court on a re-sentencing, to a plea of guilty
20 to conspiracy to distribute OxyContin. The defendant, as I
21 understand it, was a leader of the large-scale OxyContin
22 distribution range. The ring was composed of physicians, and
23 specifically Lopresti and Lahham --

24 MR. GRIBKO: Lahham, your Honor.

25 THE COURT: Lahham; to collect prescriptions for

1 OxyContin for which there is no medical necessity. Erwin
2 visited these physicians himself and paid the physician for
3 the medically unnecessary OxyContin prescriptions in his name
4 and in the name of other people, who may or may not be present
5 at the time. Erwin acquired the OxyContin for further
6 distribution.

7 Erwin also transported persons to and from the
8 physicians for the medically unnecessary prescriptions, and to
9 various pharmacies in New York and New Jersey. Erwin provided
10 the money to purchase the OxyContin based on the medically
11 unnecessary prescriptions. Generally, for 120 tablets at 30
12 milligrams each, he paid the individuals either with cash or
13 with OxyContin tablets, and thereafter he kept the remainder
14 for himself. And then he resold them the extra OxyContin
15 tablets for 12 to \$30 each, so there was a broad scheme
16 ongoing.

17 I also note that he has two prior criminal
18 convictions, but those two convictions occurred over 20 years
19 ago, and therefore weren't counted in his criminal history
20 category. The defendant is married and has one child; and we
21 heard from his wife today and her plea to be lenient based on
22 his relationship with his child. Based on that we have to
23 look at what we are doing here.

24 Generally -- and Mr. Gribko didn't want to go
25 through the 3553 factors, but I always do it. So it seems to

1 me --

2 MR. GRIBKO: I believe you have to, your Honor --
3 not to interrupt you; you have to. I was just being quick; if
4 you want me to I will --

00:22 5 THE COURT: Oh, no, it's just a comment. I'm going
6 to go through them, don't worry.

7 MR. GRIBKO: Sorry.

8 THE COURT: But we generally go through the 3553
9 factors and we call them the 3553 factors because that's the
00:23 10 section of the statute in which they're set forth. So, in
11 that statute Congress sought honesty, uniformity and
12 proportionality in sentencing. And also, we should look at
13 the following criteria when we're entering a sentence: The
14 nature and circumstances of the offense, and the history and
00:23 15 characteristic of the defendant; the sentence must reflect the
16 seriousness of the offense; promote respect for the law;
17 afford adequate deterrence to criminal conduct; protect the
18 public from further crimes of the defendant; and in some cases
19 we also look to make certain there's not unwarranted
00:23 20 sentencing disparity among defendants who have committed
21 similar crimes and similar conduct, but I don't believe that's
22 really at issue here.

23 And so, with regard to that, the case is sort of
24 unusual in the sense that not only are we looking at the facts
00:24 25 and circumstances of the case, but this is a re-sentencing.

1 And the difference between a re-sentencing and the original
2 sentence is that the Government has -- in the original
3 sentence the Government made a motion for cooperation, and
4 Judge Wolfson granted the motion, and varied or departed
5 downward based on that cooperation. Here, the Government is
6 not making such a motion. So, it's not before the Court at
7 the present time with regard to a departure.

8 So, when we're looking at the offense, the offense
9 level as we had indicated earlier is a 37, and has -- the
10 offense level when you look at those guidelines is 210 to 262
11 months, but because the maximum term under the statute is 240
12 months, really the cap is 240, not 262, so we're starting at
13 that level.

14 Here, looking at the seriousness of the offense,
15 it's a very heinous crime to be buying OxyContin; he had the
16 help of other people and doctors in this sophisticated scheme,
17 so it needs to be punished. There also needs to be some
18 deterrence to further criminal conduct by the defendant, and
19 also general deterrence, not only to criminal conduct, but I'm
20 considering how do we handle the fact that this cooperation is
21 not being executed or given at the present time because the
22 motion was not made here today.

23 And then although it's a de novo type of hearing,
24 you kind of consider what Judge Wolfson did, because I've read
25 the file. So I think she began her sentencing at the top

1 level, so it was higher. I should also state we gave two
2 points off under the change in the guidelines for the amount
3 of drugs at use, so we're at this 240 level.

4 Judge Wolfson started the max; I am going to start
5 at the bottom. So, rather than 240, I think we should start
6 at the lower end of 210 months. And the Government indicated
7 that, you know, we should look at this case under the 3553
8 factors and give a variance based on the cooperation of the
9 defendant. But it's not like cooperation when you have a

10 departure motion, it's just one of these general
11 characteristics of the case as a whole, and an attempt to
12 promote respect for the law; as well as we've got to look at
13 the fact as the Third Circuit indicated, that the defendant
14 had waived his right to appeal. And generally the policy is
15 that once you agree to a plea and the terms are set forth in
16 the plea, and one of them is you have no right to appeal,
17 you've got to abide by it. So, I'm looking at that as well.

18 So, from my standpoint, I think Mr. Erwin should be
19 given a very slight variance from the 210 minimum under that
20 level, and I would vary down 10 months to 200 months. That
21 was the recommendation of the Government; it seems to me to be
22 a fair one under the circumstances.

23 I have to say I do have some compassion for the wife
24 and Mr. Erwin's child, but, over all, the heinousness of the
25 crime requires substantial punishment. And my view is that

1 that's the primary factor in my determination here today.

2 So, Mr. Erwin, you are hereby committed to the

3 custody of the Bureau of Prisons for a term of 200 months.

4 Upon release from imprisonment, the defendant shall be placed

00:30 5 on supervised release for three years. Within 72 hours of

6 release from the custody of the Bureau of Prisons, the

7 defendant shall report in person to the probation office in

8 the district to which he is released.

9 While on supervised release the defendant shall not

00:30 10 commit another federal, state or local crime; shall be

11 prohibited from possessing a firearm or other dangerous

12 device; shall not possess an illegal controlled substance; and

13 shall comply with all other standard conditions that I'll set

14 forth below.

00:30 15 The defendant must submit to one drug test within 15

16 days of commencement of supervised release, and at least two

17 tests thereafter as determined by the probation officer. In

18 addition, the defendant shall comply with these following

19 special conditions, and I'll just read the topics, the

00:31 20 condition itself is set forth in the judgment, and the terms

21 and conditions are set forth in the judgment. But those

22 conditions are: Alcohol, drug testing and treatment; and

23 mental health treatment.

24 The Court finds the defendant does not have the

00:31 25 ability to pay a fine; the Court waives the fine. And the

1 defendant shall pay the United States a special assessment of
2 \$100, which is due immediately.

3 And Mr. Davis, could you just review with your
4 client his right of appeal and the terms of that?

00:31 5 MR. DAVIS: Yes, your Honor.

6 THE COURT: All right.

7 So, I'm sorry; in the special conditions, there were
8 gambling restrictions imposed by Judge Wolfson --

9 MR. GRIBKO: Let me check.

00:32 10 THE COURT: Do you have any comment on that, Mr.
11 Gribko?

12 THE DEFENDANT: Your Honor, if I had \$400,000 to pay
13 a fine, would that make a difference?

00:32 14 THE COURT: I'm sorry; I have a question out to Mr.
15 Gribko.

16 MR. GRIBKO: Gambling, I don't see it listed -- yes,
17 gambling exclusion, you're right, there is.

18 THE COURT: Well, from your knowledge of the case,
19 is that important in this case?

00:32 20 MR. GRIBKO: He did say he gambled the money away,
21 but it's up to your Honor, I don't -- I don't specifically
22 strongly seek it, I leave it to the discretion of the Court.

23 THE COURT: Mr. Davis, is there something --

00:32 24 MR. DAVIS: Well, Judge, if the Government's not
25 asking for it, I don't think it's something that is going to

1 be necessary --

2 THE COURT: All right. So my view is that when I
3 was reading through the file I didn't see too much on
4 gambling, so I didn't impose it. So, the sentence I believe
5 is appropriate in the sense that it's more than adequate
6 deterrence for future crimes of the defendant, he as well as
7 deterrence to the public generally; and it measures the
8 heinousness of the crime, so we'll go with that.

9 Mr. Erwin, what was your question?

10 THE DEFENDANT: I'm a little annoyed at the
11 disparity between me and the doctor. It seems the doctor has
12 \$400,000 to pay a fine; they were knowingly doing what they
13 were doing, it seems to have a big impact on why people don't
14 trust the criminal justice system.

15 THE COURT: All right. So it seems to me that the
16 sentence that was imposed is fair and reasonable under the
17 circumstances. Any other matters?

18 MR. GRIBKO: No, your Honor.

19 MR. DAVIS: No, your Honor.

20 THE COURT: Thank you for coming in.

21 THE DEPUTY CLERK: All rise.

22 (Matter concluded.)

23

24

25

cooperate [2] - 5:8, 11:5
cooperating [2] - 8:20, 10:24
cooperation [15] - 5:2, 5:5, 5:6, 5:11, 5:15, 6:14, 10:20, 11:1, 11:5, 12:5, 15:3, 15:5, 15:20, 16:8, 16:9
correct [2] - 1:23, 3:4
counted [1] - 13:19
Court [17] - 4:18, 5:12, 5:16, 5:25, 6:4, 6:7, 6:16, 6:18, 6:25, 7:2, 7:5, 8:19, 12:19, 15:6, 17:24, 17:25, 18:22
COURT [32] - 1:1, 1:12, 2:1, 2:6, 2:9, 3:1, 3:12, 3:17, 3:24, 4:2, 4:8, 4:15, 4:20, 7:9, 7:11, 7:20, 7:23, 9:21, 9:24, 12:8, 12:11, 12:25, 14:5, 14:8, 18:6, 18:10, 18:14, 18:18, 18:23, 19:2, 19:15, 19:20
court [1] - 2:8
COURTHOUSE [1] - 1:8
crime [5] - 8:10, 15:15, 16:25, 17:10, 19:8
crimes [3] - 14:18, 14:21, 19:6
criminal [9] - 3:3, 3:21, 4:4, 13:17, 13:19, 14:17, 15:18, 15:19, 19:14
CRIMINAL [1] - 1:4
criminality [1] - 7:4
criteria [1] - 14:13
crush [1] - 9:19
custody [2] - 17:3, 17:6
cuts [1] - 12:5

D

daddy [1] - 9:3
dangerous [1] - 17:11
DAVIS [13] - 1:18, 1:18, 2:7, 3:11, 4:7, 4:17, 4:21, 7:10, 9:23, 12:10, 18:5, 18:24, 19:19
Davis [6] - 2:7, 2:9, 4:15, 12:9, 18:3,

18:23
Davis' [1] - 10:17
days [1] - 17:16
de [1] - 15:23
deal [2] - 10:25
deals [1] - 10:13
decided [1] - 10:12
decision [2] - 5:23, 11:13
defendant [16] - 2:20, 12:20, 13:20, 14:15, 14:18, 15:18, 16:9, 16:13, 17:4, 17:7, 17:9, 17:15, 17:18, 17:24, 18:1, 19:6
DEFENDANT [5] - 1:6, 1:19, 7:12, 18:12, 19:10
defendants [2] - 5:9, 14:20
defense [1] - 4:7
defiance [1] - 6:3
departed [1] - 15:4
departure [3] - 4:11, 15:7, 16:10
DEPUTY [1] - 19:21
deserve [1] - 9:19
determination [1] - 17:1
determined [1] - 17:17
determining [1] - 12:16
deterrence [7] - 5:20, 10:11, 14:17, 15:18, 15:19, 19:6, 19:7
deters [1] - 9:11
device [1] - 17:12
difference [2] - 15:1, 18:13
different [1] - 8:8
difficult [1] - 10:4
disagreeing [1] - 3:16
disagrees [1] - 3:12
discretion [1] - 18:22
disparity [2] - 14:20, 19:11
distribute [1] - 12:20
distribution [2] - 12:22, 13:6
DISTRICT [4] - 1:1, 1:1, 1:12, 1:13
district [1] - 17:8
doctor [2] - 19:11
doctors [1] - 15:16
done [1] - 7:7
down [2] - 3:20, 16:20
downward [4] - 3:8, 4:11, 6:19, 15:5
drug [2] - 17:15, 17:22
drugs [2] - 3:19, 16:3

due [3] - 3:18, 5:17, 18:2

E

E-r-w-i-n [1] - 8:1
EAST [1] - 1:9
easy [1] - 9:1
eight [2] - 8:14, 9:14
eight-year [2] - 8:14, 9:14
either [2] - 8:4, 13:12
end [1] - 16:6
enter [1] - 2:2
entered [1] - 2:11
entering [1] - 14:13
entire [2] - 12:12, 12:14
Erwin [26] - 2:1, 2:8, 2:10, 4:12, 4:18, 4:22, 5:3, 5:6, 5:11, 5:21, 6:6, 6:17, 7:3, 7:8, 7:21, 8:1, 10:7, 10:11, 12:18, 13:1, 13:5, 13:7, 13:9, 16:18, 17:2, 19:9
ERWIN [4] - 1:5, 7:22, 7:25, 9:22
Erwin's [3] - 4:18, 10:20, 16:24
ESQUIRE [2] - 1:16, 1:18
essential [1] - 5:7
essentially [1] - 3:9
exactly [1] - 7:2
exchange [1] - 6:13
exclusion [1] - 18:17
excuse [1] - 9:3
executed [1] - 15:21
existed [1] - 5:14
explain [2] - 8:23, 9:4
expressed [1] - 7:1
expresses [1] - 7:2
extra [1] - 13:14
eyes [1] - 11:8

F

fact [6] - 2:12, 3:17, 5:21, 11:11, 15:20, 16:13
factor [2] - 9:16, 17:1
factors [6] - 11:19, 12:2, 13:25, 14:9, 16:8
facts [1] - 14:24
fair [2] - 16:22, 19:16
fairly [1] - 10:10

family [2] - 6:25, 8:5
far [3] - 5:11, 6:5, 10:20
father [1] - 9:5
favor [1] - 12:4
federal [1] - 17:10
felt [2] - 6:1, 6:8
few [1] - 4:19
file [3] - 12:12, 15:25, 19:3
fine [5] - 7:11, 17:25, 18:13, 19:12
firearm [1] - 17:11
FIRM [1] - 1:18
first [2] - 5:8, 10:15
FISHER [1] - 1:8
FISHMAN [1] - 1:15
flawed [1] - 8:16
focus [1] - 11:24
following [2] - 14:13, 17:18
FOR [2] - 1:17, 1:19
form [1] - 10:23
forth [9] - 2:16, 10:2, 11:5, 12:2, 14:10, 16:15, 17:14, 17:20, 17:21
forward [1] - 2:24
Francis [1] - 1:24
FRANCIS [1] - 1:24
friends [1] - 6:25
future [1] - 19:6

G

Gable [1] - 1:24
GABLE [1] - 1:24
gambled [1] - 18:20
gambling [3] - 18:8, 18:17, 19:4
Gambling [1] - 18:16
general [2] - 15:19, 16:10
Generally [2] - 13:11, 13:24
generally [3] - 14:8, 16:14, 19:7
given [11] - 3:7, 5:17, 10:5, 10:20, 10:22, 10:23, 11:6, 11:9, 11:12, 15:21, 16:19
Government [25] - 2:2, 2:5, 2:11, 4:9, 4:10, 4:25, 5:3, 5:4, 5:12, 5:22, 5:24, 6:9, 6:12, 6:13, 6:20, 10:21, 10:24, 10:25, 11:2, 11:3, 15:2, 15:3, 15:5, 16:6,

16:21
GOVERNMENT [1] - 1:17
Government's [3] - 9:25, 11:8, 18:24
granted [1] - 15:4
GRIBKO [16] - 1:16, 2:3, 2:18, 3:4, 3:14, 3:23, 4:1, 4:10, 9:25, 12:24, 14:2, 14:7, 18:9, 18:16, 18:20, 19:18
Gribko [7] - 2:4, 2:6, 2:16, 9:24, 13:24, 18:11, 18:15
grievance [1] - 5:25
guideline [2] - 3:20, 3:22
guidelines [6] - 2:21, 3:7, 3:19, 8:12, 15:10, 16:2
guilty [2] - 5:9, 12:19

H

handle [1] - 15:20
health [1] - 17:23
heard [2] - 4:16, 13:21
HEARING [1] - 1:21
hearing [1] - 15:23
heinous [1] - 15:15
heinousness [2] - 16:24, 19:8
held [1] - 10:13
Hello [1] - 7:22
help [1] - 15:16
hereby [1] - 17:2
high [2] - 12:4, 12:5
higher [1] - 16:1
himself [6] - 4:23, 6:11, 6:17, 8:15, 13:2, 13:14
history [6] - 2:19, 3:3, 3:21, 4:4, 13:19, 14:14
honesty [1] - 14:11
Honor [20] - 2:3, 2:7, 2:18, 3:4, 3:23, 4:1, 4:7, 4:17, 7:7, 9:23, 9:25, 11:19, 12:10, 12:24, 14:2, 18:5, 18:12, 18:21, 19:18, 19:19
HONORABLE [1] - 1:12
hope [2] - 8:5
hopefully [1] - 9:19
hours [1] - 17:5
humbly [1] - 9:13

I illegal [1] - 17:12 immediately [1] - 18:2 impact [1] - 19:13 important [5] - 5:5, 5:7, 6:2, 11:5, 18:19 impose [1] - 19:4 imposed [2] - 18:8, 19:16 imprisonment [1] - 17:4 inappropriate [2] - 11:11, 11:12 inappropriately [1] - 10:14 including [1] - 7:15 increase [2] - 11:10, 11:12 indicated [6] - 4:11, 4:21, 5:23, 15:9, 16:6, 16:13 individuals [1] - 13:12 instantly [1] - 8:21 interesting [1] - 4:22 interim [1] - 2:24 interrupt [1] - 14:3 invalidating [1] - 6:12 involved [2] - 3:19, 10:4 issue [2] - 5:20, 14:22 itself [1] - 17:20 J Jersey [1] - 13:9 JERSEY [3] - 1:1, 1:9, 1:13 Joseph [1] - 2:4 JOSEPH [1] - 1:16 Judge [13] - 2:11, 4:21, 5:19, 6:15, 11:20, 11:21, 12:3, 12:13, 15:4, 15:24, 16:4, 18:8, 18:24 JUDGE [1] - 1:12 judgment [3] - 9:15, 17:20, 17:21 justice [2] - 9:11, 19:14 K kept [1] - 13:13 kind [2] - 7:2, 15:24 knowing [1] - 5:22 knowingly [3] - 7:13, 10:15, 19:12	knowledge [1] - 18:18 L Lahham [3] - 12:23, 12:24, 12:25 large [1] - 12:21 large-scale [1] - 12:21 last [1] - 7:24 law [5] - 3:6, 3:15, 9:12, 14:16, 16:12 LAW [1] - 1:18 leader [2] - 5:13, 12:21 learn [1] - 9:1 least [1] - 17:16 leave [1] - 18:22 length [2] - 11:17, 11:19 lenient [1] - 13:21 less [1] - 11:11 lesson [1] - 8:24 letter [4] - 7:12, 10:2, 11:6, 12:3 letters [3] - 6:25, 12:12, 12:14 level [12] - 3:2, 3:21, 3:22, 4:4, 4:6, 7:16, 15:9, 15:10, 15:13, 16:1, 16:3, 16:20 listed [1] - 18:16 living [1] - 10:24 LLC [1] - 1:18 local [1] - 17:10 look [7] - 12:16, 13:23, 14:12, 14:19, 15:10, 16:7, 16:12 looking [4] - 14:24, 15:8, 15:14, 16:17 Lopresti [1] - 12:23 loud [1] - 8:4 lower [1] - 16:6 M Mark [1] - 2:7 MARK [1] - 1:18 married [1] - 13:20 Matter [1] - 19:22 matters [1] - 19:17 max [1] - 16:4 maximum [3] - 4:2, 7:14, 15:11 means [1] - 8:9 measures [1] - 19:7 medical [1] - 13:1 medically [3] - 13:3, 13:8, 13:10	memo [1] - 4:21 memorandum [1] - 6:24 mental [1] - 17:23 meritorious [1] - 5:25 milligrams [1] - 13:12 minimum [1] - 16:19 mistake [1] - 9:17 mistaken [1] - 3:22 mistakes [2] - 8:17, 8:18 moment [2] - 2:20, 8:2 moments [1] - 4:19 money [2] - 13:10, 18:20 month [3] - 11:7, 11:9, 11:10 months [8] - 4:4, 7:14, 15:11, 15:12, 16:6, 16:20, 17:3 most [1] - 12:13 motion [9] - 4:14, 5:16, 10:23, 11:19, 15:3, 15:4, 15:6, 15:22, 16:10 motions [2] - 4:9, 4:11 must [2] - 14:15, 17:15 N name [4] - 7:23, 7:24, 13:3, 13:4 narrow [1] - 8:3 nature [1] - 14:14 necessary [2] - 8:25, 19:1 necessity [1] - 13:1 need [2] - 9:10, 9:17 needed [1] - 6:8 needs [4] - 10:11, 11:25, 15:17 New [2] - 13:9 NEW [3] - 1:1, 1:9, 1:13 new [2] - 11:2, 11:3 NO [1] - 1:4 normally [1] - 2:19 nose [1] - 5:24 note [3] - 2:19, 4:17, 13:17 nothing [2] - 9:23, 11:7 notwithstanding [1] - 7:3 novo [1] - 15:23	O objections [1] - 4:6 occurred [1] - 13:18 OF [3] - 1:1, 1:3, 1:13 offense [7] - 3:1, 14:14, 14:16, 15:8, 15:10, 15:14 office [1] - 17:7 officer [2] - 12:16, 17:17 OFFICIAL [1] - 1:25 often [1] - 11:23 old [3] - 3:7, 8:15, 9:14 once [1] - 16:15 one [13] - 3:5, 3:9, 3:12, 3:15, 6:20, 8:24, 8:25, 11:23, 13:20, 16:10, 16:16, 16:22, 17:15 ongoing [1] - 13:16 opinion [5] - 8:8, 11:17, 11:21, 11:22, 12:3 opportunity [1] - 8:23 organization [1] - 5:13 original [3] - 2:22, 15:1, 15:2 outcome [1] - 10:8 outpouring [1] - 6:24 own [1] - 8:21 ownership [2] - 8:20, 9:16 OxyContin [9] - 12:20, 12:21, 13:1, 13:3, 13:5, 13:10, 13:13, 13:14, 15:15 P paid [2] - 13:2, 13:12 painful [1] - 8:24 papers [1] - 11:20 parameters [1] - 8:2 parent [2] - 8:23, 9:10 PAUL [1] - 1:15 pay [4] - 17:25, 18:1, 18:12, 19:12 people [5] - 8:16, 13:4, 15:16, 19:13 perhaps [1] - 8:6 person [4] - 5:9, 7:3, 10:12, 17:7 persons [1] - 13:7 perspective [1] - 8:6 PETER [1] - 1:12 PGS [1] - 1:5 pharmacies [1] - 13:9	physician [1] - 13:2 physicians [3] - 12:22, 13:2, 13:8 place [3] - 2:22, 2:24, 8:11 placed [1] - 17:4 plays [1] - 2:23 plea [16] - 2:12, 4:13, 6:4, 7:13, 10:9, 10:13, 10:24, 11:7, 11:15, 11:16, 12:1, 12:7, 12:19, 13:21, 16:15, 16:16 pled [1] - 5:9 plight [1] - 10:17 point [6] - 2:23, 3:1, 3:2, 3:18, 5:19, 10:18 points [3] - 4:5, 7:17, 16:2 policy [1] - 16:14 position [4] - 4:23, 4:24, 10:1, 10:4 possess [1] - 17:12 possessing [1] - 17:11 power [1] - 9:15 prescriptions [4] - 12:25, 13:3, 13:8, 13:11 present [4] - 2:8, 13:4, 15:7, 15:21 presented [1] - 5:16 presentence [1] - 12:15 presenting [1] - 10:3 presume [1] - 8:10 pretend [1] - 9:1 primary [1] - 17:1 Prisons [2] - 17:3, 17:6 probation [4] - 3:17, 12:16, 17:7, 17:17 procedural [1] - 2:18 procedure [1] - 3:15 proceeded [1] - 7:18 proceeding [2] - 3:5, 3:10 process [1] - 6:5 prohibited [1] - 17:11 promote [2] - 14:16, 16:12 proportional [1] - 8:9 proportionality [1] - 14:12 prosecutions [1] - 11:3 protect [1] - 14:17 provide [1] - 7:8 provided [4] - 5:3, 5:6,

6:25, 13:9	14:23, 15:7	SENTENCING [1] - 1:21	submitted [2] - 4:22, 7:6	1:16, 1:25	
public [2] - 14:18, 19:7	relationship [1] - 13:22	sentencing [14] - 2:15, 2:22, 4:4, 4:6, 4:13, 4:16, 4:24, 5:20, 12:19, 14:12, 14:20, 14:25, 15:1, 15:25	substance [1] - 17:12	U.S.C [1] - 1:23	
punished [1] - 15:17	release [5] - 17:4, 17:5, 17:6, 17:9, 17:16	sentiments [1] - 7:1	substantial [2] - 5:2, 16:25	unclear [2] - 3:5, 3:14	
punishment [1] - 16:25	released [1] - 17:8	seriousness [2] - 14:16, 15:14	summary [1] - 11:20	under [10] - 2:12, 3:24, 5:18, 8:22, 15:11, 16:2, 16:7, 16:19, 16:22, 19:16	
purchase [1] - 13:10	remainder [1] - 13:13	set [9] - 2:16, 10:2, 11:5, 12:2, 14:10, 16:15, 17:13, 17:20, 17:21	supervised [3] - 17:5, 17:9, 17:16	undercut [1] - 12:6	
pursuant [2] - 2:21, 3:6	remanded [1] - 2:14	shaky [1] - 7:25	support [1] - 6:24	Unfortunately [1] - 10:6	
put [3] - 2:25, 4:24, 11:1	remarks [1] - 7:8	shall [8] - 17:4, 17:7, 17:9, 17:10, 17:12, 17:13, 17:18, 18:1	suppose [1] - 4:3	unfortunately [3] - 10:11, 10:16, 12:6	
Q		SHERIDAN [1] - 1:12	suspect [1] - 8:8	uniformity [1] - 14:11	
quick [1] - 14:3	report [2] - 12:15, 17:7	shook [1] - 10:5	sweep [1] - 8:22	United [3] - 2:1, 2:4, 18:1	
R		similar [2] - 14:21	sweetest [1] - 9:13	UNITED [2] - 1:1, 1:3	
R.M.R [1] - 1:24	REPORTER [1] - 1:25	simply [1] - 5:24	system [1] - 19:14	unnecessary [3] - 13:3, 13:8, 13:11	
raise [1] - 6:1	represented [1] - 6:23	single [1] - 5:9	T		
range [1] - 12:22	require [1] - 11:4	slight [1] - 16:19	tablets [3] - 13:11, 13:13, 13:15	unusual [1] - 14:24	
rate [1] - 12:18	required [1] - 1:23	small [1] - 10:1	term [2] - 15:11, 17:3	unwarranted [1] - 14:19	
rather [1] - 16:5	requires [1] - 16:25	son [1] - 8:21	terms [4] - 2:12, 16:15, 17:20, 18:4	Up [1] - 9:5	
RE [1] - 1:21	resold [1] - 13:14	sophisticated [1] - 15:16	test [1] - 17:15	up [6] - 2:12, 3:17, 8:1, 9:2, 10:24, 18:21	
re [7] - 2:15, 2:21, 4:13, 11:14, 12:19, 14:25, 15:1	resources [1] - 6:9	Sorry [1] - 14:7	testify [1] - 11:4	V	
re-sentenced [2] - 2:21, 11:14	respect [5] - 4:24, 6:4, 9:12, 14:16, 16:12	sorry [3] - 7:19, 18:7, 18:14	testing [1] - 17:22	variance [8] - 4:25, 5:1, 6:19, 10:1, 11:7, 16:8, 16:19	W
RE-SENTENCING [1] - 1:21	respond [1] - 6:10	sort [1] - 14:23	tests [1] - 17:17	varied [1] - 15:4	
re-sentencing [5] - 2:15, 4:13, 12:19, 14:25, 15:1	response [1] - 8:9	sought [1] - 14:11	thereafter [3] - 11:6, 13:13, 17:17	various [1] - 13:9	
read [7] - 11:19, 12:12, 12:13, 12:14, 15:24, 17:19	responsibility [1] - 7:15	special [3] - 17:19, 18:1, 18:7	therefore [1] - 13:19	vary [1] - 16:20	
reading [2] - 7:12, 19:3	restrictions [1] - 18:8	specifically [3] - 11:14, 12:23, 18:21	Third [8] - 2:13, 4:12, 6:10, 10:10, 11:12, 11:16, 11:21, 16:13	versus [1] - 2:1	
real [1] - 11:22	retroactive [1] - 2:23	spell [1] - 7:24	three [2] - 7:16, 17:5	view [2] - 16:25, 19:2	
really [4] - 7:19, 8:14, 14:22, 15:12	review [1] - 18:3	spend [1] - 6:9	thumb [1] - 5:24	violated [1] - 6:2	
reason [5] - 6:4, 6:17, 9:2, 11:22, 11:24	rhyme [1] - 6:4	standard [1] - 17:13	title [1] - 1:23	violation [1] - 6:18	
reasonable [1] - 19:16	rights [1] - 6:1	standpoint [1] - 16:18	today [4] - 8:6, 13:21, 15:22, 17:1	visited [1] - 13:2	
reasons [1] - 11:18	ring [1] - 12:22	start [5] - 2:2, 4:2, 7:16, 16:4, 16:5	together [1] - 8:23	vital [1] - 5:7	
reassigned [1] - 2:15	rise [1] - 19:21	started [2] - 7:16, 16:4	took [1] - 2:24	Vs [1] - 1:4	
received [2] - 6:11, 6:13	risk [1] - 10:12	starting [1] - 15:12	top [1] - 15:25	W	
recommendation [1] - 16:21	rug [1] - 8:22	STATE [1] - 1:9	topics [1] - 17:19	waived [1] - 16:14	W
record [1] - 6:16	run [1] - 10:12	State [1] - 7:23	totality [1] - 7:1	waives [1] - 17:25	
redo [1] - 11:9	S		transported [1] - 13:7	warned [2] - 10:15, 10:16	
reduction [3] - 2:23, 3:2, 3:18	scale [1] - 12:21	statute [4] - 3:25, 14:10, 14:11, 15:11	treatment [2] - 17:22, 17:23	weigh [1] - 12:4	
reductions [1] - 7:15	scheme [3] - 5:13, 13:15, 15:16	statutory [1] - 7:14	TRENTON [1] - 1:9	weight [1] - 5:17	
reflect [1] - 14:15	second [1] - 10:16	step [1] - 5:5	trial [2] - 5:10, 11:4	whole [2] - 9:14, 16:11	
regard [4] - 3:19, 4:8	Section [2] - 1:23, 5:18	still [3] - 4:2, 5:17, 9:7	true [2] - 1:23, 6:5	wife [3] - 4:18, 13:21, 16:23	
	section [1] - 14:10	STREET [1] - 1:9	trust [1] - 19:14	wisdom [1] - 8:13	
	see [3] - 6:12, 18:16, 19:3	strongly [1] - 18:22	trying [1] - 6:15	wish [1] - 4:15	
	seek [1] - 18:22	submit [1] - 17:15	two [7] - 2:23, 3:2, 3:18, 13:17, 13:18, 16:1, 17:16	Wolfson [7] - 2:11, 11:21, 12:13, 15:4, 15:24, 16:4, 18:8	
	sense [2] - 14:24, 19:5		type [1] - 15:23	Wolfson's [2] - 11:21,	
	sent [1] - 11:13		U		
	sentence [12] - 2:11, 3:6, 4:3, 11:10, 12:4, 12:5, 14:13, 14:15, 15:2, 15:3, 19:4, 19:16		U.S [4] - 1:12, 1:15,		
	sentenced [2] - 2:21, 11:14				
	sentences [1] - 10:14				

12:3

world ^[1] - 9:14

worry ^[2] - 9:7, 14:6

worse ^[1] - 8:4

worth ^[1] - 8:18

writing ^[2] - 5:23, 7:2

Y

year ^[2] - 8:14, 9:14

years ^[2] - 13:18, 17:5

York ^[1] - 13:9

young ^[1] - 9:1

Appendix I

AO 245C (Mod. D/NJ 12/06) Sheet 1 - Amended Judgment in a Criminal Case

R E C E I V E D

UNITED STATES DISTRICT COURT
District of New Jersey

APR 21 2016

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

UNITED STATES OF AMERICA

v.

Case Number 3:12CR364(PGS)-01

CHRISTOPHER ERWIN

Defendant.

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Date of Original Judgment: 07/25/2013

Reason for Amendment: Correction of Sentence on Remand (18 U.S.C. §§ 3742(f)(1) and (2))

The defendant, CHRISTOPHER ERWIN, was represented by, Mark Garnet Davis, CJA.

The defendant Stipulated to count(s) 1 of the Superseding Information on 07/25/2013. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

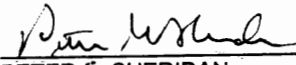
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
21 U.S.C. SECTION 846	CONSPIRACY TO DISTRIBUTE & POSSESS WITH THE INTENT TO DISTRIBUTE OXYCODONE	01/2009 THROUGH DECEMBER 2010	1s

As pronounced on 04/15/2016, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

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

Signed this the 20th day of April, 2016.



PETER G. SHERIDAN
United States District Judge

Defendant: CHRISTOPHER ERWIN
Case Number: 3:12CR364(PGS)-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 200 months with credit received for time previously served on this charge.

The Court makes the following recommendations to the Bureau of Prisons: Defendant designated to a facility close to his family.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ To _____
At _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: CHRISTOPHER ERWIN
Case Number: 3:12CR364(PGS)-01

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

The defendant shall submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

ALCOHOL/DRUG TESTING AND TREATMENT

You shall refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you shall submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged by the Court. You shall alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The Probation Officer shall supervise your compliance with this condition.

MENTAL HEALTH TREATMENT

You shall undergo treatment in a mental health program approved by the United States Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the United States Probation Office, until discharged by the Court. The Probation Officer shall supervise your compliance with this condition.

Defendant: CHRISTOPHER ERWIN
Case Number: 3:12CR364(PGS)-01

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) 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.
- 13) 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 by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) 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.
- 16) 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.
- (17) You shall cooperate in the collection of DNA as directed by the Probation Officer.

(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);

- (18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge

Defendant: CHRISTOPHER ERWIN
Case Number: 3:12CR364(PGS)-01

and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

- (19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;
- (20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

For Official Use Only - - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

U.S. Probation Officer/Designated Witness Date

Defendant: CHRISTOPHER ERWIN
Case Number: 3:12CR364(PGS)-01

RESTITUTION AND FORFEITURE

FORFEITURE

The defendant is ordered to forfeit the following property to the United States:

Consent judgment and order of forfeiture filed separately on 02/14/2013.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

Appendix J

**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 District of New Jersey
Name (under which you were convicted): Christopher Erwin	Docket or Case No.: 3:12-cr-00364-PGS-1
Place of Confinement: FCI Petersburg Low	Prisoner No.: 63427-050
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) Christopher Erwin
v.	

MOTION

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

U.S. District Court for the District of New Jersey

(b) Criminal docket or case number (if you know): 3:12-cr-00364-PGS-1

2. (a) Date of the judgment of conviction (if you know): 4/21/2016

(b) Date of sentencing: 4/15/2016

3. Length of sentence: 200 months

4. Nature of crime (all counts):

Conspiracy to distribute and possess with intent to distribute oxycodone, a controlled substance, in violation of 21 U.S.C. §§ 841(a) and (b)(1)(C), in violation of 21 U.S.C. § 846.

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?

Not applicable.

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

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JUL 14 2017

AT 8:30
WILLIAM T. WALSH
CLERK

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: United States Court of Appeals for the 3rd Circuit

(b) Docket or case number (if you know): 16-2646

(c) Result: Case dismissed pursuant to F.R.App.P. 42(b)

(d) Date of result (if you know): 7/14/2016

(e) Citation to the case (if you know): None

(f) Grounds raised:

Dismissal occurred prior to Petitioner identifying grounds for appeal.

- (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):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

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: United States Court of Appeals for the 3rd Circuit

(2) Docket or case number (if you know): 16-2646

(3) Date of filing (if you know): 08/02/2013

(4) Nature of the proceeding: Direct appeal

(5) Grounds raised:

The district court procedurally erred by applying a five-level downward departure from an incorrect advisory guidelines range that exceeded the statutory maximum

The district court violated Petitioner's 5th and 6th Amendment rights by departing from a point above the maximum legal sentence, thereby depriving him of the benefit of his plea bargain

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

(7) Result: Appeal denied due to waiver; remand for resentencing due to violation of plea agmt

(8) Date of result (if you know): 08/26/2014; rehearing denied 01/29/2015

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

(1) Name of court: Supreme Court of the United States

(2) Docket or case number (if you know): 14-1306

(3) Date of filing (if you know): 3/20/2015

(4) Nature of the proceeding: Petition for writ of certiorari

(5) Grounds raised:

Whether a court of appeals, having found an appeal barred by an appeal waiver in a plea agreement may vacate the judgment and remand to allow imposition of a higher sentence in the absence of a cross-appeal by the government.

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

(7) Result: Petition denied.

(8) Date of result (if you know): 11/2/2015

(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 ☐ Not applicable.

(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:

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:

Counsel rendered ineffective assistance in advising Petitioner on acceptance of plea offer

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

Defense counsel (James Murphy) did not investigate the facts or law of the case. Rather, from his initial meeting with Petitioner, Counsel advised that his only alternative was to enter into a plea agreement and seek to cooperate. Counsel advised that under the plea agreement, the top of the Guidelines range would be capped at the statutory maximum sentence of 240 months, and that in a worst-case scenario, Petitioner would be sentenced to 10 years. Petitioner questioned the base offense level and the Chapter 2 and 3 enhancements, especially because the proposed drug quantities were substantially higher than what in fact had been the quantity of drugs involved. Rather than raise the discrepancies with the government, Counsel told Petitioner that the cooperation agreement would bring his sentence in at or less than 10 years.

Counsel conducted no investigation and did not counsel Petitioner as to what would happen if the case went to trial, nor was there exploration of what would happen if Petitioner did not accept this agreement. An investigation would have borne out that the pill amount would be less than half of what was stipulated, and Petitioner's role would have been that of supervisor rather than leader.

Counsel's entire plan was to avoid making waves. Counsel told Petitioner he should be grateful for the cooperation agreement that was offered. After Petitioner was sentenced, Counsel expressed disbelief to its duration, telling one of Petitioner's friends that "I thought at most 10 years." [see bottom of page]

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

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

Yes ☐ No ☒ Not applicable

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

The ground has not been presented before. It allege ineffective assistance of counsel. Ineffective assistance of counsel is appropriately raised in a collateral proceeding, not on direct appeal.

- (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:

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

* Had Counsel investigated the facts and circumstances of the base level and enhancements, and properly advised Petitioner about the government's plan to use a sentence range above the statutory maximum, he would not have entered into the plea, but instead would have gone to trial or entered a blind plea, and advocated for a proper base offense level and sentencing enhancements.

Docket or case number (if you know):

Date of the court's decision:

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

(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:

Docket or case number (if you know):

Date of the court's decision:

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

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

GROUND TWO:

Counsel rendered ineffective assistance ensuring that the terms of the plea agreement were fulfilled.

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

As a material term of his cooperation with the government, Petitioner told agents about a large-scale marijuana operation in New York, and its links to organized crime. Petitioner knew how to get to the location, but not its address. Agents asked him to go to the location with them to identify it. Agents said they would contact him about doing so, but never followed up. The government had an obligation to deal with Petitioner in good faith, and Counsel had a duty to Petitioner to ensure that the government fulfilled its obligations so that Petitioner could get maximum credit for the assistance he rendered.

Had Petitioner known Counsel would not ensure that the government fulfill its obligations to provide a reasonable opportunity for him to cooperate, he would not have entered into the plea agreement, but instead would have gone to trial or entered a blind plea, and advocated for a proper base offense level and sentencing enhancements.

(b) Direct Appeal of Ground Two:

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

Yes ☐ No ☒ Not applicable

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

The ground has not been presented before. It allege ineffective assistance of counsel. Ineffective assistance of counsel is appropriately raised in a collateral proceeding, not on direct appeal.

(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:

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

Docket or case number (if you know):

Date of the court's decision:

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

(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:

Docket or case number (if you know):

Date of the court's decision:

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

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

GROUND THREE:

The government breached the plea agreement.

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

As a material term of his cooperation with the government, Petitioner told agents about a large-scale marijuana operation in New York, and its links to organized crime. Petitioner knew how to get to the location, but not its address. Agents asked him to go to the location with them to identify it. Agents said they would contact him about doing so, but never followed up. The government had an obligation to deal with Petitioner in good faith, which it breached by failing to permit a full measure of cooperation by Petitioner.

Had Petitioner known the government would not fulfill its obligations to provide a reasonable opportunity for him to cooperate, he would not have entered into the plea agreement, but instead would have gone to trial or entered a blind plea, and advocated for a proper base offense level and sentencing enhancements.

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

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

Yes ☐ No ☒ Not applicable.

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

The evidence needed to raise this issue was not a matter of record in the trial court, and thus could not have been argued on appeal.

(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:

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

Docket or case number (if you know):

Date of the court's decision:

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

(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:

Docket or case number (if you know):

Date of the court's decision:

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

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

GROUND FOUR:

The government breached the plea agreement.

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

It is settled that the terms of a plea agreement are those that the defendant reasonably understands to be the terms. Petitioner reasonably understood that the government's request for a downward departure pursuant to USSG § 5K1.1 would seek a downward departure from the applicable guidelines sentencing range, which recommended a maximum sentence of 240 months, which was the statutory maximum. The government breached this by proposing a downward departure from 262 months, which was the top of a hypothetical guidelines range. Material to Petitioner's decision to accept the plea agreement was the government's agreement that he would plead guilty to a single count with a statutory maximum of 240 months.

Had he known that notwithstanding this agreement, the government would press the court to depart from a hypothetical sentence maximum 22 months higher, Petitioner would not have entered into the plea, but instead would have gone to trial or entered a blind plea, and advocated for a base offense level and sentencing enhancements that comported with reality.

(b) Direct Appeal of Ground Four:

(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:

(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:

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

Docket or case number (if you know):

Date of the court's decision:

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

(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:

Docket or case number (if you know):

Date of the court's decision:

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

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

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:

None of the grounds has been presented before. Three of the grounds allege ineffective assistance of counsel. Ineffective assistance of counsel is appropriately raised in a collateral proceeding rather than on direct appeal. *Massaro v. United States*, 538 U.S. 500, 504 (2003). The facts relating to the government's failure to fulfill its obligations under the plea agreement are not in the trial court record, and thus could not have been raised on direct appeal.

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.

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: See Attachment 1

(b) At arraignment and plea:

See Attachment 1

(c) At trial:

See Attachment 1

(d) At sentencing:

See Attachment 1

(e) On appeal:

See Attachment 1

(f) In any post-conviction proceeding:

Pro se

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

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:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(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.*

Not applicable.

* 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:

Vacate Petitioner's sentence and plea agreement, and set the matter for further proceedings,

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 7/12/2017 (date).



Signature of Movant

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

Appendix KA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CHRISTOPHER ERWIN,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

) Hon. Peter G. Sheridan
) United States District Judge

)
) Crim. No. 12-364
) Civ. No. 17-5156

)
) RECEIVED
)

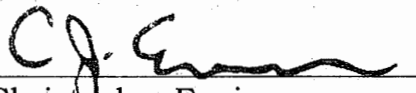
) APR 13 2018
)

AT 8:30
WILLIAM T. WALSH M
CLERK

PETITIONER'S NOTICE OF AMENDMENT

Christopher Erwin, Petitioner herein and defendant in the underlying criminal case, proceeding *pro se*, herewith gives notice that he is amending his pending *Motion to Vacate, Set Aside or Correct Sentence by a Person in Custody Pursuant to 28 U.S.C. § 2255*, pursuant to *F.R.Civ.P. 15(a)*, with the attached *Amendment to Motion to Vacate, Set Aside or Correct Sentence by a Person in Custody Pursuant to 28 U.S.C. § 2255*.

Executed: April 9, 2018


Christopher Erwin
Reg. No. 63427-050
FCI Petersburg Low
P.O. Box 1000
Petersburg, VA 23804

CERTIFICATE OF SERVICE

I herewith certify pursuant to 28 U.S.C. § 1746 that I have transmitted a manually-signed original of the foregoing *Notice of Amendment* and attached *Amendment to Motion to Vacate, Set Aside or Correct Sentence by a Person in Custody Pursuant to 28 U.S.C. § 2255* by causing the same to be sent through the legal mail system at FPC Ashland, first-class mail, postage prepaid, addressed to the following:

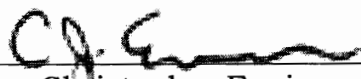
Clerk of Court
United States District Court for the
District of New Jersey
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street
Trenton, NJ 08608

and I have served a true and complete copy of the same by depositing said document by first-class mail, postage prepaid, addressed to the following:

R. Joseph Gribko
Assistant U.S. Attorney
United States Attorney's Office
402 East State Street
Trenton, New Jersey 08608

The foregoing statements are true under penalty of perjury.

Executed April __, 2018


Christopher Erwin

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CHRISTOPHER ERWIN,	)	Hon. Peter G. Sheridan
	)	United States District Judge
Petitioner,	)	
	)	Crim. No. 12-364
	)	Civ. No. 17-5156
-vs-	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

PETITIONER'S AMENDMENT TO AMENDED MOTION TO
VACATE, SET ASIDE OR CORRECT SENTENCE BY A PERSON
IN CUSTODY PURSUANT TO 28 U.S.C. § 2255

Christopher Erwin, Petitioner herein and defendant in the underlying criminal case, proceeding *pro se*, herewith amends his pending *Amended Motion to Vacate, Set Aside or Correct Sentence by a Person in Custody Pursuant to 28 U.S.C. § 2255*, R.5, filed August 14, 2017, ("*§ 2255 Motion*") by providing the following:

I. Issues Presented

Erwin has raised the following four issues in his *§ 2255 Motion*:

- Ground 1: Counsel rendered ineffective assistance in advising Petitioner on acceptance of plea offer
- Ground 2: Counsel rendered ineffective assistance ensuring that the terms of the plea agreement were fulfilled.
- Ground 3: The government breached the plea agreement.
- Ground 4: The government breached the plea agreement.

Erwin argues that Defense Counsel advised him improperly as to the effect of the plea agreement, grossly misadvised him about the effect of the cooperation agreement with the Government, and failed to investigate facts and the law as to the alternatives available to Erwin. He also argues that the Government breached the plea agreement in two separate ways, by failing to proceed in good faith on debriefing Erwin, which left him unable to complete providing most of the valuable information he possessed, and in failing to calculate the downward departure in a manner reasonably anticipated by the plea agreement.

II. *Facts of the Underlying Case*

In May 2011, a complaint charged Erwin and a host of others with conspiring to possess with intent to distribute oxycodone, in violation of 21 U.S.C. § 846. *Complaint*, Dkt.1, May 9, 2011. After his arrest, Erwin agreed to plead guilty to a one-count information and to cooperate with law enforcement. *Plea Agreement*, Dkt. 274, May 24, 2012. The information, charging him with conspiring to distribute and possess with intent to distribute oxycodone in violation of 21 U.S.C. § 846, was filed July 25, 2013, and he pled guilty to it the same day. *Superseding Information*, Dkt. 277; *Stipulation*, Dkt. 278, filed July 25, 2013. Erwin was sentenced to a 188-month prison term and three years' supervised release. *Judgment*, Dkt. 280, July 25, 2013.

Erwin and the government reached several stipulations addressing his offense level under the advisory Sentencing Guidelines. The parties agreed

Erwin was accountable for 6,912 grams of oxycodone, setting a U.S.S.G. § 2D1.1(c) base offense level of 38. The parties also agreed Erwin was a leader/organizer, yielding a 4-level enhancement under U.S.S.G. § 3B1.1(a), and that Erwin was entitled to a 3-level downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1(a) and (b). The stipulations resulted in a total offense level 39. *Plea Agreement, supra.*

The plea agreement also contained a waiver provision:

8. Christopher Erwin knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from a total Guidelines offense level of 39. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from a total Guidelines offense level of 39. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein.

Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

9. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.

Id. at Schedule A.

In July 2013, the Government moved for a downward departure pursuant to U.S.S.G. § 5K1.1. *U.S. Attorney's July 12, 2013 Motion for Downward Departure*, Dkt. ---.

The Court's *Presentence Report* ("PSR"), Dkt. ---, recommended that Erwin be held responsible for 6,912 grams of oxycodone, for a base offense level of 38. *Id.* at ¶¶ 116, 146. The PSR also recommended the 4-level § 3B1.1(a) enhancement and the § 3E1.1(a) and (b) downward adjustment. *Id.* at ¶¶ 117, 149, 152, 153, 154. The PSR recited that Erwin should receive no criminal history points, and recommended advisory sentencing range of 262 to 327 months. *Id.* at ¶ 187. However, the PSR noted, because the statutory maximum sentence for the single count of conviction was 240 months, the minimum and maximum advisory sentencing range was 240 months. *Id.*

At sentencing, the Government requested a 5-level downward departure pursuant to § 5K1.1. *Transcript of Sentencing*, Dkt. 284 (hereinafter "*Sent.Tr.*") at 8-9. However, what the Government gave with one hand it sought to take back with the other, arguing that the departure should be calculated from the Total Offense Level of 39, rather than from the sentencing range of 240-240 months due to the statutory maximum:

[T]he government is recommending a five-level downward departure, and that would be a departure from the 39 down to a 34, just to be clear because I know because of the cap there is some—there may be some question as to where to start, but that is the downward departure the government is seeking from the 39 to the 34, that five-level downward departure.

Sent.Tr. at 9. This Court found the downward departure warranted, but based it on the Total Offense Level 39/Criminal History I range of 262-327 months, not the maximum sentence to which Erwin was exposed by law. Had Erwin's maximum exposure been translated into a Guidelines advisory sentencing range, the 240 months would have fallen at most into a Total Offense Level of 38, and the 5-level reduction would have placed him Total Offense Level 33, with an advisory range of 135 to 168 months.

Instead, the district court applied the 5-level reduction beginning at an advisory sentencing range that exceeded the statutory maximum to which Erwin was exposed. At the Government's request, Erwin was sentenced at the top of the range, or 188 months. *Sent.Tr.* at 25-26, 35.

Erwin appealed the sentence to the United States Court of Appeals for the Third Circuit. *United States v. Erwin*, 765 F.3d 219 (3rd Cir. 2014). The Court determined that the appeal was within the scope of the *Plea Agreement's* appellate waiver, and thus it was "barred." *Id.* at 765 F.3d 228. Furthermore, although the Government filed no cross-appeal, the Circuit concluded that Erwin had breached the plea agreement by appealing, "and that the appropriate remedy for his breach is specific performance of the agreement's terms: that is, the Government will be excused from its obligation to move for a downward departure." *Id.* at 765 F.3d 223. The Court vacated Erwin's sentence and remanded for *de novo* resentencing, relieving the Government from its obligation to seek a downward departure.

Erwin was resentenced before Hon. Peter G. Sheridan on April 15, 2016. At the time he was resentenced, the United States Sentencing Commission's Amendment 782 and 788 had been adopted, making a 2-level reduction of the drug quantity tables in U.S.S.G. § 2D1.1(c) retroactive. Thus, Erwin's Total Offense Level fell from 39 to 37. *Sentencing Transcript* of sentencing held April 15, 2016, Dkt. --- (hereinafter "*ReSent.Tr.*") at 2-3. The revised Guidelines assigned an advisory sentencing range of 210-262 months. The Government recommended a 10-month downward variance from the bottom of that range, which the district judge accepted. Erwin was resentenced to 200 months, a 12-month increase over his prior sentence. *Id.* at 10, 16-17.

Erwin appealed the new sentence. *United States v. Erwin*, Case No. 16-2646, but voluntarily dismissed the appeal. *Order*, Case No. 16-2646, issued July 14, 2016).

III. Law Governing § 2255 Motions

(a) *Generally:* Title 28, § 2255, permits *habeas corpus* relief for an error of law or fact constituting a "fundamental defect which inherently results in a complete miscarriage of justice." *United States v. Eakman*, 378 F.3d 294, 298 (3rd Cir. 2004) (citing *United States v. Addonizio*, 442 U.S. 178, 185 (1979)). If the court finds that the sentence was not authorized by law, was unconstitutional, or otherwise open to collateral attack, it must either vacate the judgment, resentence the prisoner, or grant the prisoner a new trial as appropriate. See 28 U.S.C. § 2255(b). On the other hand, a court may dismiss a § 2255 motion where the record shows conclusively that the facts alleged

would not, even if true, support any relief on the conviction or sentence. *United States v. Nahodil*, 36 F.3d 323, 326 (3rd Cir. 1994); *see also United States v. Booth*, 432 F.3d 542, 546 (3rd Cir. 2005), *citing Rules Governing Section 2255 Cases* (hereinafter “§ 2255 Rule”) 4(b). An incarcerated movant’s *pro se* pleading is to be liberally construed. *See Erickson v. Pardus*, 551 U.S. 89, 94, 1 (2007) (*per curiam*); *Huertas v. Galaxy Asset Management*, 641 F.3d 28, 32 (3rd Cir. 2011).

A district court has discretion whether to order a hearing when a defendant brings a motion to vacate sentence pursuant to 28 U.S.C. § 2255. However, the law imposes limitations on the exercise of that discretion. In considering a motion to vacate a defendant’s sentence, “the court must accept the truth of the movant’s factual allegations unless they are clearly frivolous on the basis of the existing record.” *Government of the Virgin Islands v. Forte*, 865 F.2d 59, 62 (3rd Cir. 1989); *see also* § 2255 Rule 4(b). As noted, a district court must hold an evidentiary hearing “unless the motion and files and records of the case show conclusively that the movant is not entitled to relief.” *Booth*, *supra*.

The standard for requiring a hearing on a § 2255 motion is intended to be a “reasonably low threshold for habeas petitioners to meet.” *United States v. McCoy*, 410 F.3d 124, 134 (3rd Cir. 2005), *quoting Phillips v. Woodford*, 267 F.3d 966, 973 (9th Cir. 2001). A district court abuses its discretion if it fails to hold an evidentiary hearing when the files and records of the case are inconclusive as to whether the movant is entitled to relief. *Id.* at 410 F.3d 131

and 134 ("If [the] petition alleges any facts warranting relief under § 2255 that are not clearly resolved by the record, the District Court [is] obligated to follow the statutory mandate to hold an evidentiary hearing").

(b) *Ineffective Assistance of Counsel*: "The right to counsel is the right to the effective assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 686 (1984), quoting *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970). The right to effective assistance of counsel applies to all critical stages of criminal proceedings, including the negotiation of a guilty plea. *Lee v. United States*, __ U.S. __, 137 S.Ct. 1958, 1964, 198 L.Ed.2d 476 (2012); *United States v. Giamo*, 665 Fed.Appx. 154, 156 (3rd Cir. 2016), citing *Missouri v. Frye*, 566 U.S. 134, 140 (2012); *McMann v. Richardson*, 397 U.S. 759, 771 (1970). Counsel is ineffective when his "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, *supra* at 466 U.S. 686.

Claims of ineffective assistance of counsel are evaluated under the two-part test set out in *Strickland v. Washington*, 466 U.S. 668 (1984). *Giamo*, *supra*. Under *Strickland*, a petitioner must show: (1) the errors by his attorney were so serious that his counsel did not perform the function guaranteed by the Sixth Amendment; and (2) counsel's deficient performance prejudiced the defense. *Id.* at 466 U.S. 687. The petitioner bears the burden to prove both parts of the test. *Id.* at 466 U.S. 693. To show that prejudice resulted from his Counsel's assistance in the plea-bargaining context, a petitioner must demonstrate that "for counsel's deficient performance there is a reasonable

probability he and the trial court would have accepted the guilty plea' and the resulting sentence would have been lower." *Shotts v. Wetzel*, 724 F.3d 364, 376 (3rd Cir. 2013), *quoting Lafler v. Cooper*, 566 U.S. 156, 171 (2012); *see also United States v. Day*, 969 F.2d 39, 45 n.8 (3rd Cir. 1992).

Under the first *Strickland* prong, "judicial scrutiny [of counsel's performance] is highly deferential," and courts "must indulge [in] a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 466 U.S. 688-89; *see also Marshall v. Cathel*, 428 F.3d 452, 462 (3rd Cir. 2005), *quoting Strickland, supra* at 466 U.S. 689. This deference is afforded because "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland, supra* at 466 U.S. 690. A movant "must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *United States v. Kauffman*, 109 F.3d 186, 189 (3rd Cir. 1997) (*quoting Strickland, supra* at 466 U.S. 689). This Circuit has held that "[i]t is only the rare claim of ineffective assistance of counsel that should succeed under the properly deferential standard to be applied in scrutinizing counsel's performance." *Kauffman, supra* at 109 F.3d 190 (*quoting United States v. Gray*, 878 F.2d 702, 711 (3rd Cir. 1989)).

In order to establish prejudice, the movant must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 466 U.S. 694;

Campbell v. Burris, 515 F.3d 172, 184 (3rd Cir. 2008), *citing Strickland, supra*. In sentencing, “prejudice exists where the deficient performance affected a defendant's sentence.” *United States v. Hankerson*, 496 F.3d 303, 310 (3rd Cir. 2007). “It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceedings... [because] not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding’.” *Campbell, supra*, *quoting Strickland, supra* at 466 U.S. 693.

However, when a petitioner alleges his counsel’s deficient performance led him to accept a guilty plea rather than go to trial, the question is whether, had he gone to trial, the result of that trial would have been different than the result of the plea bargain. Instead, the question is whether the petitioner “was prejudiced by the ‘denial of the entire judicial proceeding... to which he had a right’.” *Lee, supra* at 137 S.Ct. 1965, *quoting Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000). During the consideration of plea bargains, “a reasonably competent lawyer must attempt to learn all of the relevant facts of the case, make an estimate of the likely sentence, and communicate the results of that analysis to the client before allowing the client to plead guilty.” *United States v. Brock-Miller*, Case No. 16-3050 (7th Cir., Apr. 3, 2018), *slip opn.* at 19. A lawyer’s failure to learn the relevant facts and make an estimate of the likely sentence constitutes deficient performance. *Moore v. Bryant*, 348 F.3d 238, 242 (7th Cir. 2003); *see also Bridgeman v. United States*, 229 F.3d 589, 592 (7th Cir. 2000) (in the plea context, inaccurate advice that resulted from the attorney's

failure to undertake a good-faith analysis of all of the relevant facts and applicable legal principles establishes deficient performance under *Strickland*).

Where a petitioner 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." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). In making this determination, "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee, supra* at 137 S.Ct. 1967.

Generally, courts consider the *Strickland* prejudice prong before examining the performance of counsel prong "because this course of action is less burdensome to defense counsel." *McCoy, supra* at 410 F.3d at 132 n.6; see also *Strickland, supra* at 466 U.S. 694 ("if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so," the prejudice prong should be examined before the performance prong "to ensure that ineffectiveness claims do not become so burdensome to defense counsel that the entire criminal justice system suffers as a result"); *McAleese v. Mazurkiewicz*, 1 F.3d 159, 170-71 (3rd Cir. 1993) (a district court should reverse the steps of the *Strickland* test and first determine

whether a defendant would have been prejudiced even assuming objectively deficient conduct, *citing United States v. Fulford*, 825 F.2d 3, 8 (3rd Cir. 1987)).¹

Thus, to “merit a hearing, a claim for ineffective assistance of counsel – with the court accepting as it is required to the veracity of the petition’s allegations – must satisfy both prongs of the *Strickland* test, deficient counsel and prejudice to the defense’.” *Campbell*, *supra* at 515 F.3d 183 (*quoting Wells v. Petsock*, 941 F.2d 253, 259-60 (3rd Cir. 1991).

(c) *Government Breach of Plea Agreement:* When a defendant’s exchange of a plea of guilty is made “in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257, 262 (1971). In determining whether the government has breached a plea agreement, a court must apply the same approach that the Supreme Court articulated in *Santobello*, looking to the principle that “[p]lea agreements, although arising in the criminal context, are analyzed under contract law standards.” *United States v. Williams*, 510 F.3d 416, 422 (3rd Cir. 2007), *quoting United States v. Nolan-Cooper*, 155 F.3d 221, 236 (3rd Cir. 1998); *see also United States v. Hodge*, 389 Fed.Appx. 96, 101 (3rd Cir. 2010), *citing*

¹ Sometimes, the practical suggestion to first consider the *Strickland* prejudice prong helps inform the inquiry into the performance of the movant’s trial counsel. *See, e.g., Booth*, *supra* at 432 F.3d 546 n.4.

United States v. Badaracco, 954 F.2d 928, 939 (3rd Cir. 1992) and *Santobello*, *supra*); *United States v. Queensborough*, 227 F.3d 149, 156 (3rd Cir. 2000).

Among those is the principle that “[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance.” *United States v. Doe*, 865 F.3d 1295, 1300 (10th Cir. 2017), *quoting United States v. Isaac*, 141 F.3d 477, 483 (3rd Cir. 1998) (*quoting* RESTATEMENT (SECOND) OF CONTRACTS § 205 (Am. Law Inst. 1981)).

The Government is obligated to adhere strictly to the terms of the bargain it strikes with defendants. *Queensborough*, *supra*. When a defendant claims that the Government has breached the plea agreement, the court must look to contract-law standards to determine whether the government’s conduct was inconsistent with the defendant’s reasonable understanding of the agreement when he pled guilty. *Id.*; *Badaracco*, *supra*; *see also United States v. Roman*, 121 F.3d 136, 142 (3rd Cir. 1997).

However, because a defendant gives up multiple constitutional rights by entering into a plea agreement, courts must carefully scrutinize the agreement to ensure that the government has fulfilled its promises, strictly construing the text against the government. *United States v. Rivera*, 357 F.3d 290, 294-95 (3rd Cir. 2004); *United States v. Floyd*, 428 F.3d 513, 516 (3rd Cir. 2005) *United States v. Baird*, 218 F.3d 221, 229 (3rd Cir. 2000)). Any ambiguities in a plea agreement must be construed against the government. *Id.*

As well, because a defendant bargains away important rights in a plea agreement, when the agreement contains a § 5K1.1 provision, it is not the case that a “clause regarding government discretion deprives the defendant of any reasonable expectation of receiving something in return for the surrender of his rights.” *Isaac, supra* at 141 F.3d 483. A defendant trading his constitutional rights in exchange for, inter alia, the chance for a § 5K1.1 downward departure does “not strike an illusory bargain. He, as would anyone else in the same position, ha[s] a reasonable expectation that there w[ill] be a discretionary evaluation of his cooperation in good faith.” *Id.*; accord, *Doe, supra*. The sole requirement is that the Government's position be based on an honest evaluation of the assistance provided. *Isaac, supra*.

This Circuit has not articulated a procedure for evaluating claims of Government bad faith in the exercise of promises to consider discretionary action like a § 5K1.1 motion. The 10th and the 2nd Circuits have done so, however. Those Circuits require that the defendant must first allege that the government acted in bad faith. The government may then rebut that allegation by providing its reasons for proceeding on its evaluation as it did. “Assuming those reasons are at least facially plausible... a defendant is only entitled to good-faith review ‘if he or she produce[s] evidence giving reason to question the justification [the government] advanced’.” *Doe, supra, quoting Isaac, supra* at 141 F.3d 484. See also *United States v. Imtiaz*, 81 F.3d 262, 264 (2nd Cir. 1996) and cases cited therein.

IV. Erwin's Claims

Ground 1: Counsel rendered ineffective assistance in advising Petitioner on acceptance of plea offer

Ground 2: Counsel rendered ineffective assistance ensuring that the terms of the plea agreement were fulfilled.

(a) *Facts:* Erwin was arrested May 11, 2011. After being represented at arraignment by another attorney who had a conflict that prevented his continuing in the case, Erwin was assigned Attorney James R. Murphy (hereinafter called "Defense Counsel") to represent him in the proceeding.

When Defense Counsel first met Erwin in the county jail, he essentially told Erwin that his situation was dire, and his only meaningful option was to cooperate. He told Erwin that in multi defendant cases, it was important not to be the "last one on the bus." Erwin responded that he did not think he knew enough to satisfy the Government, but he nevertheless agreed to debrief, hoping the commitment would get him out of county jail and home to his then 3-year-old son.

Erwin's initial meeting with Defense Counsel was brief, but Counsel returned a day or two later and said the government agreed to a bail package with the homes of two family members securing his release, and total home confinement with Erwin's wife as his guardian. None of the restrictions mattered to Erwin, whose only desire at this point was to be with his young son for as long as possible.

Defense Counsel did not investigate the allegations against Erwin or even discuss what might happen at trial or what would happen if Erwin did not cooperate and plead guilty. Investigation would have borne out that the pill amount would be less than half of what was stipulated, and Erwin's role would have been akin to that of a supervisor rather than a leader. The only discussion that bordered on actual sentence exposure was Defense Counsel's exclamation that Erwin's sentencing "levels are off the charts".

Erwin's initial proffer sessions with the Government occurred prior to October 2011, when Assistant U.S. Attorney Joseph Gribko took over the case for the Government. Erwin believed that the proffer sessions were going well, despite the fact that information he offered up to the Government that did not relate directly to his case seemed to him to be dismissed as unimportant. At this point, both physician defendants in the case were threatening to go to trial, leading Erwin to believe that the Government found him valuable.²

At one point, while preparing Erwin for possible testimony in Dr. Lahham's anticipated trial, the AUSA told Erwin that "[y]ou know we can't promise you anything because it would compromise you on the stand. That defense attorneys hammer away at witnesses to try to show they have motive to

² In fact, the AUSA specifically recognized Erwin's assistance in the planned prosecution of the doctors, which resulted in their guilty pleas. See *U.S. Attorney's July 12, 2013 Motion for Downward Departure*, Dkt. ---, p.1.

lie.”³ Erwin understood that the statement was Government code meaning it would take care of him at sentencing, but if he were promised a reduction, it might jeopardize his credibility to the jury. This made perfect sense to Erwin, especially because it matched what Defense Counsel had told him, which was that a 5K1.1 departure would reduce his sentencing exposure from 240 months to about half of that, and that Erwin were fortunate to get such a deal from the Government.

By January of 2012, Erwin’s bond conditions had been further relaxed as his debriefing continued. To Erwin, this further cemented in his mind that Defense Counsel’s advice as to how the sentencing would play out was correct.

Erwin’s plea agreement made no mention of a cooperation agreement with the Government, something that escaped his notice. He barely skimmed it due to his severe attention deficit disorder being at an all-time high due to his depression. He noted that the reference to the drugs involved in the case was in weight, not numbers of pills, which made it difficult for him to determine the accuracy of the representation. His friend Michelle told him she believed the gram amount was extremely high and was inconsistent with her research, and she encouraged Erwin to ask Defense Counsel about it. His reaction was, “Jesus Christ. Chris, I’m saving you from life in prison and got you the 5k.

³ Erwin from time to time quotes the AUSA and Defense Counsel. Except for quotations taken from transcripts, Erwin does not recall the statements verbatim, but believes that what he has recounted of the statements is essentially correct. Thus, the quoted statements are approximate.

Don't make waves.”⁴ Inasmuch as his friend Michelle did not have a law degree, while Defense Counsel had both a degree and years of experience, Erwin took his advice.

As for the failure to note the cooperation agreement in the Plea Agreement, Erwin had no prior experience with plea agreements, and did not find the omission important. He thought that the non-mention of the cooperation agreement was a “nod and a wink” sort of thing, like the AUSA’s explanation to him that nothing could be promised because of possible cross-examination. Erwin knew that he had been cooperating for almost a year, that the cooperation had yielded beneficial changes in his release, and that the AUSA had assumed him he would be taken care of.

In fact, the AUSA himself acknowledged that a cooperation agreement existed in his July 12, 2013, letter:

Christopher Erwin has complied with his plea and cooperation agreement, having pleaded guilty before Your Honor in 2012. More importantly, he has cooperated with the Government and provided important information and assistance...

Id. The AUSA’s conflation of the plea agreement and cooperation agreement, immediately preceding a dependent clause that accurately cabins the date on which both existed, establishes that despite all of the blandishments delivered to the Court at the change-of-plea hearing about there being no other agreements that what was stated within the four corners of the plea agreement,

⁴ Again, Erwin’s recall of this statement is approximate, but he believes it to be essentially accurate. See Footnote 3.

there was in fact such an additional agreement about the 5K1.1, one that that both parties acknowledged and understood was in place although nowhere reduced to writing.

At sentencing, the Government found it necessary to advise the Court that there that “just to be clear because I know because of the cap there is some --there may be some question as to where to start, but that is the downward departure the government is seeking from the 39 to the 34, that five-level downward departure.” *Sentencing Hearing Transcript*, July 25, 2013, Dkt. 284, at 9. Indeed, Defense Counsel himself, whom had advised Erwin that his Guidelines sentencing range would be 240-240 months – which is what the *PSR* said – told Erwin that he should pursue his first, ill-advised appeal:

I believe the Court and the AUSA were working from a false premise, to wit : the maximum sentence under the statute is 240 months. By using the starting point as level 39 , same overstates the potential sentence because level 39 CHC 1 has a range of 262-327 months. To be consistent with the maximum under the statute, I think it is logical to require the Gov and the Court to consider a level that encompasses the max 240 month sentence. While that only reduces the level to 38 (235-293 months) , it has the effect with the Gov 5 level downward departure of establishing the departure level as 33 with a 135-168 month range , a reduction of 20 months. I have no case law on this but it is at least a possible ground for Appeal.

Email from Defense Counsel to Chris Erwin and Allison Erwin, **Exhibit 1**, p.2.

At the change-of-plea hearing, the Court explained that Erwin’s maximum statutory exposure was 240 months, and Erwin expressed his understanding of the plea agreement:

Q (from Court): Has your attorney attempted to estimate for you what he thinks the Guideline range may be in your case based on the information that he currently has?

A (Erwin): No, just my score, the 39 and the 20 years maximum penalty.

Q. Well, in other words, he has estimated for you where he thinks.

A. I thought you mean estimate the amount of time would get.

Change-of-Plea transcript, May 24, 2012, Dkt. 283, at 19. Previously, Defense Counsel had told Erwin that his guideline range was “off the charts, but with a 5k the guidelines didn't matter.” Erwin had aware from his own reading that the Government liked large quantities and substantial sentence exposure for press releases, and that cooperators can plead to multiple murders and still get five years, so Defense Counsel’s advice that the Guidelines would not be followed did not seem unreasonable to Erwin.⁵ Defense Counsel and Erwin figured that any and all downward departures would come from the 240-month statutory maximum sentence, a belief on the part of Erwin that was bolstered by the *PSR*’s reference to

187. Guideline Provisions: Pursuant to U.S.S.G. Chapter 5, Part A, based on a total offense level of 39 and a criminal history category of I, the guideline range for imprisonment is 262 to 327 months. However, due to the statutory maximum in this case, the defendant's guideline range is 240 months.

⁵ In fact, Defense Counsel told Erwin from the summer of 2011 onward that the worst he could expect was 120 months of incarceration, and even admitted as much to Erwin and his wife, Allison Erwin, in an email after sentencing. See email, attached hereto as **Exhibit 1**, p.2.

PSR, supra at ¶187.

Based on the foregoing, Erwin believed that any reductions for cooperation would begin at his Guidelines sentencing range, which a plea to a single count assured would be a minimum of 240 months and a maximum of 240 months. The Government represented to him that it would be filing a § 5K1.1 motion, even before the plea agreement was signed and the change-of-plea hearing was held. Defense Counsel kept advising Erwin that the reduction would be half, and that he foresaw a final sentence of 120 months. Erwin was aware that the United States Sentencing Commission reported for the year of 2011 a median 50% decrease from the Guidelines minimum sentences for drug trafficking defendants who were granted § 5K1.1 downward departures.

Erwin's overarching goal was to be able to return home to his 3-year old son while he was still a youth. A 10-year sentence would have ensured, at least, that he be home for his son by the time the boy was a 12-year old (allowing for good conduct time under 18 U.S.C. § 3624(b)). Had he known that the 10-year advice of Defense Counsel was not based on any reasonable analysis, and that he would not be home while his son was still a minor under any circumstances, he would have sought to prove the drug quantity was vastly overstated and that his role in the offense was that of a supervisor, not a leader. He would not have taken the plea, but rather sought to demonstrate that while he was involved in the conspiracy, the primary movers were the physicians and others.

During his debriefing, Erwin identified a large-scale marijuana operation in Staten Island, New York, belonging to a nephew of one of Erwin's associates who was involved organized crime. Erwin had been to the residence before, but while he could find the location, he did not know the address. Federal agents asked him whether he would ride with them to locate the house, and he agreed.

The agents agreed to contact him to set up the trip, but they did not do so. Erwin complained to Defense Counsel that the Government's uninterest in substantial information was adversely affecting his ability to cooperate, but Defense Counsel did nothing.

(b) *Argument:* Defense Counsel rendered objectively substandard assistance to Erwin in advising him to enter into a plea agreement that omitted a material term that no one denies was applicable, Erwin's cooperation agreement. He advised that under the plea agreement, the top of the Guidelines range would be capped at the statutory maximum sentence of 240 months, and repeatedly advised Erwin that his worst-case sentence would be 120 months. While the Court advised Erwin at the change-of-plea hearing that the ultimate Guidelines range had yet to be determined, *Change-of-plea transcript* at 9, the Court was unaware of the dynamics of the cooperation agreement the Government and Defense Counsel had omitted from the plea agreement, and what Erwin's reasonable belief as to the effect of that on his sentence might be, based on legal advice received from Defense Counsel and statements made by the AUSA.

And rather than investigating Erwin's legitimate concerns about the accuracy of the PSR's recommended base offense level – especially in light of substantial questions Erwin provided Defense Counsel on the weight versus pill quantify, Defense Counsel elected to put all of Erwin's eggs in the 5K1.1 basket. Counsel's entire plan was to avoid making waves. Counsel told Petitioner he should be grateful for the cooperation agreement that was offered.

At the same time, Defense Counsel misadvised Erwin that the statutory maximum sentence was effectively Erwin's Guidelines range, and a 5K1.1 downward departure would begin from that starting point. If that was the deal, Defense Counsel was negligent in not seeing that such was included in the plea agreement. If that was not the deal, Defense Counsel's advice was deficient in telling Erwin that it was.

Defense Counsel's failure to learn all of the relevant facts of the case, make an estimate of the likely sentence, and communicate the results of that analysis to Erwin before allowing him to plead guilty, constituted ineffective assistance of counsel. *Brock-Miller, supra; Moore, supra; Bridgeman, supra.* After Erwin was sentenced, Defense Counsel expressed disbelief as to the 188-month term, telling Erwin that "I thought at most 10 years." Had Defense Counsel investigated the facts and circumstances of the base level and enhancements, and properly advised Erwin about the government's plan to use a sentence range above the statutory maximum, Erwin would not have entered into the plea, but instead would have gone to trial or entered a blind plea, and advocated for a proper base offense level and sentencing enhancements.

What's more, Defense Counsel failed to ensure that the terms of Erwin's cooperation agreement were reduced to writing and included in the plea agreement, knowing full well that *F.R.Crim.P.* 11(c)(2) required that the terms of the cooperation agreement – which was a material term of the plea agreement – be disclosed. Had Defense Counsel ensured that the plea agreement contained all of the material terms of the deal, Erwin would have been on notice that the Government intended to depart from the Level 39 Guidelines range, and not the 240-month range, and would have refused to go forward on those terms.

At sentencing, Defense Counsel did nothing to bring to the Court's attention that the cooperation aspect of the plea agreement – which had not been disclosed to the Court prior to July 12, 2013, 5K1.1 motion (and which did not clearly notify the Court that the parties had failed to disclose the cooperation was part of the plea agreement instead of some post-plea 11th-hour thing) – was predicated on a downward departure starting at the 240-month level. Ironically, the AUSA inadvertently hinted at the problem when, *sua sponte*, he alluded to confusion as to the starting point. Without context, his statement that “there may be some question as to where to start” is puzzling. But in the context of an agreement neither reduced to writing nor revealed to the Court, it makes perfect sense.

As a material term of his cooperation agreement with the Government, Erwin told agents about a large-scale marijuana operation in New York, and its links to organized crime. Agents asked him to go to the location with them to identify it, but never followed up. The government has an obligation to deal

with those to whom it has promised discretionary consideration for 5K1.1 departures in good faith, *Irwin*, *supra*, and Defense Counsel had a duty to Erwin to ensure that the Government fulfilled its obligations so that Erwin could get as much credit for assistance as the quality of his information merited.

The Government may argue that there is no reasonable probability that Erwin would have gone to trial, but as *Lee* makes clear, one cannot assume a hypothetical reasonable man in such an analysis. Erwin was consistent in his goal to return to some portion of his son's youth. Had Defense Counsel provided objectively reasonable representation, Erwin would have recognized that such could not be accomplished by a guilty plea, and would have gone to trial.

As for Defense Counsel's failure to advocate for the Government to proceed in good faith in permitting Erwin to cooperate fully, Erwin was concerned from the outset that he lacked enough information on the conspiracy to obtain substantial credit. Had he been aware that Defense Counsel would not advocate for the Government to proceed in good faith, there is a reasonable probability that he would not have entered into the cooperation and plea agreement, and would have instead gone to trial.

Grounds 3 and 4: The government breached the plea agreement

(a) *Facts:* The facts underlying this claim have been set out *supra*.

(b) *Argument:* The terms of a plea agreement are those that the defendant reasonably understands to be the terms. *Queensborough, supra. Badaracco, supra; Roman, supra.* In this case, there can be no question that Erwin reasonably understood that the Government would seek a downward departure from the applicable guidelines sentencing range, which was the statutory maximum sentence of 240 months. Defense Counsel believed so, see **Exhibit 1**, and even told him so. The Court, not being aware of the cooperation agreement because the Government did not inform Court of its existence at the time of the *Rule 11* hearing, did not tell Erwin otherwise. The *PSR* suggested that the statutory maximum was the Guidelines sentencing range. Indeed, this Court often makes similar references. See, e.g., *United States v. Wright*, 669 Fed.Appx. 83, 84 n.2 (3rd Cir. 2016) (“[T]he Dispositional Report, like the District Court, notes that the Guidelines range would have been ‘33 to 41 months’ if not for the statutory maximum *setting the Guidelines range to 24 months*”) (emphasis added).

This being Erwin’s reasonable understanding of the agreement (and, in fact, Defense Counsel’s understanding), the Government breached the plea and cooperation agreement by proposing a downward departure from 262 months, the top of a hypothetical Guidelines range that could not apply to Erwin. Material to Erwin’s decision to accept the plea agreement and begin cooperation as early as he did was his reasonable understanding that Government agreed that he would plead guilty to a single count with a statutory maximum of 240 months, and that 240 months would become his

Guidelines range. Indeed, the Guidelines themselves direct as much. See § 5G1.1(a) (“[w]here the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence *shall be the guideline sentence*”) (emphasis added). Compare *Hodges, supra* (Government breached plea agreement when making sentencing recommendation because “a reasonable person would have understood the plain language of [the defendant's] plea agreement to mean that the government would not make any specific sentencing recommendation”).

Had Erwin known that notwithstanding the plea and cooperation agreement, the Government would press the Court to depart from a hypothetical sentence maximum that was 22 months higher than the Guidelines sentence, he would not have entered into the plea, but instead would have gone to trial or entered a blind plea, and advocated for a base offense level and sentencing enhancements that comported with reality.

Finally, as noted *supra*, as a material term of his cooperation with the government, Erwin told agents about a large-scale marijuana operation in New York, and its links to organized crime. Agents asked him to go to the location with them to identify it. Agents said they would contact him about doing so, but never followed up.

The government had an obligation to deal with Erwin in good faith on its promise to consider a substantial-assistance downward departure, and integral to that, the Government must act in good faith to follow through on its commitments to enable a defendant to fulfill his obligations. The Government

breached its obligation to act in good faith when it failed to permit a full measure of cooperation by Petitioner. *See Anvil Mining Company v. Humble*, 153 U.S. 540 (1894) (a party to a contract may not interfere with performance by the party to be charged and still enforce the letter of the contract).

For the foregoing reasons, Erwin's § 2255 *Motion* should be granted. The statements made herein are true, under penalty of perjury.

Executed April 9, 2018

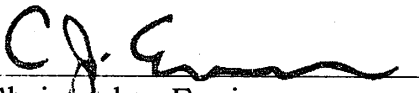

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Petersburg, VA 23804

EXHIBIT 1

Exhibit 1, Page 1



Michelle McGee

[Edit profile details](#)

From: **Michelle McGee** (fancyboots@outlook.com)

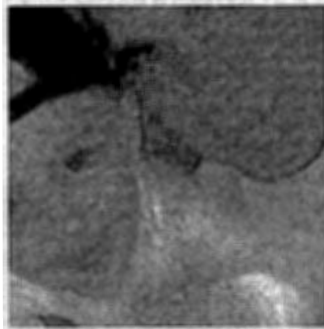
Sent: Thu 8/01/13 1:58 PM

To: Chris Erwin (chriser98@yahoo.com)

Well that is interesting. Not to mention, that the max 240 sentence would be at the BOTTOM of the range for a level 38 (235 - 293).

Maybe on that basis it would be fair to argue that the bottom of the departure level 33 is more appropriate - more like 135 months.

I think you should do it. At least have him file the appeal for you, in the interest of time.



From: **Chris Erwin** (chriser98@yahoo.com) This sender is in your contact list.

Sent: Thu 8/01/13 1:50 PM

To: fancyboots@outlook.com

Sent from my iPad

Begin forwarded message:

From: jrmm26@att.net

Date: August 1, 2013 4:39:03 PM EDT

To: allison erwin <allisonerwin98@gmail.com>, Chris Erwin <chriser98@yahoo.com>

Cc: "jrmm26@att.net" <jrmm26@att.net>

Exhibit 1, Page 1

Subject: Appeal Possibility

Reply-To: jrmm26@att.net

Dear Allison & Chris - When I last spoke w/ Chris after sentencing he asked me about Appeal possibilities. I advised that the plea agreement , Schedule A ,para 8, forecloses the possibility of Appeal if the Court finds a Guideline level 39 which it did and noted in the JOC/SOR. However , I believe the Court and the AUSA were working from a false premise, to wit : the maximum sentence under the statute is 240 months. By using the starting point as level 39 , same overstates the potential sentence because level 39 CHC 1 has a range of 262-327 months. To be consistent with the maximum under the statute , I think it is logical to require the Gov and the Court to consider a level that encompasses the max 240 month sentence. While that only reduces the level to 38 (235-293 months) , it has the effect with the Gov 5 level downward departure of establishing the departure level as 33 with a 135-168 month range , a reduction of 20 months. I have no case law on this but it is at least a possible ground for Appeal. A Notice of Appeal must be filed w/in 10 days of July 25, 2013 . I do not know your plans or if you have spoken with other counsel about an Appeal but be advised that I will gladly help in any way I can as I feel that Chris' sentence was much to harsh. The worst I expected was 120 months. Jim Murphy

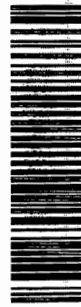
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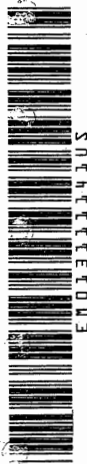
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Appendix KB

DECLARATION

I am Allison L. Erwin. I am married to Christopher Erwin, who is a defendant in a case known as United States v. Erwin, Case No. 12-00364-001, in the United States District Court for the District of New Jersey.

After Chris was arrested, I maintained constant communications with him while he was in jail, both on the telephone and in visits with him. I met his attorney, James R. Murphy, several times prior to sentencing, and again at the sentencing proceeding.

It is difficult to explain to those who have not experienced it what it is like to face the loss of father to a 6-year-old boy, and to continue through the years to try to make sense of that loss as that young boy now turns 11. Your all-consuming thoughts are of how long the sentence will be, and how much of your child's life will be sacrificed along with that of your husband.

For Chris and me, all of our countless conversations after his arrest focused on his sentence. As oppressive as a 10-year sentence sounded, we rationalized that Chris would at least be home for some of our son's high school years. The thought of his being incarcerated beyond our son turning 18 years old was unthinkable.

Chris decided very soon after arrest that he would co-operate with the authorities, if so doing would yield a sentence that would let him be a father to our son while Colin still had two or three years of high school remaining. Even a 10-year sentence was too much for Chris to handle initially, but after we talked out how old Colin would be, Chris said, "If that's the worst, I can handle it. I'll be around to catch his high school career."

Attorney Murphy gave us hope. He was fixated on seeing that Chris was not indicted as a kingpin, which he said could imprison Chris for life. He explained that the deal that he worked out would expose Chris to a maximum sentence of 20 years, but with Chris's cooperation, there would be a reduction from that level. When discussing the sentence, Mr. Murphy always began his sentence analysis with a Guidelines range of 240 months, and would count down from that point. He told us that the information Chris possessed was good enough that he could expect a reduction of 50% from the Guidelines sentencing range. He told us repeatedly that he believed the "worst case" sentence was 10 years.

When Chris agreed to cooperate, he was released and allowed to return home. Prior to release, Chris told me candidly that his plan was to spend as much time with Colin as he could, and then – if he was not able to achieve the 10-year maximum sentence – to commit suicide. He said Colin and I would be better off.

I was upset by Chris's plan. I worked hard to actively talk him out of the idea – I begged and pleaded, told him "let's fight it," made him promise we would talk later if it looked like it was coming to that. I intended to get him home from jail on pretrial release, and then if the sentencing looked like it would go badly, I would hopefully be able to convince him that ending his life was not an option for the well being of his son.

However, after Chris returned home and began cooperating, Mr. Murphy repeatedly assured us that because Chris' top Guidelines range was the statutory maximum of 20 years (240 months), and because Chris would certainly qualify for a 50% cooperation reduction, the "worst case" (Mr. Murphy's often-used expression) was 120 months.

I began to get misgivings about Mr. Murphy's preparation immediately prior to sentencing. Mr. Murphy and I met in the courthouse cafeteria 15 minutes before the sentencing hearing, and he told me for the first time at that moment that I could address the court. I only had a few minutes, with all of the worry and concern troubling me, to work up a statement on the back of a piece of paper I borrowed to provide the court. I was unpleasantly surprised that Mr. Murphy had not prepared us better for sentencing. (He only told Chris about his allocution two days before sentencing, and asked Chris to write something up for his approval).

When we walked out after sentencing, Mr. Murphy looked crestfallen, as I believe he truly cared about Chris and was as blindsided as we were about what happened. He kept mumbling, "I can't believe this." He was flabbergasted at the sentence, always believing that any counting for the reduction would begin at 240 months, which he said was the Guidelines sentencing range in the case.

After the sentencing, Mr. Murphy sent me the email attached to this Declaration. He was so troubled by the sentence that he advised Chris to appeal, saying that the district court was obviously wrong about using the 262-month sentencing range as a departure point. He offered to help us in any way he could.

Chris would never have taken the plea agreement if he knew that a sentence of more than 10 years was at all probable. I know this because I was the one who talked to him for hours on end over many months, who talked him out of suicide, who knew about his anger over the government's painting him as the head of this criminal enterprise. I listened to Chris declare, insist, even shout that his guilt in the pill enterprise was much less than the government declared it was.

Chris wanted to fight the government's claim that he was somehow the leader and organizer of the drug venture, but Mr. Murphy convinced him that he could achieve his aim for a 10-year or less sentence through a plea agreement and cooperation. It was not that Chris was not guilty of participation in the crime, but he was a participant rather than a leader.

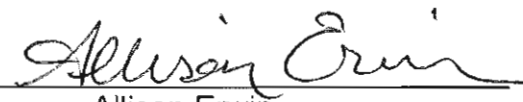
Chris and I believed prior to sentencing and we remain utterly convinced that if he had his day in court, even without getting sentencing credit for pleading guilty, he would have fared better at sentencing than he did based on a Presentence Report that was engineered completely by the government. Chris did not pluck those doctors out of the sky. Instead, they were up to their elbows in illegal pill distribution before Chris was referred to them by Joey Keossian (whom, the government claimed, was introduced to the doctors by Chris, an inversion of the truth).

I am certain that had Chris been told that the court would have applied the sentencing credit for cooperation to a starting point set higher than the 240-month maximum sentence, and had Chris known that a 10-year sentence was not even close to the "worst case," he would have gone to trial and fought the government's efforts to turn the offense into an Erwin-led drug distribution network.

My statements here are made not out of blind faith or mindless devotion, as although Chris and I are married we have been estranged for a very long time. I make these statements in order to try to achieve justice and fairness for a man who deserves to face reasonable consequences for his actions and who made a decision about the fate of both himself and his little boy with false information and false hope. He is an amazing father to our little boy, and cares about Colin's well being more than he cares about himself. I witnessed first-hand the torment he put himself through trying to decide the best course of action prior to his sentencing, all related to what was best for that little boy.

The foregoing is true, under penalty of perjury.

Executed July 4, 2018


Allison Erwin

Appendix L

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHRISTOPHER ERWIN	:	Civ. No. 17-CV-5156 (PGS)
	:	
	:	(Crim. No. 12-CR-364 (PGS))
v.	:	
	:	Hon. Peter G. Sheridan
	:	
UNITED STATES OF AMERICA	:	<u>ANSWER TO MOTION AND AMENDED</u>
		<u>MOTION</u>

The United States of America, through its attorney, Craig Carpenito, United States Attorney for the District of New Jersey (by R. Joseph Gribko, Assistant United States Attorney), responds to the allegations contained in Movant Christopher Erwin’s (“Erwin” or “Movant”) *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“Motion”) and states:

STATEMENT OF FACTS

1. Between approximately January 2009 through December 2010, Erwin managed a large-scale oxycodone distribution ring (the “Erwin Organization”) that operated throughout the State of New Jersey and elsewhere (PSR at ¶ 21).

2. As the leader of the oxycodone distribution ring, Erwin utilized physicians to collect prescriptions for oxycodone for which there was no medical necessity (PSR at ¶ 42). Erwin visited physicians, Jacqueline Lopresti (“Lopresti”) and Hassan Lahham (“Lahham”), and paid them in return for medically unnecessary oxycodone prescriptions in his name and in the name of others. Id. Erwin acquired these prescriptions for distribution purposes. Id.

3. From January 2009 through December 2010, Erwin used multiple vehicles to transport persons to and from the physicians as well as various pharmacies in New Jersey and New York for the medically unnecessary prescriptions (PSR ¶ 43). Erwin provided money to these individuals to purchase the oxycodone based upon medically unnecessary prescriptions, and paid the individuals with either cash or oxycodone tablets, thereby keeping the remainder, which he sold for \$12 to \$30 each. Id. Additionally, Erwin would pay his most trusted conspirators to recruit and bring customers to Lopresti (PSR at ¶ 44).

4. On May 9, 2011, a complaint was filed against Erwin and others charging them with conspiring to distribute oxycodone, contrary to 21 U.S.C. § 841(a)(1) and (b)(1)(C), in violation of 21 U.S.C. § 846.

5. On May 11, 2011, Erwin was arrested and detained (PSR at ¶ 139).

6. On May 16, 2011, James R. Murphy, Esq. was appointed to represent Erwin.

7. On May 17, 2011, Erwin had a bail hearing before United States Magistrate Judge Tonianne J. Bongiovanni (PSR at ¶ 139). Movant was released on a \$1,000,000 Secured Appearance Bond. Id.

8. On March 26, 2012, the Government provided Erwin with a letter outlining a proposed plea agreement (the “Plea Agreement”) as well as a proposed cooperation agreement (the “Cooperation Agreement”) (A copy of the signed Plea Agreement and Cooperation Agreement are attached hereto as Exhibit 1, however, they are not being filed on ECF).

9. Schedule A of the Plea Agreement contained specific Sentencing Guidelines to which Erwin stipulated and agreed. Specifically, Erwin stipulated and agreed to the following:

- a. The parties agree that Christopher Erwin is responsible for approximately 6,912 g of oxycodone, which is the equivalent of 43,310 kg of marijuana.

Accordingly, the applicable guideline is U.S.S.G. § 2D1.1(c)(1). This guideline carries a Base Offense Level of 38

- b. Christopher Erwin was the organizer or leader of a criminal activity that involved five or more participants or was otherwise excessive. This results in an increase of 4 levels pursuant to U.S.S.G. § 3B1.1(a).
- c. Christopher Erwin has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore a downward adjustment of two points for acceptance of responsibility is appropriate if Christopher Erwin's acceptance of responsibility continues through the date of sentencing. See U.S.S.G § 3E1.1(a).
- d. Christopher Erwin has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the authorities of his intentions to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Christopher Erwin enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G § 3E1.1(a), and if in addition Christopher Erwin's offense level under the Guidelines prior to the operation of U.S.S.G § 3E1.1(a) is 16 or greater, Christopher Erwin will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G § 3E1.1(b).
- e. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Christopher Erwin will be 39.
- f. The parties agree not to seek or argue for any upward or downward departure or adjustment not set forth herein.

Ex. 1, Plea Agreement pp. 8-9; PSR ¶ 138(2)-(7).

10. The Plea Agreement also contained a waiver of appeal. Specifically it provides:

Christopher Erwin knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 39. This Office will not file any appeal, motion, or writ which challenges the sentence imposed by the sentencing

court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 39. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

Ex. 1 Plea Agreement p 9; PSR at ¶ 138(8).

11. Movant also entered into a Cooperation Agreement with the United States.¹ The Cooperation Agreement provides, in part:

The determination whether Christopher Erwin has fully complied with this agreement and provided substantial assistance to the Government rests solely in the discretion of this Office. If this Office determines in its sole discretion that Christopher Erwin has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offense, this Office: (1) will move the sentencing judge, pursuant to Section 5K1.1 of the Sentencing Guidelines, to depart from the otherwise applicable guidelines range. Whether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range is a matter committed solely to the discretion of the sentencing judge. Christopher Erwin may not withdraw his plea if this Office determines that Christopher Erwin has not rendered substantial assistance or has not fully complied with the terms of this agreement, or if the Court refuses to grant in whole or in part the Government's motion for a downward departure.

Ex. 1, Cooperation Agreement at 2.

12. On May 24, 2012, Erwin pled guilty to a one-count information, pursuant to the terms of the Plea Agreement and Cooperation Agreement. Before appearing in Court to enter

¹ Perplexingly, Movant complains that the Cooperation Agreement was not reduced to writing. See Amended Motion p. 24. This is simply not true. See, Ex. 1.

his change of plea, Movant and his attorney filled out an Application for Permission to Plead Guilty (the “Rule 11 Form”) (A copy of the Rule 11 Form is attached hereto as Exhibit 2). He then plead guilty before Judge Freda L. Wolfson to a one-count information, charging him with conspiring to distribute Oxycodone, in violation of 21 U.S.C. § 846. (A Copy of the Plea Colloquy is Attached hereto as Exhibit 3).

13. On July 12, 2013, the Government made a motion for a downward departure from the otherwise applicable Guidelines range pursuant to § 5K1.1. (the “5K1.1 Motion”) (A Copy of the 5K1.1 Motion is attached hereto as Exhibit 4, but it is not being filed on ECF)

14. Specifically in requesting the downward departure, the Government stated:

Christopher Erwin has complied with his plea and cooperation agreement, having pleaded guilty before Your Honor in 2012. More importantly, he has cooperated with the Government and provided important information and assistance, which contributed to the prosecution and conviction of his co-conspirators, most notably Dr. Jacqueline Lopresti and Dr. Hassan Lahham. It is to this cooperation the remainder of the letter will address.

Ex. 4, 5K1.1 Motion at 1.

15. On July 25, 2013, the District Court conducted a sentencing hearing. (A copy of a transcript of the Sentencing Hearing is attached hereto as Exhibit 5). At sentencing, the Government moved for a downward departure, pursuant to U.S.S.G 5K1.1, and the Court granted the Government’s motion for a downward departure. The Court then sentenced Erwin to a term of imprisonment of 188 months, more than four years below the 240-month Sentencing Guidelines range to which the parties had agreed in the Plea Agreement. In determining Erwin’s sentence, District Court specifically noted,

So when I consider all the 3553(a) factors, there is no doubt in my mind, but for the break that the government has given on the 5K, I

would have been happy sending Mr. Erwin to even a higher sentence, the top of the Guidelines is totally and absolutely sufficient but not greater than necessary, the 188 months.

Ex. 5, Erwin Sent. Tr. at 34-35.

16. On August 8, 2018, Erwin filed an appeal of his sentence to the Third Circuit, in violation of his plea agreement with the Government. United States v. Erwin, 765 F.3d 219, 222 (2014). In that appeal, Erwin argued “the District Court’s use of offense level 39 as its starting point for the downward departure was error because, when combined with criminal history category I, offense level 39 yields an advisory Guidelines range above the statutory maximum.” Erwin, 765 F.3d at 225. The Third Circuit rejected this claim. Moreover, the Third Circuit went on to hold that “Erwin breached the plea agreement by appealing, and that the appropriate remedy for his breach is specific performance of the agreement’s terms: that is, the Government will be excused from its obligation to move for a downward departure.” Id. The Third Circuit then vacated Erwin’s judgment of sentence and remanded for de novo resentencing by a different district judge than the one who presided over the now-vacated sentence. Id. at 235.

17. On April 15, 2016, Erwin was resentenced in front of the Honorable Peter G. Sheridan. At the hearing, Judge Sheridan imposed a sentence of 200 months.

18. Movant timely appealed his 200-month sentence. However, he voluntarily dismissed that appeal on July 14, 2016.

THE 2255 MOTION

19. On July 14, 2017, Movant Erwin filed a Motion pursuant to 28 U.S.C. § 2255. On April 13, 2018, Movant amended his original 2255 Motion, and presented different versions of the arguments that he presented in the original Motion.

20. In the Amended Motion, Movant appears to assert four bases for his motion:
- a. Movant's attorney rendered ineffective assistance of counsel by not investigating the facts and in advising Movant to plead guilty;
 - b. Movant's attorney rendered ineffective assistance of counsel by not ensuring that the terms of the Plea Agreement (by which he appears to mean the Cooperation Agreement) were fulfilled because Movant did not receive as much credit for his cooperation as he believes he deserves;
 - c. The Government breached the Plea Agreement (by which he appears to mean the Cooperation Agreement) by departing from the top of the Guidelines range, rather than from the statutory maximum (Movant also appears to make this claim as a claim of ineffective assistance); and
 - d. The Government breached the Plea Agreement (by which he appears to mean the Cooperation Agreement) by failing to investigate an unrelated marijuana operation in New York (Movant also appears to make this claim as a claim of ineffective assistance).

21. All four of Movant's claims fail.

- a. Movant's first claim fails because he repeatedly stated both in writing and under oath that he understood the terms of the Plea Agreement, including the enhancements about which he now complains as well as the twenty-year statutory maximum, and thus Movant's counsel was not ineffective nor was Movant prejudiced by any alleged ineffectiveness;
- b. Movant's second claim fails because the terms of the Plea Agreement (and Cooperation Agreement) were fulfilled, as the Government did make a motion pursuant to 5K1.1, which was granted by the Court, and thus Movant's counsel was not ineffective nor was Movant prejudiced by any alleged ineffectiveness;
- c. Movant's third claim fails because it has already been decided, and denied, by the Third Circuit on Movant's direct appeal, because it is barred by the waiver in Movant's Plea Agreement, and because the Government did not breach either the Plea Agreement or Cooperation Agreement;
- d. Movant's fourth claim fails because it he did not raise it on direct appeal, it is barred by the waiver in Movant's Plea Agreement and because the Government did not breach either the Plea Agreement or Cooperation Agreement.

ANSWER TO NUMBERED PARAGRAPHS IN THE MOTION

22. Respondent responds to the allegations set forth in the numbered paragraphs of the Motion as follows:

- a. Respondent admits the assertions in Paragraph 1.
- b. Respondent admits the assertions in Paragraph 2.
- c. Respondent admits the assertions in Paragraph 3.
- d. Respondent admits the assertions in Paragraph 4.
- e. Respondent admits the assertions in Paragraph 5.
- f. Respondent admits that Paragraph 6 is not applicable.
- g. Respondent admits the assertions in Paragraph 7.
- h. Respondent admits the assertions in Paragraph 8.
- i. Respondent admits the assertions in Paragraph 9.
- j. Respondent admits the assertions in Paragraph 10.
- k. Respondent admits the assertions in Paragraph 11.
- l. Paragraph 12 contains legal conclusions, to which no response is required.

To the extent a response is required, Respondent denies these assertions

and a more detailed response is set forth below.
- m. Respondent denies the assertions in Paragraph 13 and a more detailed

response is set forth below.
- n. Respondent admits the assertions in Paragraph 14.
- o. Respondent admits the assertions in Paragraph 15.
- p. Respondent admits the assertions in Paragraph 16.

- q. Respondent admits the assertions in Paragraph 17.
- r. Respondent denies assertion in Paragraph 18. Movant's judgment of conviction was final over a year after Movant filed his petition. However, Movant filed an appeal to his resentencing and voluntarily dismissed on July 14, 2016.

SPECIFIC RESPONSES TO MOVANT'S CLAIMS

A. Movant's Counsel Was Not Ineffective for Failing to Investigate or in Advising Movant to Plead Guilty

23. First, Movant claims that his trial counsel was ineffective in failing to investigate the facts of the case and in advising Movant to accept the Plea Agreement. (Erwin Petition p. 15-16). Specifically, Movant claims that further investigation by his attorney would have revealed that two Guidelines enhancements were inaccurate: the drug quantity amount and his role in the offense. Movant further claims that his attorney told him that he would be sentenced to ten years' imprisonment, and that if he had known that this prediction was inaccurate, Movant would have gone to trial.²

24. However, Movant repeatedly stated both in writing and under oath that he understood the terms of his Plea Agreement, which included his stipulation to the two enhancements about which he now complains. Movant also repeatedly stated both in writing and under oath that he understood that his attorney's estimate as to his sentence might be inaccurate and that he understood that faced up to twenty years' imprisonment. Thus, Movant's counsel was not ineffective nor was Movant was prejudiced by any alleged ineffectiveness.

25. In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court articulated the standard:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the

² Movant also bizarrely claims that his counsel was ineffective because he failed to ensure that the terms of the Cooperation Agreement were reduced to writing. This is obviously false. See, Ex. 1, Cooperation Agreement.

defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. at 687; see Reese v. Fulcomer, 946 F.2d 247, 256-57 (3d Cir. 1991).

A Movant seeking to vacate his sentence must satisfy both prongs of the Strickland test: a breach of duty and prejudice as a result of that breach. United States v. Nino, 878 F.2d 101, 103-04 (3d Cir. 1989). See also United States v. Baynes, 622 F.2d 66, 69 (3d Cir. 1980) (movant bears burden of proof to demonstrate ineffective assistance).

26. Movant bears a heavy burden to establish that his attorney's conduct was deficient. Under the deficiency prong, Movant must point to specific errors made by defense counsel, which were unreasonable under prevailing professional norms. See United States v. Cronin, 466 U.S. 648, 666 (1984). Courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689; United States v. Gray, 878 F.2d 702, 710 (3d Cir. 1989). Accordingly, in assessing whether the assistance of counsel was reasonable, courts must be "highly deferential" and not "second-guess counsel's assistance after conviction." Strickland, 466 U.S. at 689; Berryman v. Morton, 100 F.3d 1089, 1094 (3d Cir. 1996). "Every effort [should] be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689.

27. The prejudice prong requires a showing of specific prejudice. See id. at 687. Assuming that counsel's performance was deficient, the test for prejudice is "whether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694-95; Gov't of the Virgin Islands v. Forte, 865 F.2d 59, 62

(3d Cir. 1989). A “reasonable probability” is more than a theoretical possibility. See Frey v. Fulcomer, 974 F.2d 348, 358 (3d Cir. 1992). A “reasonable probability” is a probability sufficient to undermine confidence in the outcome. See Strickland, 466 U.S. at 694. Because of Strickland’s high standards, it is only the “rare claim of ineffective assistance that should succeed under the properly deferential standard to be applied in scrutinizing counsel’s performance.” United States v. Kaufman, 109 F.3d 186, 190 (3d Cir. 1997). Moreover, a reviewing court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of [any] alleged deficiencies.” Strickland, 466 U.S. at 697. Therefore, if it is easier for a court to dispose of an ineffectiveness claim on the grounds of lack of sufficient prejudice, the reviewing court should do so. See id.

28. In order to determine whether counsel has been ineffective, a court “must judge the reasonableness of 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. Specifically in regards to pretrial investigation,

[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision to not investigate must be directly assessed for its reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.

Id. at 691.

29. Movant claims that because of defense counsel’s failure to investigate, Movant entered into an improvident plea. (Erwin Petition p. 15-16). Specifically, Movant alleges that two of the Guidelines enhancements were inaccurate, and that he was told that he would only receive a ten-year sentence as a worst-case scenario. Id. However, these assertions are belied by

Movant's statements both in writing and under oath.

30. As an initial matter, both of the enhancements about which Movant now complains were set forth in Schedule A of the Plea Agreement, which Movant signed. Schedule A of the Plea Agreement stated the following:

1. This Office and Christopher Erwin recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Christopher Erwin nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Christopher Erwin within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and Christopher Erwin further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.
2. The version of the United States Sentencing Guidelines effective November 1, 2011 applies in this case. The Guidelines dictate that, for calculation purposes, 1 gram of oxycodone is equivalent to 6700 grams of marijuana. U.S.S.G. § 2D1.1 n.10(E). The parties agree that Christopher Erwin is responsible for approximately 6,912 g of oxycodone, which is the equivalent of 46,310 kg of marijuana. Accordingly, the applicable guideline is U.S.S.G. § 2D1.1(c)(1). This guideline carries a Base Level of 38.
3. Christopher Erwin was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. This results in an increase of 4 levels, pursuant to § 3B1.1(a).
4. As of date of this letter, Christopher Erwin has clearly demonstrated a recognition and affirmative acceptance of responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Christopher Erwin's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

5. As of the date of this letter, Christopher Erwin has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Christopher Erwin enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in addition Christopher Erwin's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, Christopher Erwin will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).
6. In accordance with the above, the parties agree the total Guidelines offense level applicable to Christopher Erwin will be 39 (collectively, the "agreed total Guidelines offense level").

Ex. 1.

31. Despite his claims now that "investigation would have borne out" that these stipulations were inaccurate, Movant specially agreed to both of these enhancements, which were clearly set forth in the Plea Agreement, which he signed. Movant agreed to the amount of pills. Movant agreed that he was a leader of the drug trafficking organization. Given his specific agreement to those facts then, Movant cannot complain about them now.

32. Thereafter, at his Rule 11 plea hearing, Movant stated, under oath that he fully understood all of the terms of the Plea Agreement, and that it set forth both accurately and completely all of the terms of the plea bargain as he understood it. Movant also stated under oath that no other promises were made to him other than what was outlined in the Plea Agreement.

33. Specifically the Court questioned:

THE COURT: Mr. Erwin, you are being shown the plea bargain letter in this case. Have you read the entire plea agreement?

THE DEFENDANT: Yes.

THE COURT: Have you had an opportunity to fully discuss the agreement with your lawyer before you signed it?

THE DEFENDANT: Yes, I have.

THE COURT: Please look at the agreement and let me know if your signature appears there.

THE DEFENDANT: Yes.

THE COURT: Mr. Murphy, does your signature appear as defense counsel?

MR. MURPHY: Yes, your Honor.

THE COURT: Mr. Gribko, does a representative of your office appear as well?

MR. GRIBKO: Yes, mine and my supervisor's.

THE COURT: Thank you.

THE COURT: Mr. Erwin, do you feel that with the explanations and advice of your attorney that you fully understand all of the terms of the plea bargain letter?

THE DEFENDANT: Yes.

THE COURT: That letter is supposed to set out all the bargains, benefits, things that flow to you in exchange for your willingness to plead guilty to the Information. Do you feel that the plea bargain letter sets forth both accurately and completely all of the terms of the plea bargain as you understand it?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions at all that you wish to ask me or your attorney about what the plea bargain letter means or what any of the words or phrases in there mean?

THE DEFENDANT: No.

THE COURT: Do you understand the terms of the plea agreement?

THE DEFENDANT: Yes.

THE COURT: Has anyone made any other or different promises or assurances to you of any kind in an effort to induce you to enter a plea of guilty in this case?

THE DEFENDANT: No.

Ex. 3, Erwin Plea Allocution Tr. at 10-12; see also Ex. 1, Plea Agreement p. 7;
Ex. 2 Rule 11 Form p. 4.

34. In addition to questioning Movant about his understanding of the Plea Agreement, the Court also questioned Movant at length on his understanding of the application of the Sentencing Guidelines. Specifically, the Court asked the following:

THE COURT: First, however, do you understand that the United States Sentencing Guidelines are advisory and not mandatory?

THE DEFENDANT: Yes.

THE COURT: Therefore, do you understand the Court can impose a sentence that is higher or lower than that recommended by the Guidelines?

THE DEFENDANT: Yes, I do.

THE COURT: Are you aware that the Sentencing Guidelines take into account the actual conduct in which you engaged, considers the victims of your offense, the role that you played, and whether or not you have engaged in any obstruction of justice or have accepted responsibility for your acts?

THE DEFENDANT: Yes.

THE COURT: Do you also understand that your criminal history is an important factor in applying the Sentencing Guidelines?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand that until a Presentence Report is completed, it is impossible for either me or for your lawyer to know exactly what sentence range may be required by the Guidelines?

THE DEFENDANT: Yes.

THE COURT: Do you also understand that it may be necessary to resolve disputed facts contained in the Presentence Report and that may also affect the applicable Guidelines and your sentence?

THE DEFENDANT: Yes.

THE COURT: Have you discussed the Sentencing Guidelines with your attorney?

THE DEFENDANT: Yes, I have.

THE COURT: Has he explained to you the various considerations that go into determining what Guidelines shall be applied?

THE DEFENDANT: Yes.

THE COURT: Has your attorney attempted to estimate for you what he thinks the Guideline range may be in your case based on the information that he currently has?

THE DEFENDANT: No, just more score, the 39 and the 20 years maximum penalty.

THE COURT: Well, in other words, he has estimated for you where he thinks –

THE DEFENDANT: I thought you mean estimate the amount of time I would get.

THE COURT: No. He tried to estimate for you what he thinks the Guideline range may be –

THE DEFENDANT: Yes.

THE COURT: -- based on the offense level.

THE DEFENDANT: Okay.

THE COURT: Correct?

THE DEFENDANT: Yes.

THE COURT: But do you understand, however, that at this point it may be

impossible for him to make a completely accurate assessment as to the Guideline range which will actually apply in your case because he does not yet have all the necessary information and has not seen the Presentence Report?

THE DEFENDANT: Yes.

THE COURT: Do you understand that you will not be able to withdraw your plea on the ground that anyone's prediction as to the Guideline range proved to be inaccurate?

THE DEFENDANT: Yes.

THE COURT: Do you further understand that the Court will not be able to determine the Guideline sentence for your case until after the Presentence Report has been completed and you and the government have had an opportunity to challenge the reported facts and the application of the Guidelines recommended by the probation officer?

THE DEFENDANT: Yes.

THE COURT: Do you understand that the sentence imposed may be different from any estimate your attorney may have given you?

THE DEFENDANT: Yes.

THE COURT: And do you realize that any stipulations or agreements between you and the government as to what the applicable facts are or what the Guidelines are, are not binding on me if the Presentence Investigation Report or other sources persuade me that they are inaccurate?

THE DEFENDANT: Yes.

Ex. 3, Erwin Plea Allocution Tr. at 18-21.

35. It is clear that the Court questioned Movant about his understanding of the Plea Agreement as well as the Sentencing Guidelines and how they are advisory rather than mandatory. (See also Ex. 1, Plea Agreement p. 2, 8-9; Ex. 2 Rule 11 Form p. 4.) Additionally, the Court stated repeatedly how it was impossible for Mr. Murphy to make an accurate estimation of Movant's sentence until he received the final Presentence Report. Erwin stated, under oath, that he understood both the Plea Agreement and the Court's explanation of the Guidelines.

36. Accordingly, Movant's claim that he relied upon an alleged assertion by his attorney that he would receive a ten-year sentence is completely contradicted by Movant's own sworn statements at his plea allocution, the terms of the Plea Agreement, which he signed and

agreed to, and his written statements in the Rule 11 Form. Thus, Movant's claims that his counsel was ineffective for failing to investigate, or in advising him to accept the terms of the Plea Agreement must be denied.

37. Moreover, Movant's former attorney, James Murphy, Esq., has provided an affidavit that directly contradicts Movant's claims. (The Affidavit of James Murphy, Esq., is attached hereto as Exhibit 6 but is not being filed on ECF). According to the Murphy Affidavit, Movant and his counsel discussed the factual allegations set forth in the Complaint in detail. When Mr. Murphy met with Movant, Movant acknowledged that the accusations outlined in the complaint were generally accurate. (Ex. 6 Murphy Affidavit p. 2). Mr. Murphy advised Movant that his potential exposure was not limited to the twenty-year maximum sentence set forth in 21 U.S.C. § 846 as set forth in the Complaint (and to which Movant pleaded guilty), but rather could increase if the Government sought substantive counts or enhancements due to his role in the conspiracy. Id. Movant stated to Mr. Murphy that the Government had him "dead to rights" and inquired about options to reduce his sentence. Id. Mr. Murphy advised Erwin that if he chose to cooperate with the Government, it would result in a reduced sentence, but he would have to plead guilty. Id. Mr. Murphy also advised Erwin that if he cooperated early, they would have little time to obtain discovery. Id. Despite this, Erwin stated he wished to plead guilty, that he wanted to cooperate with the Government, and asked Mr. Murphy to schedule a meeting with the Government as soon as possible. Id. Mr. Murphy set up a meeting with the Government as soon as possible per Erwin's request. Id. Thus, it was Erwin's wish to cooperate with the Government and plead guilty rather than to disprove the Government's case against him at trial.

38. Movant reviewed the Plea Agreement with Mr. Murphy, and he reviewed the Draft Presentence Report from Probation prior to sentencing. (Ex. 6, Murphy Affidavit p. 5). Mr. Murphy discussed with Movant, again, all of the enhancements including the amount of drugs as well as the enhancement for being an organizer or leader of the drug organization. Id. After a lengthy discussion with Movant, at Movant's direction, Mr. Murphy submitted a number of objections to the Draft PSR, none of which included the amount or the enhancement for Movant's leadership. Id.

39. Thus, Movant's counsel's conduct was not deficient and Movant has been in no way prejudiced. Movant was advised about all of the enhancements about which he now complains, as well as the fact that Movant faced a prison term of up to twenty years, even if his counsel estimated a lower range. All of the enhancements were also expressly set forth in the Plea Agreement, which Movant signed, and Movant expressed his understanding of all of this when he signed the Plea Agreement, and when he filled out the Rule 11 Form, and under oath at the time of his guilty plea hearing. Accordingly, Movant has failed to prove that he was deprived of effective assistance of counsel under Strickland, and this claim should be dismissed.

B. Defense Counsel Was Not Ineffective Because the Terms of the Plea Agreement Were Fulfilled

40. Movant claims that his defense counsel was ineffective because he failed to ensure that the terms of the Plea Agreement, or more specifically, the Cooperation Agreement, were fulfilled. (Erwin Petition p. 15). Specifically, the Movant claims his counsel was ineffective for failing to ensure that Movant would get credit for assisting the Government with an unrelated marijuana operation in New York. (Erwin Petition p. 22).

41. Movant's second claim fails because it is clear that the terms of the Plea Agreement (and Cooperation Agreement) were fulfilled, and thus his counsel was not ineffective nor was he was prejudiced by any alleged ineffectiveness.

42. The Cooperation Agreement states, in pertinent part:

The determination whether Christopher Erwin has fully complied with this agreement and provided substantial assistance to the Government rests solely in the discretion of this Office. If this Office determines in its sole discretion that Christopher Erwin has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offense, this Office: (1) will move the sentencing judge, pursuant to Section 5K1.1 of the Sentencing Guidelines, to depart from the otherwise applicable guidelines range. Whether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range is a matter committed solely to the discretion of the sentencing judge. Christopher Erwin may not withdraw his plea if this Office determines that Christopher Erwin has not rendered substantial assistance or has not fully complied with the terms of this agreement, or if the Court refuses to grant in whole or in part the Government's motion for a downward departure.

Ex. 2, Erwin Cooperation Agreement at 2.

43. Here, the Government did in fact file a motion pursuant to § 5K1.1, even though it was not required to do so.³ In that motion, the Government asked the Court to depart pursuant to U.S.S.G. 5K1.1. (See, Ex. 4, Government 5K1.1 Motion). The Court granted that motion and sentenced the defendant to a term significantly lower than range to which the parties stipulated in the Plea Agreement.

44. The Government filed that motion because it “determine[d] in its sole discretion that Christopher Erwin has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offense...” Specifically, he cooperated with the Government and provided important information and assistance, which contributed to the prosecution and conviction of his co-conspirators, most notably Dr. Jacqueline Lopresti and Dr. Hassan Lahham. (See, Ex. 4., Government Motion at p.1).

45. The Government did not include facts relating to the vaguely identified “large-scale marijuana operation” in another District in the 5K1.1 Letter, because that information did not amount to “substantial assistance in the investigation or prosecution” of the alleged group. As set forth in the Cooperation Agreement, that determination “rests solely in the discretion of this Office.” Ex. 2, Cooperation Agreement p. 2.

46. It is clear from the record that Movant knew that his single mention of a vaguely identified “large-scale marijuana operation” did not amount to substantial assistance. Although Movant’s counsel mentioned it briefly in his statements at sentencing, it is clear from those statements that the cooperation was not significant. (See Ex. 5, Sent. Tr. p. 13). Movant did not

³ In fact, the Government did so despite the fact that the Movant violated the terms of the Cooperation Agreement by not being completely candid. See, Ex. 5, Sent. Tr. p. 8 noting that defendant was “essentially truthful”).

raise it in his statements to the Court at his sentencing (see, Ex. 5, Sent. Tr. pp. 20-25), nor did he raise it in his appeal to the Third Circuit, nor did he raise it when he was re-sentenced by this Court.

47. The Affidavit of James Murphy only serves to underscore how frivolous Movant's this claims is. As set forth therein, Movant met with his counsel on numerous occasions and discussed the allegations, the Plea Agreement, and the Cooperation Agreement. On May 23, 2011, Movant and his counsel met with the Government and Movant discussed the details of the conspiracy alleged in the complaint including his own involvement as well as his co-conspirators. (Murphy Affidavit p. 3). Additionally, Movant met with the Government four additional times to provide more information. Id. Contrary to Movant's allegations, there never was a significant discussion of the marijuana operation, only a vague discussion of the subject. Id. Additionally, Movant never instructed Mr. Murphy to follow up with the Government about the operation after. Id.

48. Movant reviewed the 5K1.1 Motion with Mr. Murphy. Id. Movant "expressed no surprise" that the 5K1.1 Motion only discussed the cooperation regarding Dr. Lopresti and Dr. Lahham and at no time did Movant request Mr. Murphy to notify the Government of any additional cooperation, including the marijuana operation. Id.

49. Thus, Movant's counsel's conduct was not deficient and Movant has been in no way prejudiced. The terms of the Plea Agreement and Cooperation Agreement were fulfilled. Accordingly, Movant has failed to prove that he was deprived of effective assistance of counsel under Strickland, and this claim should be dismissed.

C. The Government Did Not Breach the Plea Agreement by Departing From the Top of the Guidelines Range, Rather Than From the Statutory Maximum

50. Movant contends that the Government breached the Plea Agreement by departing from the Guidelines range, rather than from the statutory maximum (Amended Motion p. 26).⁴ This claim fails because (1) it has already been decided and denied by the Third Circuit on his direct appeal; (2) it is barred by the waiver in Movant's Plea Agreement, and (3) the Government fulfilled the terms of the Plea Agreement (and Cooperation Agreement), and the Government made no other promises as to the sentence that Movant would receive. Thus, it must be denied however it is phrased.

51. Movant argued before the Third Circuit "that the District Court's failure to depart to offense level 33 deprived him of his due process right to receive the full benefit of his bargain with the Government." U.S. v. Erwin, 765 F.3d 219, 227 (3d Cir. 2014). The Government agreed to file a departure motion pursuant to U.S.S.G. § 5K1.1, but cautioned the Movant that the departure would remain in the sole discretion of the sentencing judge. Id.

52. The Third Circuit already determined that because there was not any suggestion in the record that the Government guaranteed to specifically request a five-level downward departure or that the sentencing judge would apply the departure to the statutory maximum. Id.

53. When a prisoner raises a claim that had been previously decided on direct appeal, he ordinarily forfeits that claim and cannot relitigate the same issue in a 2255 proceeding. In this regard, the Third Circuit has held that 2255 generally "may not be employed to relitigate questions which were raised and considered on direct appeal." United States v. DeRewal, 10

⁴ Movant alternately phases this claim as an ineffective assistance claim and an improper government conduct claim. However, it fails under either analysis.

F.3d 100, 105 n.4 (3d Cir. 1993) (citations omitted). Thus, Movant's third claim is barred because it was already litigated before the Third Circuit.

54. This claim is also barred by Movant's waiver of his right to collaterally attack his sentence. "A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution." United States v. Fazio, 795 F.3d 421, 425 (3d Cir. 2015) (quoting United States v. Mezzanatto, 513 U.S. 196, 201 (1995)). A defendant's right to appeal or collaterally attack his sentence are among those rights that may be waived knowingly and voluntarily. See id. (citing United States v. Khattak, 273 F.3d 557, 561 (3d Cir. 2001)). Accordingly, in the Third Circuit, courts will enforce an appellate or collateral waiver "when they are entered into knowingly and voluntarily and their enforcement does not work a miscarriage of justice." Id. When enforcing a collateral waiver, the "district court has an independent obligation to conduct an evaluation of the validity of a collateral waiver." United States v. Mabry, 536 F.3d 231, 238 (3d Cir. 2008). In considering the validity of the waiver, the district court must consider: 1) whether the instant challenge is within the scope of the waiver; 2) whether the waiver was knowing and voluntary; and 3) whether enforcing the waiver would work a miscarriage of justice. See id. at 237; United States v. Erwin, 765 F.3d 219, 225 (3d Cir. 2014). Movant is, obviously well aware of this, as he was the appellant in United States v. Erwin, 765 F.3d 219, 225 (3d Cir. 2014). Again, this is undoubtedly why he attempts to contort this claim to be a claim for ineffective assistance of counsel.

55. Even if the Court determines that Movant's claim not procedurally barred, it still fails because the Government did not breach the Plea Agreement or Cooperation Agreement as alleged. This is clear from the Third Circuit's discussion of this issue in Movant's direct appeal.

Erwin, 765 F.3d at 227. There is no indication that that suggests the Government made a promise to Movant for a particular sentence. See, Santobello v. New York, 404 U.S. 257, 262 (1971) (“when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.”)

56. The Government in this case agreed to “move the sentencing judge,” pursuant to U.S.S.G. § 5K1.1, to depart from the otherwise applicable Guideline range if it determined in its sole discretion that Erwin provided substantial assistance. Erwin, 765 F.3d at 227 (referring to Ex. 1, Cooperation Agreement.) The Cooperation Agreement cautioned that, “[w]hether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range is a matter committed solely to the discretion of the sentencing judge.” Erwin, 765 F.3d at 227; Because the record is devoid of any indication that the Government promised it would specifically request a five-level downward departure, much less that the court would apply the departure to the statutory maximum, Erwin’s due process claim also fails. Id.

57. Thus, the Third Circuit already determined that because there was not any suggestion in the record that the Government guaranteed to specifically request a five-level downward departure or that the sentencing judge would apply the departure to the statutory maximum. Id. Indeed, in his Amended Motion, Movant concedes that the Government specifically told him that it would make no promises about his sentence. (Amended Motion p. 16).⁵ As previously stated, Schedule A of the Plea Agreement did not contain any language

⁵ The Government disputes the attribution set forth in quotation marks on pages 16 and 17 of the Amended Motion, which Movant concedes is not a verbatim quote. Even if the statement were “essentially correct” (which the Government does not concede), it certainly was not intended as “code” for something else, no matter what Movant now claims he “understood.”

promising a particular sentence. At the Rule 11 hearing, the Court went over the Plea Agreement with Movant and asked him if he understood the terms. (Erwin Plea Allocution Tr. at 10-12). Further, the Court asked Movant if anyone had promised him anything not contained in the agreement and Movant stated “no.” Id. at 11. The Court then reminded Movant that the Guidelines as well as the stipulations were not binding on the Court. Id. at 21.

58. Accordingly, the Government did not breach the Plea Agreement by arguing for a departure from the top of the Guidelines range rather than from the statutory maximum, and this claim must be dismissed.

D. The Government Did Not Breach the Plea Agreement by Not Investigating an Alleged Marijuana Operation in New York

59. Finally, the Movant asserts that the Government breached the Plea Agreement by failing to investigate his claims about an unrelated marijuana operation in New York. (Erwin Petition p. 27).⁶ This claim fails because (1) Movant did not raise this issue on direct appeal; (2) it is barred by Movant's waiver in the Plea Agreement and (3) the Government fulfilled its obligations under the terms of the Plea Agreement (and Cooperation Agreement). Thus, this claim must be denied however it is phrased.

60. Contrary to his claim that the Government breached the Plea Agreement in calculating the Guidelines (discussed above), Movant did not raise this issue before the Third Circuit. See U.S. v. Erwin, 765 F.3d 219 (3d Cir. 2014). However, Movant's failure to raise any claims on direct appeal leaves him in equal hardship because he has "procedurally defaulted" such a claim and is ordinarily "procedurally barred" from raising it on collateral review. In order to overcome his procedural default, Movant must ordinarily show "cause" for his failure to raise the issue in prior proceedings as well as "actual prejudice" resulting from the alleged error. Constitutional claims, such as ineffective assistance of counsel, do not need to be preserved on appeal, nor do jurisdictional challenges. United States v. Davies, 394 F.3d 182, 188 (3d Cir. 2005) (ineffective assistance of counsel claim not waived when petitioner failed to raise issue on direct appeal.)

61. Accordingly, Movant may raise this issue in a § 2255 Motion only if the claimed error of law is shown to: (1) constitute a fundamental defect which inherently results in a

⁶ Movant alternately phases this claim as an ineffective assistance claim and an improper government conduct claim. This appears to be an attempt to avoid his waiver of appeal and his failure to exhaust appellate remedies. However, even aside from those two issues, this claim fails.

complete miscarriage of justice; (2) present exceptional circumstances where the need for post conviction relief is apparent; or (3) result in a proceeding inconsistent with the rudimentary demands of fair procedure. United States v. Cepero, 224 F.3d 256, 267 (3d Cir. 2000) (“Section 2255 petitions are not substitutes for direct appeals and serve only to protect a defendant from a violation of the constitution or from a statutory defect so fundamental that a complete miscarriage of justice has occurred.”) (citing Reed v. Farley, 512 U.S. 339, 348, 354 (1994)); Hill v. United States, 368 U.S. 424, 428 (1962) (providing that motions that allege violations of federal law are generally cognizable only if they implicate errors involving a “fundamental defect which inherently results in a complete miscarriage of justice” or “an omission inconsistent with the rudimentary demands of fair procedure.”); United States v. Addonizio, 442 U.S. 178, 185 (1979) (explaining that “unless the claim alleges a lack of jurisdiction or constitutional error, the scope of collateral attack has remained far more limited,” (citing Stone v. Powell, 428 U.S. 465, 477 n. 10 and Hill, 368 U.S. at 428)); United States v. Timmreck, 441 U.S. 780, 783-84 (1979); Davis v. United States, 417 U.S. 333, 346 (1974); United States v. Cleary, 46 F.3d 307, 310-11 (3d Cir. 1995); United States v. Essig, 10 F.3d 968, 977 n. 25 (3d Cir. 1993). Movant fails to meet any of these requirements, which is undoubtable why he attempts to contort this claim to be a claim for ineffective assistance of counsel.

62. This claim is also barred by Movant’s waiver of his right to collaterally attack his sentence. United States v. Erwin, 765 F.3d 219, 225 (3d Cir. 2014). Movant is obviously well aware of this, as he was the appellant in Erwin, and this is undoubtedly why Movant at various points appears to attempt to recast this as a claim for ineffective assistance of counsel.

63. Even if the Court is inclined to consider Movant's claim, it still fails because the terms of the Plea Agreement (and Cooperation Agreement) were fulfilled. Erwin, 765 F.3d at 227. The Government did, in fact make a motion to reduce his sentence pursuant to U.S.S.G. § 5K1.1 (see, Ex. 4, 5K1.1 Motion), even though it was not obligated to do so, and the Court granted a significant downward departure based on that motion.

64. In his Amended Motion, Movant cites cases to show that a claim for the Government's bad faith refusal to file a motion pursuant to U.S.S.G. § 5K1.1 may give rise to a 2255 claim. See, United States v. Isaac, 141 F.3d 477 (3d Cir. 1998) (district court had authority to review for good faith government's refusal to file motion for downward departure); United States v. Doe, 865 F.3d 1295 (10th Cir. 2017) (government's decision to not file substantial assistance motion was subject to good-faith review).

65. Here, unlike the cases cited by Movant, the Government did in fact file a motion pursuant to § 5K1.1. In that motion, the Government asked the Court to depart pursuant to U.S.S.G. 5K1.1. (See, Ex. 4, 5K1.1 Motion). The Court granted that motion and sentenced Movant to a term significantly lower than range to which the parties stipulated in the Plea Agreement. As discussed above, the Government did not promise a specific downward departure. Indeed, Movant concedes the Government refused to make such a promise, even though Movant asked. Thus, the Government fulfilled its obligation by requesting a five-level downward departure pursuant to U.S.S.G. § 5K1.1, which was granted by the Court. Erwin, 765 F.3d at 227.

66. The Government filed the 5K1.1 Motion because it "determine[d] in its sole discretion that Christopher Erwin has fully complied with this agreement and has provided

substantial assistance in the investigation or prosecution of one or more persons who have committed offense...” Specifically, he cooperated with the Government and provided important information and assistance, which contributed to the prosecution and conviction of his co-conspirators, most notably Dr. Lopresti and Dr. Lahham. (See, 5K1.1 Motion at p.1).

67. The Government did not include facts relating to the vaguely identified “large-scale marijuana operation” in another District in the 5K1.1 Motion, because that information did not amount to “substantial assistance in the investigation or prosecution” of the alleged group. As set forth in the Cooperation Agreement, that determination “rests solely in the discretion of this Office.” Ex. 2, Cooperation Agreement p. 2. The Government’s alleged failure to deem this vague lead to be substantial assistance, and to include it in the 5K1.1 Motion cannot in any way be seen as bad faith, nor can Movant’s counsel’s failure to request its inclusion in the letter be seen as ineffective assistance.

68. Indeed, Movant’s counsel agreed that there were no significant conversations about the operation, and Movant’s primary cooperation with the Government involved discussing the details of the conspiracy alleged in the complaint. (Ex 6, Murphy Affidavit p. 3).

69. Accordingly, Movant’s fourth ground should be denied.

CONCLUSION

Whereas Movant Christopher Erwin has failed to satisfy the burden of proof required for the relief demanded, the motion for a writ of habeas corpus should be denied in all respects.

In support of this Answer, the United States will rely upon the record of direct proceedings and appeal, and any additional evidence as may, from time to time, be filed during the pendency of this matter.

Respectfully submitted,

CRAIG CARPENITO
United States Attorney

R. Joseph Gribko

By: R. JOSEPH GRIBKO
Assistant U.S. Attorney

DATED: May 15, 2018
Trenton, New Jersey

CERTIFICATE OF SERVICE

I, R. Joseph Gribko, an Assistant United States Attorney, hereby certify that on May 15, 2018, I caused a copy of the enclosed Answer of the United States to the Motion of Christopher Erwin, *pro se*, for relief under 28 U.S.C. § 2255 to be mailed, via certified mail, return receipt requested, to:

Christopher Erwin
#63427-050
Petersburg Low
Federal Correctional Institution
Inmate Mail/Parcels
P.O. Box 1000
Petersburg, VA 23804

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, that I am subject to punishment.

Respectfully submitted,

CRAIG CARPENITO
United States Attorney

By: s/ R. Joseph Gribko
R. JOSEPH GRIBKO
Assistant United States Attorney



U.S. Department of Justice

*United States Attorney
District of New Jersey*

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2010R00301

402 E. State St., Room 430
Trenton, NJ 08608

609-989-2190

March 26, 2012

James R. Murphy, Esq.
947 State Road
Suite 205
Princeton, NJ 08540

Re: Plea Agreement with Christopher Erwin

Cr 12-364-01 (FLW)

Dear Mr. Murphy:

This letter sets forth the plea agreement between your client, Christopher Erwin, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Christopher Erwin to a one-count Information, to be filed in this district, which charges that Christopher Erwin did knowingly and intentionally conspire to distribute and possess with intent to distribute oxycodone, a Schedule II controlled substance, contrary to Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), in violation of Title 21, United States Code, Section 846. If Christopher Erwin enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Christopher Erwin for his participation in a conspiracy to distribute and possess with intent to distribute oxycodone from January 2009 through December 2010, as set forth more specifically in the Information. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Christopher Erwin may be commenced against him, notwithstanding the expiration of the limitations period after Christopher Erwin signs the agreement.

Sentencing

The violation of 21 U.S.C. § 846 to which Christopher Erwin agrees to plead guilty carries a statutory maximum prison sentence of 20 years, and a statutory maximum fine equal to the greatest of: (1) \$1,000,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Christopher Erwin is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Christopher Erwin ultimately will receive.

Further, in addition to imposing any other penalty on Christopher Erwin, the sentencing judge: (1) will order Christopher Erwin to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Christopher Erwin to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Christopher Erwin, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) may deny Christopher Erwin certain statutorily defined benefits, pursuant to 21 U.S.C. §§ 862 and 862a; and (5) pursuant to 21 U.S.C. § 841, must require Christopher Erwin to serve a term of supervised release of at least 3 years, which will begin at the expiration of any term of imprisonment imposed. Should Christopher Erwin be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Christopher Erwin may be sentenced to not more than 2 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Christopher Erwin by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Christopher Erwin's activities and relevant conduct with respect to this case.

Stipulations

This Office and Christopher Erwin agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Christopher Erwin from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Christopher Erwin waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

Christopher Erwin agrees that as part of his acceptance of responsibility and pursuant to 21 U.S.C. § 853, Christopher Erwin will consent to the entry of a forfeiture money judgment in the amount of \$1,000,000.00 in United States currency (the "Forfeiture Money Judgment"). Defendant acknowledges that the \$1,000,000 is subject to forfeiture as property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of a narcotics violation.

Payment of the Forfeiture Money Judgment shall be made by certified or bank check, with the criminal docket number noted on the face of the check, payable to the United States Marshals Service. On or before the date he enters his plea of guilty pursuant to this agreement, Christopher Erwin shall cause said check to be hand-delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102.

If the Forfeiture Money Judgment is not paid on or before the date Christopher Erwin enters his plea of guilty pursuant to this agreement, interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Furthermore, if Christopher Erwin fails to pay any portion of the Forfeiture Money Judgment on or before the date of his guilty plea, Christopher Erwin consents to the forfeiture of any other property alleged to be subject to forfeiture in the Information, including substitute assets, in full or partial satisfaction of the money judgment, and remains responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full.

Christopher Erwin agrees to consent to the entry of orders of forfeiture for the Forfeiture Money Judgment and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Christopher Erwin understands that the Forfeiture Money Judgment is part of the sentence that may be imposed in this case and

waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

Christopher Erwin hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense(s) may result in him being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense(s) regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

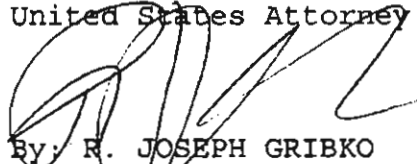
This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Christopher Erwin. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against Christopher Erwin.

No Other Promises

This agreement constitutes the plea agreement between Christopher Erwin and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: R. JOSEPH GRIBKO
Assistant U.S. Attorney

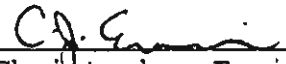
APPROVED:



Nelson S.T. Thayer, Jr.
Attorney In Charge, Trenton Office

I have received this letter from my attorney, James R. Murphy, Esq. I have read this letter. My attorney and I have discussed the letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. I understand the letter fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

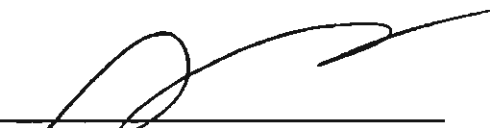
AGREED AND ACCEPTED:



Christopher Erwin

Date: 5-8-12

I have discussed with my client this letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. My client understands the letter fully and wants to plead guilty pursuant to this plea agreement.



James R. Murphy, Esq.

Date: 5/8/12

Plea Agreement With Christopher Erwin

Schedule A

1. This Office and Christopher Erwin recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Christopher Erwin nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Christopher Erwin within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and Christopher Erwin further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2011 applies in this case. The Guidelines dictate that, for calculation purposes, 1 gram of oxycodone is equivalent to 6700 grams of marijuana. U.S.S.G. § 2D1.1 n.10(E). The parties agree that Christopher Erwin is responsible for approximately 6,912 g of oxycodone, which is the equivalent of 46,310 kg of marijuana. Accordingly, the applicable guideline is U.S.S.G. § 2D1.1(c)(1). This guideline carries a Base Offense Level of 38.

3. Christopher Erwin was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. This results in an increase of 4 levels, pursuant to U.S.S.G. § 3B1.1 (a).

4. As of the date of this letter, Christopher Erwin has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Christopher Erwin's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

5. As of the date of this letter, Christopher Erwin has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Christopher Erwin enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in

addition Christopher Erwin's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, Christopher Erwin will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

6. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Christopher Erwin will be 39 (collectively, the "agreed total Guidelines offense level").

7. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

8. Christopher Erwin knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from a total Guidelines offense level of 39. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from a total Guidelines offense level of 39. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

9. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.



U.S. Department of Justice

United States Attorney
District of New Jersey

R. Joseph Gribko
Assistant U.S. Attorney

Clarkson S. Fisher Federal Building
402 East State Street, Room 430
Trenton, New Jersey 08608

Tele 609 989 2190
Fax 609 989 2275

RJG/COOP.AGR

CONFIDENTIAL - NOT TO BE FILED
WITH THE CLERK'S OFFICE

March 26, 2012

James R. Murphy, Esq.
947 State Road
Suite 205
Princeton, NJ 08540

Re: Cooperation Agreement with Christopher Erwin

Dear Mr. Murphy:

This letter sets forth the understandings between your client, Christopher Erwin, and the United States Attorney for the District of New Jersey ("this Office") concerning Christopher Erwin's cooperation with this Office. This cooperation agreement supplements the plea agreement dated March 26, 2012, between the same parties, which will be filed in open court (the "plea agreement"). The plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties.

Christopher Erwin and this Office agree that this cooperation agreement will be disclosed to the Court but not filed with the Clerk's Office. Christopher Erwin further agrees not to reveal his cooperation, or any information derived therefrom, to any third party (other than the Court) without prior consent of this Office.

Christopher Erwin and this Office further agree that this cooperation agreement is contingent upon the entry of a guilty plea by Christopher Erwin pursuant to the provisions of the plea agreement. In the event that Christopher Erwin does not enter a guilty plea pursuant to the provisions of the plea agreement, this Office will be released from its obligations under this cooperation agreement.

Scope of Cooperation

Christopher Erwin shall cooperate fully with this Office. As part of that obligation, Christopher Erwin shall truthfully disclose all information concerning all matters about which this Office and other Government agencies designated by this Office may inquire and shall not commit or attempt to commit any additional crimes. Christopher Erwin also agrees to be available at all reasonable times requested by representatives of the Government and shall truthfully testify in all proceedings, including grand jury and trial proceedings, as to any subject about which he is questioned. Furthermore, Christopher Erwin agrees to provide to this Office, upon request, all documents and other materials relating to matters about which this Office inquires.

Full cooperation includes participating, if requested, in affirmative investigative techniques, such as making telephone calls, tape recording conversations, and introducing law enforcement officials to other individuals. All such activity by Christopher Erwin must be conducted only at the express direction and under the supervision of this Office and federal law enforcement personnel.

If as part of this obligation to cooperate, Christopher Erwin provides self-incriminating statements, the statements shall be subject to the protections, terms, and conditions set forth in U.S.S.G. § 1B1.8 (a) & (b). Nothing, however, shall prevent the use of such statements in a prosecution for false statements, perjury, or obstruction of justice, or prevent the derivative use of such statements.

Informing the Court About Cooperation

The determination whether Christopher Erwin has fully complied with this agreement and provided substantial assistance to the Government rests solely in the discretion of this Office. If this Office determines in its sole discretion that Christopher Erwin has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offenses, this Office:

- (1) will move the sentencing judge, pursuant to Section 5K1.1 of the Sentencing Guidelines, to depart from the otherwise applicable guideline range. Whether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range is a matter committed solely to the discretion of the sentencing judge. Christopher Erwin may not withdraw his plea if

this Office determines that Christopher Erwin has not rendered substantial assistance or has not fully complied with the terms of this agreement, or if the Court refuses to grant in whole or in part the Government's motion for a downward departure.

Other Provisions

This cooperation agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement and Christopher Erwin's cooperation to the attention of other prosecuting offices, if requested to do so.

Breach of Agreement

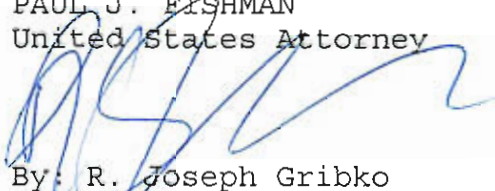
Should Christopher Erwin withdraw from or violate any provision of this cooperation agreement or the plea agreement, or commit or attempt to commit any additional federal, state, or local crimes, or intentionally give materially false, incomplete, or misleading testimony or information, this Office will be released from its obligations under this agreement and the plea agreement, including any obligation to file a motion under U.S.S.G. § 5K1.1, but Christopher Erwin may not withdraw the guilty plea entered into pursuant to the plea agreement. In addition, Christopher Erwin shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by Christopher Erwin, and all such information, statements, and leads therefrom may be used against Christopher Erwin. Any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by Christopher Erwin may be commenced, notwithstanding the expiration of the limitations period after Christopher Erwin signs the agreement. Christopher Erwin agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Christopher Erwin signs the agreement. With respect to any prosecution referred to in this agreement, Christopher Erwin further waives any right to claim that statements made by him before or after the execution of this agreement, including any statements made pursuant to any prior agreement between Christopher Erwin and this Office, or any leads from Christopher Erwin's statements, should be suppressed under that prior agreement or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), U.S.S.G. § 1B1.8, or otherwise.

No Other Promises

Christopher Erwin acknowledges that no additional promises, agreements or conditions have been made other than those set forth in this cooperation agreement and in the plea agreement, and none will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. EISHMAN
United States Attorney



By: R. Joseph Gribko
Assistant U.S. Attorney

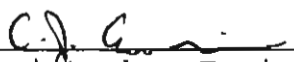
APPROVED:



Nelson S.T. Thayer, Jr.
Attorney In Charge, Trenton Office

I have received this cooperation agreement from my attorney, James R. Murphy, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this cooperation agreement and acknowledge that the plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:



Christopher Erwin

Date: 5-8-12



James R. Murphy, Esq.

Date: 5/8/2012

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Mag./Crim. No. Cr 12-364-01 (FLW)

v.

APPLICATION FOR PERMISSION
TO ENTER PLEA OF GUILTY

Christopher EREW

(Defendant with Counsel)

(Defendant's Name)

Christopher EREW, hereby certifies as follows:
(Defendant's Name)

1. My full name is Christopher EREW and I request that all proceedings against me be held in that name.
2. I understand that the Constitution and laws of the United States guarantee me the right to be represented by a lawyer at every stage in these proceedings, including any trial on these charges, and that if I cannot afford to hire a lawyer, the Court will provide one for me.
3. I have a lawyer who is representing me in this proceeding. My lawyer's name is JAMES R. MORPHY. I am satisfied that I have had enough time to discuss this matter with my lawyer.
4. English [IS] ~~[IS NOT]~~ my native language. My formal education stopped after [grade] I am presently [UNEMPLOYED] ~~[EMPLOYED]~~ as a landscaper (occupation).
5. I have taken [NO] ~~[THE FOLLOWING]~~ drugs or medication within the past seventy-two hours: Valium, Xanax (Fentanyl)
6. I [HAVE] ~~[HAVE NEVER]~~ been a patient in a mental hospital or institution. I [DO] ~~[DO NOT]~~ believe that at the present time I am mentally ill or mentally incompetent in any respect.
7. I received a copy of the [COMPLAINT] ~~[INDICTMENT]~~ [INFORMATION] before being called upon to plead. I have read and discussed it with my lawyer. I understand that the substance of the charge(s) against me is that I: conspired to distribute and possess w/ intent to distribute Oxycodone

[add separate sheets if necessary]

WAIVER OF INDICTMENT (IF APPLICABLE)

8. My lawyer has explained to me that I have a constitutional right to be charged by an indictment of a grand jury but that I can waive that right and consent to being charged through a criminal Information filed by the United States Attorney.
9. I understand that unless I waive indictment I may not be charged with a felony unless a grand jury finds by return of an indictment that there is probable cause to believe that a crime has been committed and that I committed it.
10. I also understand that if I do not waive indictment, the government may present the case to the grand jury and request the grand jury to indict me.
11. I understand that a grand jury is composed of at least 16 and not more than 23 persons, that at least 12 grand jurors must find that there is probable cause to believe that I committed the crime. I also understand that the grand jury may or may not indict me.
12. I further understand that by waiving indictment by the grand jury, the case will proceed against me on the United States Attorney's Information as though I had been indicted.
13. My attorney has discussed the nature of the charge(s) against me and waiving my right to indictment thereon by grand jury, I fully understand those rights, and I wish to waive indictment by grand jury.
14. My decision to waive indictment by grand jury is made knowingly and voluntarily, and no threats or promises have been made to induce me to waive indictment.

THE GUILTY PLEA

15. I have told my lawyer all the facts and circumstances known to me about the charge(s) set forth in the [COMPLAINT] [INDICTMENT] [INFORMATION].
16. I am satisfied that my lawyer understands the information which I have provided, and that my lawyer has counseled and advised me on the nature of each charge and on all possible defenses that I might have in this case.
17. In addition, my lawyer has explained to me, and I understand, that if I enter a plea of NOT GUILTY (or persisted in my plea of NOT GUILTY), under the Constitution and laws of the United States I would be entitled to a speedy and public trial by a jury of twelve persons on the charge(s) contained in this [COMPLAINT] [INDICTMENT] [INFORMATION].
18. My lawyer has explained to me, and I understand, that at such a trial the jury would be told by the judge that I am presumed to be innocent, and that the Government would be required to prove me guilty of the charge(s) against me beyond a reasonable doubt. I understand that

I would not have to prove that I am innocent, and that I could not be convicted unless all twelve jurors voted unanimously for conviction.

19. My lawyer has explained to me, and I understand, that if I went to trial on these charge(s), the Government would have to produce in open court the witnesses against me, and that my lawyer could confront and cross-examine them and object to evidence offered by the Government.
20. My lawyer has further explained to me, and I understand, that I have the right to produce witnesses and could offer evidence in my defense at a trial on these charge(s), and that I would have the right, if I so chose, to testify on my own behalf at that trial; but if I chose not to testify, the jury could draw no suggestion or inference of guilt from that fact.
21. My lawyer has explained to me, and I understand, that if I plead GUILTY to any charge(s) in this [COMPLAINT] [INDICTMENT] [INFORMATION] and the judge accepts my plea, I WAIVE MY RIGHT TO TRIAL AND THE OTHER RIGHTS SET FORTH IN PARAGRAPHS 17, 18, 19 and 20 ABOVE. I am aware and understand that if my GUILTY plea is accepted, there will be no trial and a judgment of GUILTY will be entered after which, the judge, upon consideration of my presentence report, will impose punishment upon me. I understand that if I plead GUILTY, the judge may impose the same punishment as if I had pleaded "not guilty", went to trial and was convicted by a jury.
22. My lawyer has also explained to me, and I understand, that if I plead GUILTY, I WAIVE MY RIGHT NOT TO INCRIMINATE MYSELF. I understand that the judge will ask me what I did and I will have to acknowledge my guilt as charged by setting forth my actions so that the judge is satisfied that I am, indeed, guilty. I understand that any statements I make at the time I plead GUILTY, if untrue and made under oath, can be the basis of a perjury prosecution against me.

SENTENCING ISSUES

23. My lawyer has informed me, and I understand, that the maximum punishment which the law provides for the offense(s) charged in this [COMPLAINT] [INDICTMENT] [INFORMATION] is:

A MAXIMUM OF 20 years imprisonment and a fine of \$ 1 million or 20 years for the offense(s) charged in Count(s) ONE. My lawyer has further explained, and I understand, that there is (NO) [A] mandatory minimum punishment of ___ years imprisonment and (NO) [A] mandatory minimum fine of \$ _____ for the offense(s) charged in Count(s) ONE.

I understand that if I plead ~~GUILTY~~ to Count(s) ONE of the [COMPLAINT] [INDICTMENT] [INFORMATION], I face a maximum sentence on those Count(s) of 20 years imprisonment, plus an aggregate fine of \$ 1 million or 20 years. My lawyer has additionally explained, and I understand, that in addition to or in lieu of the penalties already discussed, I may be ordered to make restitution to any victim of the offense and that the Court may require me to make a restitution in services instead of money or to make restitution to a designated third person or organization instead of the victim. I understand that in determining whether to order restitution

and the amount of restitution the Court will consider the amount of the loss sustained by any victim as a result of the offense, my financial resources, the financial needs and earning ability of my dependents, and any other factors as the Court deems appropriate.

I understand that I will be assessed \$100 for each felony upon which I am sentenced and \$25 for each misdemeanor, if any.

24. I hereby declare that no officer or agent of any branch of government, (Federal, State or Local), nor my lawyer, nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead GUILTY. My lawyer has explained, and I understand, that only the judge may decide what punishment I shall receive, and that if any person has told me otherwise, that person is not telling me the truth.
25. I understand that the sentence to be imposed upon me is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act of 1984.
26. I understand that in deciding what sentence to impose upon me, the sentencing judge is required to consider the maximum and minimum prison terms, fines and terms of supervised release recommended under the Sentencing Guidelines. I understand that the Sentencing Guidelines may authorize departures from the maximum and minimum Guidelines recommendations under certain circumstances.
27. I understand that the Sentencing Guidelines are advisory, and that the sentencing judge must also consider the other statutory factors identified in 18 U.S.C. § 3553(a) in deciding what sentence to impose. I understand that the judge has the authority to impose a sentence more severe (up to the statutory maximum) or less severe than the sentencing range recommended by the Guidelines.
28. I have discussed with my attorney how the Sentencing Guidelines might apply to my case.
29. I understand that the Court will not be able to determine the sentence for my case until after the Presentence Report has been completed and both I and the Government have had an opportunity to read the report and challenge any facts reported by the probation officer.
30. I understand that the Court may be bound to impose a fine in accordance with statutory requirements.
31. I understand that parole has been abolished and if I am sentenced to prison I will not be released on parole.
32. I further understand that the Court ~~[SHALL]~~ [MAY] impose a term of supervised release to follow any term of imprisonment and that any violation of that term of supervised release may result in an additional term of imprisonment. I understand that I am subject to a term of supervised release of up to 5 years, the statutory maximum period of supervised release for the crime(s) to which I am pleading guilty.

I further understand that the provisions of 21 U.S.C. § 841, which provide for a mandatory minimum term of supervised release of 3 years, DO [DO NOT] apply to my case.

33. I understand that I will have no right to withdraw my plea on the grounds that anyone's prediction as to the Guidelines range or expectation of sentence proves inaccurate.

WA 34. My lawyer has explained to me, and I understand, that if I am not a citizen of the United States, my plea of GUILTY to the charged offense(s) [MAY] [WILL LIKELY] result in my being subject to separate immigration law proceedings to have me removed from the United States by making me deportable, excludable, or inadmissible, or ending my naturalization.

MA 35. My lawyer has explained to me, and I understand, that if the charged offense(s) is a sex offense under 42 U.S.C. § 16911(5), my plea of GUILTY [MAY] [WILL LIKELY] result in a requirement that I register as a sex offender under Federal and State law, and I will be subject to the registration law's requirements and penalties.

PLEA AGREEMENT

36. I hereby declare that I have not been forced, coerced or threatened in any manner by any person to plead GUILTY to these charge(s). Nor have I been told that if I refuse to plead GUILTY, other persons will be prosecuted.

37. There HAS [HAS NOT] been a plea agreement entered into between me and the United States Attorney, by Assistant United States Attorney Joseph Grivko (name).

[] The plea agreement DOES NOT exist in written form.

X The plea agreement DOES exist in written form. I have read it or have had it read to me in English (LANGUAGE). My lawyer has explained it to me and I understand it.

38. The substance of the plea agreement is: I plead guilty to Count 1 as
the information charging conspiracy to distribute
and possess with intent to distribute cocaine. Gov
will bring no further charges for the charge contained
in the complaint

39. The plea agreement DOES [DOES NOT] contain stipulations agreed to by the parties.

IF APPLICABLE, CHOOSE ONE OF THE FOLLOWING:

X I understand that my plea agreement sets forth a Guidelines calculation which I agree is the total Guidelines offense level applicable to me in this case. I further understand that I have waived the right to argue that the sentencing judge should impose a sentence below the range that results from this offense level, and that the government has waived the right to argue for a sentence above the range that results from this offense level.

- ☐ I understand that my plea agreement sets forth a Guidelines calculation which I agree is the total Guidelines offense level applicable to me in this case. I further understand that with the exception of arguments regarding a departure as set forth in Paragraph ____ of Schedule A to the plea agreement, I have waived the right to argue that the sentencing judge should impose a sentence below the range that results from this offense level, and the government has waived the right to argue for a sentence above the range that results from this offense level.
- ☐ The plea agreement contains stipulations regarding certain facts. I understand that if the sentencing court accepts a factual stipulation set forth in the plea agreement, both I and the government have waived the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.
40. I understand that my plea agreement [PROVIDES] ~~[DOES NOT PROVIDE]~~ that under certain circumstances I have waived my right to appeal or collaterally attack the sentence imposed in this case.
41. My lawyer has explained to me, and I understand, that if the judge accepts from GUILTY plea under the plea agreement, including the government's proposal to dismiss charges or to not bring other charges, the judge is not bound to follow the other terms of the plea agreement, including the stipulations recommending that a particular sentence or sentencing range is appropriate or that a particular provision of the Guidelines does or does not apply. I understand that if the judge does not follow one or all of the other terms of the plea agreement, including the stipulations, I will have no right to withdraw my GUILTY plea, even if the disposition of my case may be less favorable than that proposed in the plea agreement.
42. I believe that my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP MY LAWYER HAS GIVEN ME.
43. I know the judge will not permit anyone to plead GUILTY who claims to be innocent, and with that in mind and because I am GUILTY, I respectfully request that the Court accept my plea of GUILTY and to have the Clerk enter my plea of GUILTY as follows:
- To Count(s) ONE of this [COMPLAINT] [INDICTMENT] [INFORMATION].
44. I offer my plea of GUILTY freely and voluntarily and of my own accord with full understanding of all matters set forth in the [COMPLAINT] [INDICTMENT] [INFORMATION], in this application, and in the certification of my lawyer which is attached to this application.
45. I further declare that I wish to waive the reading of the [COMPLAINT] [INDICTMENT] [INFORMATION] in open court, and I request the Court to enter my plea of GUILTY as set forth in Paragraph 43, above.

46. The following person(s), if any, assisted me in completing this application: JAMES R. MURPHY, ESQ

I hereby certify that the foregoing information and statements herein are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Signed by me in open court in the presence of my lawyer this 24th day of July, 2012.

CJ G
Defendant

CERTIFICATION OF COUNSEL

JAMES R. MURPHY hereby certifies that:

1. I am an attorney at law of the State of N.J. and have been [RETAINED BY] [ASSIGNED TO REPRESENT] the defendant Christopher Ezeu, in [MAGISTRATE] [CRIMINAL] No. _____.
2. I have read and fully explained to the defendant the allegations contained in the [COMPLAINT] [INDICTMENT] [INFORMATION].
3. To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing Application are in all respects accurate and true.
4. (IF APPLICABLE) In my opinion the defendant's waiver of indictment by grand jury is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
5. In my opinion the defendant's waiver of reading the [COMPLAINT] [INDICTMENT] [INFORMATION] in open Court as provided in Rule 10 is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
6. I have explained the maximum and any mandatory minimum penalty for each count to the defendant. I have explained to him that he may be ordered to make restitution under the Victim and Witness Protection Act.
7. I have explained to the defendant that in imposing sentence, the sentencing judge is required to consider the Sentencing Guidelines, and I have further explained how the Guidelines might apply to this offense and to the defendant. I have further explained to the defendant that the Guidelines are advisory, not mandatory, and that the sentencing judge may impose a sentence higher or lower than that recommended by the Guidelines.
8. The plea of GUILTY offered by the defendant in Paragraph 43 accords with my understanding of the facts related to me and is consistent with my advice to the defendant.
9. In my opinion the plea of GUILTY as offered by the defendant in Paragraph 43 of this Application is voluntarily made with understanding of the consequences of the plea. I recommend that the Court accept the plea of GUILTY.

Signed by me in open Court in the presence of the defendant above named, and after full disclosure of the contents of this Certification to the defendant, this 24 day of May 2012.

[Signature]
Attorney for the Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 12-364 (FLW)

1

UNITED STATES OF AMERICA

v.

CHRISTOPHER ERWIN,
Defendant

:
: TRANSCRIPT OF
: SENTENCE
:
:
: JULY 25, 2013
:
:
:

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FRED A. L. WOLFSON, USDJ

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

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: R. JOSEPH GRIBKO, AUSA
On behalf of the Government

JAMES R. MURPHY, ESQUIRE
On behalf of the Defendant

* * * * *
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER
(609) 588-9516

C E R T I F I C A T I O N

PURSUANT TO SECTION 753, TITLE 28, USC, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

A handwritten signature in cursive script, reading "Vincent Russoniello".

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court, defendant present.)

2 THE CLERK: All rise.

3 THE COURT: Thank you.

4 I'll have the appearances. Everyone else may
5 be seated.

6 MR. GRIBKO: Good morning, your Honor.

7 Assistant United States Attorney Joseph Gribko
8 on behalf of the government; and with me at counsel
9 table is Tim Beach of the DEA.

10 MR. BEACH: Good morning, Judge.

11 THE COURT: Thank you.

12 MR. MURPHY: Good morning, your Honor.

13 James R. Murphy representing Christopher
14 Erwin, who is present to my right.

15 THE COURT: Thank you. Have a seat, please.

16 We are here for the sentencing of Mr. Erwin in
17 connection with his guilty plea to a count of
18 conspiracy to distribute and possess with intent to
19 distribute oxycodone.

20 Before we begin, Mr. Gribko, I understand that
21 you wish to note that there has been a consent order
22 with regard to a Superseding Information that will
23 include a forfeiture count consistent with the plea
24 stipulations and the prior agreements of counsel and
25 the defendant.

1 We will proceed at this time.

2 I know that counsel have received the
3 Presentence Investigation Report. I have received
4 sentencing memoranda from both the government as well
5 as from defense counsel as well as a number of letters
6 on behalf of Mr. Erwin.

7 Mr. Murphy, have you had sufficient
8 opportunity to review the report with your client?

9 MR. MURPHY: Yes, I have your Honor.

10 There is only one issue left and I believe I
11 addressed that in a letter to the Court with regard to
12 a dismissal of a charge in municipal court that had a
13 reference to a weapon.

14 There was no weapon. I just ask that the
15 probation officer correct that in the final version. I
16 did that by letter to the Court.

17 THE COURT: I have the letter, but I think
18 that you are incorrect.

19 I have received a printout regarding the
20 criminal history and apparently -- I know your
21 argument was based on the fact your client didn't
22 think he was charged with a weapon, plus because you
23 indicated for the municipal court to have dismissed
24 it, it wouldn't have been.

25 In fact, what the record revealed, it was

1 referred to the Ocean County Prosecutor, it was
2 no-billed, and then sent back for a dismissal. It
3 clearly was referenced as an aggravated assault with a
4 weapon. I can show you the printout.

5 MR. MURPHY: That's not necessary, your Honor.

6 THE COURT: I know it added no points. It
7 makes no difference on the criminal history in that
8 regard, but as an arrest it is accurate.

9 MR. MURPHY: Thank you, your Honor.

10 THE COURT: Beyond that, are there any
11 objections to the report by the government?

12 MR. GRIBKO: None from the government, your
13 Honor.

14 THE COURT: Any objections from the defense?

15 MR. MURPHY: No, your Honor.

16 THE COURT: All right. You may have a seat.

17 Then I will begin by calculating the
18 Guidelines in this matter:

19 The base offense level based on the quantity
20 of drugs is a level 38.

21 Looking at adjustments for role in the
22 offense, pursuant to Sentencing Guideline 3B1.1(a), I
23 find that it is appropriate to have an upward
24 adjustment of four levels, since Mr. Erwin was clearly
25 an organizer, leader, and manager of more than five

1 individuals, and indeed he is at the top of this
2 conspiracy. The four levels will be added.

3 That brings it to an adjusted offense level of
4 42.

5 I find that he would qualify for the two-level
6 adjustment for acceptance of responsibility.

7 Mr. Gribko, are you moving for the additional
8 one level?

9 MR. GRIBKO: Yes, your Honor.

10 THE COURT: I will grant that, and, thus, the
11 offense level is a 39.

12 Turning to criminal history:

13 There are no criminal history points, and as a
14 result he is in a criminal history category of 1.

15 With a total offense level of 39 and a
16 criminal history category of 1, under the statute he
17 faces a maximum of 20 years imprisonment; while under
18 the Guidelines it would have been 262 to 327 months,
19 it is capped at 240 months because of the statutory
20 maximum of 20 years.

21 Probation under the statute is one to
22 five years; he is not eligible under the Guidelines.

23 Supervised release is at least three years;
24 the Guidelines is three years.

25 The fine under the statute is a maximum of

1 \$1 million; with a Guideline range of \$25,000 to \$1
2 million.

3 Restitution is not applicable here.

4 There is the mandatory special assessment of
5 \$100 for the single count of conviction.

6 Counsel, any disagreement with the ranges as I
7 have read them to you?

8 MR. GRIBKO: No, your Honor.

9 MR. MURPHY: No, your Honor.

10 THE COURT: I understand that the government
11 has an application for a departure and under 5K1.1.

12 MR. GRIBKO: Yes, your Honor.

13 The basis for that motion is set forth in the
14 government's letter to the Court of July 12th, 2013.

15 In essence, it states that Mr. Erwin came into
16 the U.S. Attorney's Office and provided detailed
17 information about the scheme and about the doctors'
18 connection to the scheme.

19 He went through records, gave a detailed
20 account, as only he as the leader of the scheme could,
21 and disclosed discussions and interactions he had with
22 the doctors, as only he, the leader of the scheme
23 could.

24 He was essentially truthful and he agreed to
25 testify against both the doctors in this case.

1 The fact that he who knew intimately the exact
2 nature of the relationship and knew all of the details
3 agreed to cooperate, was relayed to the doctors, and
4 it likely influenced their decision to plead guilty in
5 this case and both of of them did.

6 So at this point the government is
7 recommending a five-level downward departure, and that
8 would be a departure from the 39 down to a 34, just to
9 be clear because I know because of the cap there is
10 some -- there may be some question as to where to
11 start, but that is the downward departure the
12 government is seeking from the 39 to the 34, that
13 five-level downward departure.

14 THE COURT: Thank you.

15 I've considered the letter that you submitted,
16 and your motion, Mr. Gribko, as well as your comments,
17 and I'll make my findings with regard to the Torres
18 factors at this time.

19 As you've indicated, and as is apparent from
20 all that I have learned, Mr. Erwin was the leader of
21 this drug-trafficking scheme. As a result, obviously,
22 he was privy to the most information about it.

23 You have indicated that he did cooperate by
24 providing the government with information, including
25 medical files of conspirators, prescriptions,

1 reviewing them with you, that he agreed most
2 importantly to testify against the doctors, who
3 ultimately pled guilty, and that it was useful in
4 obtaining those guilty pleas.

5 The information he provided was corroborated
6 by documents, other information, and testimony that
7 was provided by other cooperators, and that therefore
8 was generally corroborated by your investigation.

9 You consider his cooperation to be important,
10 and it was timely, and as a result the Torres factors
11 are satisfied in that the information provided was
12 significant and useful. It was complete and reliable.
13 He did agree to testify as to the nature and extent.
14 There is no indication of a risk of harm. It is a
15 neutral factor; and it was timely.

16 As a result, I will grant the government's
17 motion for a 5K1.1 departure.

18 I've heard your recommendation, Mr. Gribko,
19 for a five-level departure. Certainly, you are aware
20 that we have spent the better part of this month
21 sentencing various individuals and I've provided
22 departures for a number of them pursuant to their
23 cooperation, and I'm well aware of the ranges that
24 have been given out based upon the kinds of
25 cooperation given.

1 While I do obviously have some concern given
2 Mr. Erwin's role, obviously he did provide information
3 that was important that perhaps others could not have
4 provided because only he could have been aware of as
5 the leader, and therefore I find it would merit the
6 five-level departure, which is a major significant in
7 my mind departure in this case for Mr. Erwin.

8 That would place him at a level 34. With a
9 criminal history category of 1, it places him at 151
10 to 188 months. To some extent almost a half departure
11 in time.

12 Are there any other applications for
13 departures or variances?

14 MR. GRIBKO: None from the government.

15 MR. MURPHY: None from the defense, your
16 Honor.

17 THE COURT: Then I'm ready to hear your
18 comments with regard to sentencing.

19 Mr. Murphy, I'll hear from you first.

20 MR. MURPHY: Yes, your Honor.

21 First of all, I believe your Honor should be
22 aware from the letters and the people in the courtroom
23 that there are people that believe, as I do, that
24 Chris is a salvageable human being.

25 He has had a strong outpouring of support not

1 only in the letters, but by the people who are here
2 present in court. All those people who wrote to your
3 Honor, as well as those present in court, recognize
4 the criminality that Chris in fact created by being
5 the leader of this operation.

6 Two letters do stand out in my mind for your
7 Honor's consideration, and they are by his wife
8 Allison whose candid comments I think do lay out her
9 feelings towards her husband with regard to how he has
10 in one level failed their marriage, but also
11 truthfully has been a strong parent and father of
12 their child, as well as a letter by an individual who
13 had an addiction problem and who Chris, as she points
14 out, attempted to help even though she was getting
15 oxycodone from him.

16 Mrs. Erwin and Ms. Hugg are willing to make
17 brief statements with regard to their situation with
18 regard to their husband and their friend after I've
19 finished my comments, your Honor.

20 He has been on pretrial release for two years
21 without any problems. Chris' crime never could have
22 happened if it wasn't for the two doctors and
23 particularly involved in this particular matter.

24 He doesn't have the ability to write
25 prescriptions. Am I attempting to belie the fact of

1 his participation and his active leadership in this
2 conspiracy? No.

3 However, he can't write a prescription and
4 from the Presentence Report your Honor can in fact
5 read that Dr. Lopresti for a two-year period from the
6 period between 2009 and December 2010 wrote
7 prescriptions, over 5,000 prescriptions for 275,000
8 tabs of oxycodone. Dr. Lahham for the same period
9 wrote 1300 prescriptions for 162,000 tabs of
10 oxycodone.

11 Chris cooperated almost immediately after his
12 arrest. His cooperation did lead to the pleas by Drs.
13 Lopresti and Lahham. He met with the government, as
14 your Honor has granted the 5K, but he did meet with
15 the government on numerous occasions, gave them all
16 the information he had, and relayed any and all
17 information that they requested.

18 There was other information he provided with
19 regard to other matters that didn't involve the
20 doctors that may have not led anywhere, but he was
21 ready, willing, and able to assist in any endeavor the
22 government wished him to.

23 He does take full responsibility for his
24 actions. Chris can give reasons as to what put him in
25 this particular situation, the loss of his dream job,

1 the financial failures of his business endeavors, and
2 in the end it was his decision to break the law. He
3 clearly recognizes that. Oddly enough Chris' only
4 financial success in the last however so years has
5 been his involvement with the oxycodone conspiracy.

6 He now realizes that none of his criminal
7 activity was worth it. Chris clearly realizes that he
8 hurt himself, his family, his son, Collin, who he
9 loves dearly who is 6-year-old and who he is the
10 primary caretaker for.

11 As noted in every letter received by your
12 Honor by every person who wrote about Chris, they show
13 and describe his abiding love of his son, Collin, and
14 his fear of exactly what will occur when he quite
15 properly is sentenced to a jail term as your Honor I
16 believe must in this particular situation.

17 I just wish your Honor would consider under
18 all the attendant circumstances as required by the
19 sentencing, 3553(a), what in fact an appropriate
20 sentence would be.

21 Your Honor should consider, as you are well
22 aware under the statute, a sentence that is sufficient
23 but not greater than necessary to achieve the purposes
24 of sentencing.

25 As you pointed out, Chris' Guideline numbers

1 are off the charts. He did face a maximum sentence of
2 20 years or 240 months.

3 I only as counsel have the benefit of Dr.
4 Lahham's sentence by your Honor of 9 years. Dr.
5 Lopresti awaits her sentence. But if cooperation is
6 to be rewarded, your Honor, I must respectfully
7 request that you consider the sentences given to Dr.
8 Lahham and what you eventually may give Dr. Lopresti
9 when you consider the appropriate sentence under the
10 Booker analysis for my client.

11 I further request that your Honor allow my
12 client to self-surrender to the Federal Bureau of
13 Prisons, and that you make a recommendation that Chris
14 be sentenced to a facility, if possible, at or near
15 his family here in New Jersey.

16 The recommendation for the self-surrender
17 allows him to be classified at a lower level as your
18 Honor is undoubtedly aware.

19 My hope would have been that your Honor could
20 sentence Mr. Erwin to a sentence lower than either
21 doctor because, while he was the leader of this
22 organization, they were certainly the catalysts that
23 provided the prescriptions to allow the pills to be
24 sold and distributed.

25 His wife would like to make a brief statement

1 as well as Dara Hugg, your Honor.

2 THE COURT: I'll hear from them at this time,
3 and then I'm in assuming Mr. Erwin wants to speak.
4 Correct?

5 MR. MURPHY: Yes he does, your Honor.

6 THE COURT: Provide your full name, please.

7 MS. ALLISON ERWIN: Allison Erwin.

8 Hello, your Honor. Thank you for the
9 opportunity to say something.

10 I know you've gotten my letter, and thank you
11 very much for reading it, so I won't take up too much
12 time. But I did want to personally explain that the
13 man who behaved in the way that brought him to this
14 court today is not the man that he has been for
15 20 years. It's not the man that he has been certainly
16 since the day he got arrested.

17 The day he got arrested I was seeing panic.
18 He was calm. It was over. It was finally over for
19 him. Over the past two years, he's explained it to me
20 and I've come to terms with his explanation that he
21 panicked, made horrible decisions, and then that panic
22 sort of turned to a certain amount of greed, and a
23 certain amount of descending into this world, and then
24 after a certain point he became trapped.

25 Once the realization of the reality of what

1 this was doing to young people in the community, it
2 hit him. But at that point he was in too deep as he
3 explained it to me. He couldn't get out if he tried
4 because they knew too much about him.

5 And in the end my sense is that, and he
6 explained it to me, that it was finally over and that
7 he would have to take what's coming to him and he
8 understands that.

9 He is not going to talk to you about not
10 taking responsibility. In fact, to the contrary, he's
11 going to talk about taking responsible for it. He is
12 humbled. He is changed. Is he flawed? Yes,
13 obviously, or we wouldn't be here. But over the
14 two years I've come to terms with his explanation.

15 What he is in addition to the things that you
16 have seen on paper that he has done, every father in
17 this court of course loves their child, but the bond
18 between Chris and Collin is something I've never seen.

19 It used to make me jealous, actually, it used
20 to make me a little bit jealous because I would be
21 going to work and sometimes when Collin would get a
22 boo-boo he would run to daddy instead of mommy and
23 that hurt a little bit. But in the end, it was one of
24 his parents and I had to sort of accept that, but it
25 was hard.

1 As a working mom leaving him home was only
2 bearable because he was with his other parent, his
3 daddy, and that made it a little bit easier to take.
4 Collin is the most well-adjusted, sweetest, wonderful
5 child in the world and a big part of that is because
6 of how Chris is with him.

7 I'm not going to go into the devastation. We
8 can all imagine what that is and I don't think I can
9 get through it if I tried. So I would just hope that
10 your Honor would consider that.

11 The people behind me here today are all here
12 in support of Chris. They are my family members and
13 my friends and Chris' family members his friends.
14 They are neighbors.

15 They are people who have been in our lives for
16 years, all of whom as I talked to them over the last
17 few years have had the same sort of continuum of
18 reaction, anger, fear, resentment, frustration over
19 Chris.

20 But in the end, at the end of the day, they
21 are here for him because they understand that the man
22 that they knew and the man that he has been since the
23 day he got arrested is not the man who behaved in the
24 way that is on paper in front of your your Honor.

25 I don't think any of us is asking for

1 forgiveness, I know Chris isn't, but only for
2 consideration of the man he was both before and after.

3 I would respectfully ask you for leniency and
4 for as much mercy as you see appropriate for the
5 father that he is to the sweetest little boy in the
6 world and the value that he has to all of our lives.

7 Thank you.

8 THE COURT: Thank you, Mrs. Erwin.

9 MR. MURPHY: Ms. Hugg.

10 MS. DARRA HUGG: Hi, your Honor. My name is
11 Darra Hugg.

12 I just want to restate what was in my letter.
13 Obviously, I'm nervous. I am a recovering drug
14 addict. And I don't think anybody sitting in this
15 room can say that without Chris I probably wouldn't be
16 here.

17 The whole time that I used -- he was selling
18 the pills, I would beg him for them, as did 80 percent
19 of the addicts. We would beg and plead, please,
20 please, and every day he would beg me to get off of
21 the drug, every single day.

22 And about two years ago I listened to him. I
23 did get off the drug. He's helped me build my life
24 back. He's helped my daughter. My daughter and his
25 son are best of friends and honestly I don't know

1 where I would be without him.

2 That's all I wanted to say. Thank you.

3 THE COURT: Thank you, Ms. Hugg.

4 MR. MURPHY: Mr. Erwin?

5 THE COURT: You can stay right there. There
6 is a microphone right there.

7 THE DEFENDANT: Okay.

8 Thank you for the opportunity to address the
9 Court. I will not insult anyone by using this time to
10 make excuses for my behavior. I take complete
11 responsibility for my actions.

12 But while there is no excuses for putting
13 myself in the position to devastate my son and my
14 family and ruining my own life, there are reasons, and
15 I hope taking a moment to explain these reasons will
16 allow you to understand that the actions that brought
17 me before this Court are not reflections of how the
18 way I live my life and they are also nowhere near the
19 person I had been since I was arrested.

20 In my early twenties, my parents went through
21 an ugly divorce and I had a terrible breakup with who
22 at the time I thought was the love of my life and I
23 became totally self-destructive.

24 At that time I was a criminal justice major in
25 college, on the waiting list for the San Diego Police

1 Department, with aspirations of a career in law
2 enforcement. But I became totally self-destructive.
3 I know the points aren't there, but you are aware of
4 the earlier, and I got arrested.

5 At that point, I didn't care what happened to
6 me. I think it's one of those things. I've always
7 had emotional problems and I went to a psychiatrist in
8 my teens, panic and depressed, whatever, you know, and
9 that led me to some sort of self-destructive behavior
10 which even when it was happening I didn't care. The
11 arrest of the person at 24, he might as well be a
12 different person than the arrest now.

13 When I got out of prison the first time, I
14 worked two jobs, walked, hitchhiked, took busses,
15 cabs, and eventually it led to a career at a newspaper
16 as a sports-writer which was my dream job because I
17 loved sports. I played athletics through high school
18 and some college.

19 The paper was a local paper, the Asbury Park
20 Press. It was bought by a large corporation. And if
21 you've ever seen a movie where a corporation overtakes
22 a small company and just guts it and mistreats people,
23 it was very similar to that.

24 Eventually, they fired one of my -- a lady on
25 Christmas Eve over the phone and she committed

1 suicide. Maybe within 3 to 6 months after, I wrote a
2 letter to corporate Human Resources saying that it was
3 despicable the way they treated people. It led to my
4 termination. I might as well have fired myself.

5 After that because of my previous conviction
6 in the '80s, I was unable to get another job. I was
7 applying at Home Depot. For a \$1.99, they could run
8 your background check. So I couldn't secure
9 employment.

10 My wife makes a decent living. We didn't have
11 a baby until later in life. We got married in our
12 mid-thirties. But a lot of it was to do because we
13 wanted to be financially stable and provide for the --
14 the key argument in most relationships are money. So
15 we waited to have the baby until we were financially
16 set, and unfortunately at the time Collin was an
17 in-vitro baby, so that was a little expense in itself.

18 I lost my job. I couldn't secure another one.
19 I had an investment property that was supposed to pay
20 for the in-vitro. I got involved with a family
21 member, my sister. She reneged on the deal and I was
22 paying two mortgages for 10 months. Not I, our family
23 together, and I went through my 401K and everything
24 and I was broke, and I got desperate and stupid and I
25 started this downward spiral.

1 I started selling marijuana thinking I would
2 just sell it to people over 30 years old and older and
3 it just -- one thing led to another and I was caught
4 in it.

5 And initially when I got involved with the
6 pills, I wasn't aware that they were like heroin. I
7 thought pills were for kids that wouldn't go to the
8 city to buy weed or coke. I didn't realize that it
9 was such an epidemic. I thought like sleeping pills.
10 Eventually -- I'm not going to insult you -- a month
11 or so into it I realized it. But greed and I guess
12 the thrill of the power kind of kept me in.

13 And when my wife says, you know, I was
14 trapped, I'm sure you probably rolled your eyes and
15 think that -- I figured there was such a paper trail
16 with this and the people involved are so vindictive
17 that you almost had to keep your enemies closer
18 than -- keep your friends close and your enemies
19 closer.

20 So it was like to appease people just so they
21 wouldn't tell on me and in the end I was told on
22 anyway. But that was the consideration in continuing
23 my involvement. It went on, my prices, what I sold
24 the pills for was just like I was almost giving them
25 away to -- not almost giving them away.

1 But if they had a street value of \$25, I was
2 selling them for like \$8 to \$10, you know, and I was
3 blowing money in casinos and I just got caught up in
4 the whole life style.

5 I know I got away from my notes. I'm sorry.

6 I know you have the responsibility to hand
7 down a sentence that protects society and punishes
8 those. My explanation and letters you have received
9 about me will help you to eliminate that I'm not a
10 danger to society.

11 My absence will not only devastate my young
12 son, but also significantly impact my wife who is able
13 to work as hard as she does as a primary earner in our
14 family because of my ability to help considerably with
15 childcare.

16 I certainly don't need to tell you or anyone
17 in this court what a Scrooge on society pills are. In
18 fact, my church has even started a public service
19 Awareness Program about it and I spoke to the
20 monsignor and offered to be a guest speaker or perhaps
21 a resource for the Awareness Program. It fits right
22 into my desire to do something to help combat this
23 problem among young people who have their whole lives
24 ahead of them.

25 I remember watching Scared Straight as a kid

1 and being terrified. I think that with the current
2 drugs and Governor Christie's report being an
3 epidemic, but this is white suburbia. I don't think
4 you can scare the kids straight. I think you have to
5 reason them straight maybe and I think that I could do
6 that.

7 I have always connected with young people.
8 I'm the guy who plays wiffle ball and
9 pick-up-basketball games with the kids in the
10 neighborhood. I'm pretty immature, like I'm a
11 Johnny-goofball, so I relate well to kids.

12 In closing, I would like to thank U.S.
13 Attorney Gribko and Morasco -- am I saying that
14 correct -- and the DEA for treating me with such
15 professionalism, and especially the two Tims, one is
16 in the court and the other one isn't. The day of the
17 arrest they hid their guns and let my wife and son
18 leave. It was really meaningful to me. I totally
19 appreciate that.

20 That's it. Thank you.

21 THE COURT: Thank you Mr. Erwin.

22 Mr. Gribko.

23 MR. GRIBKO: Your Honor, the government is of
24 course seeking a lengthy sentence in this case. In
25 fact, we are seeking not just a sentence within the

1 range, but the top of the range of 188 months.

2 The reasons for that are that Mr. Erwin wasn't
3 just part of this conspiracy; he was this conspiracy.
4 He created this whole conspiracy. He created addicts.
5 He took people who he knew to be addicted to drugs and
6 made them greater addicts, made them beholding to him
7 to get pills from doctors so that he could make money.

8 For every Ms. Hugg there are -- you've seen 20
9 something defendants in this case, 20 something
10 addicts who worked for Mr. Erwin. There were more,
11 there were many more, who were uncharged, and even
12 Ms. Hugg I believe, and she can correct me if I'm
13 wrong, went to Dr. Lahham with Mr. Erwin.

14 He created these people. He made them into
15 addicts, greater addicts than they were. He used them
16 and he made them into criminals. They are not victims
17 in the usual sense. They are criminals. But they are
18 criminals because Mr. Erwin used them.

19 He was this conspiracy. Every single script
20 came through him. It was his idea. He ran it. He's
21 more culpable than the doctors even because he knew
22 exactly what was going on. He knew exactly what these
23 people were doing with the scripts.

24 The doctors may have had an idea that these
25 people, many of whom had medical problems, had some

1 use of the drugs or were addicted to the drugs.
2 They've admitted that. But he knew exactly what was
3 going on. He knew that these people weren't even
4 getting the drugs. They were getting a small portion
5 and then they had to buy the rest back from him at a
6 higher price.

7 This wasn't even just pure greed. It was well
8 beyond that. It was not something desperate. It
9 wasn't anything stupid. It wasn't driven just by some
10 small financial decision. He made huge amounts of
11 money on this case. The street value of these pills
12 is astronomical and he was getting them a hundred at a
13 time every time he brought an addict to a doctor.

14 I want to briefly address his son because it's
15 been brought up sometimes.

16 The fact of the matter is, he's going to miss
17 a big chunk of Collin's life, no matter what the Court
18 does here. Even if the Court were to give him a
19 significant break, which I don't believe you should,
20 it was his decision to do so. It was his decision to
21 do this. He knows he's going to miss his life.

22 That should not be a reason for downwardly
23 varying in any way. As the best case scenario here,
24 even if this Court were to significantly go down,
25 Collin would be an adult by the time he gets out of

1 jail.

2 Finally, I want to end on one note and that is
3 the defendant's criminal history. He has zero
4 criminal history points which is astonishing because
5 he is the same person despite what he says now that
6 dealt drugs in 1988 and was given a significant
7 sentence at that time. It is the same person who did
8 a burglary back at that time.

9 He is the same person. This lapse of time
10 only caused him to not be a career offender here.
11 He's the same guy. He did it then, he did it now, and
12 unless a significance sentence is imposed he may even
13 do it again.

14 Your Honor, I don't have anything further.
15 The government is requesting the top of the range.

16 THE COURT: Thank you Mr. Gribko.

17 I'll proceed with my comments pursuant to the
18 3553(a) factors, and I'll begin with the nature and
19 circumstances of the offense.

20 I've had the opportunity over this last month
21 to speak often, several times a day, in fact, doing
22 all the sentencings that I have been doing of the
23 individuals who were involved in this conspiracy.
24 I've talked about oxycodone. I've talked about the
25 effect of this conspiracy on individuals.

1 And finally today I sentence you, Mr. Erwin,
2 who, yes, was the creator, originator of the scheme,
3 the leader of the scheme.

4 I will tell you, as well, that having seen a
5 number of the individuals who were your -- we've used
6 the term -- runners, those who were the addicts that
7 were brought to Dr. Lahham's office or brought to Dr.
8 Lopresti's office or brought to Atlantic City casinos
9 to meet with Dr. Lahham in his hotel room to get
10 prescriptions, those addicts are at the bottom of
11 society, many of them, little to their name, and you
12 used and abused them.

13 I think appropriately when Mr. Gribko said
14 they are now criminals, in a certain way they were
15 also victims. They were victimized by you creating
16 the scheme and using their weakness, their addiction
17 to perpetrate this crime. Some of them had no
18 criminal history at all, not just because of a lapse
19 of time, but they hadn't committed another crime.
20 Others may have. Now, they are all criminals and
21 addicts, some recovering.

22 You've indicated in your remarks today that
23 you finally recognize the effects of oxycodone. I
24 don't want to have my intelligence insulted, Mr.
25 Erwin. I don't think you ever didn't know what the

1 effects of oxycodone were. There is nobody out there
2 these days who doesn't understand the addictive powers
3 of painkillers. It's been in the news for years.
4 It's out there.

5 So your initial involvement, as you point out,
6 yes, was it agreed, was it you panicked -- I'm not
7 sure of the words -- panic turned to greed, you knew
8 what you were doing. You knew these were highly
9 addictive drugs. It wasn't after a month that you
10 learned it. You made your decisions deliberately. In
11 fact, it's the only way it works, because when you
12 supply an addictive drug, people want more.

13 This was widespread. I can't believe the
14 number of individuals that were involved in
15 effectuating this scheme, how many went to Lahham, to
16 Lopresti, that you brought there, that you instructed
17 others to drive them there, and come out with these
18 prescriptions, take them to the pharmacist, get them,
19 sell them on the street, and sell some of them back to
20 these same individuals or give them some of the pills,
21 and that was the reason they were in on this, to get
22 the pills and support their habit.

23 It is becoming unfortunately a drug of choice
24 of many, so highly addictive, so highly destructive.
25 You were a significant cog in the problem. You

1 created it, you maintained it, and maintained it for a
2 substantial period of time.

3 And to say you didn't know how to get out
4 because they knew too much about you and you would be
5 caught, you were going to get caught anyway at some
6 point. You didn't want to stop.

7 You tell me that you went to casinos. You
8 were gambling. You even used the word "power" in your
9 remarks, not just greed, but power. Doesn't that stop
10 you even to think about saying the idea of being
11 "powerful" in a drug conspiracy? It is appalling.

12 Some of those remarks will also go to the
13 history and characteristics are, but I'll get to be in
14 a moment.

15 The need for deterrence. You've already
16 referenced, and you've got no criminal history points
17 because it was back in 88 and the sentence was
18 completed in the '90s, but you've told me about why
19 you got involved in self-destructive behavior back in
20 1988.

21 You were convicted back then of burglary. You
22 were involved in a large conspiracy to distribute
23 cocaine. You received a very substantial state
24 sentence, 10 years, parole ineligibility of
25 four years. That says a lot because I know in the

1 state system those kinds of lengthy sentences are not
2 given out for first time offenders and that kind of
3 parole ineligibility. This was a large scheme.

4 Indeed, at least one or two of the individuals
5 I've already sentenced were also charged in that
6 scheme. You knew who to recruit, I guess. But the
7 prior conviction and receiving such a substantial
8 custodial term did not deter you years later from
9 committing this crime and heading up another
10 conspiracy.

11 Deterrence, yes, is a concern for this Court
12 as to you. Also, a general deterrence that the public
13 realize that committing this kind of crime will be
14 dealt with seriously and severely by the Court.

15 Turning to your history and characteristics.
16 I've already referenced the prior criminal matter. I
17 do note, it is documented in the report, that you've
18 had certain emotional issues over many years, anxiety
19 and depression and you've dealt with some mental
20 health providers in that regard.

21 But you had a stable marriage. You finally
22 had had a child and much is being made of the
23 relationship with your child. I do not in any way
24 doubt that you have been or attempted to be a good
25 father to your son and that there is a special

1 relationship.

2 You, though, involved yourself in this crime
3 after your son was born. You can't say it was a
4 wake-up call and you wanted out of this when your son
5 was born. You had that son when you committed these
6 acts. You knew what you were doing and you knew what
7 you were jeopardizing.

8 Unfortunately, Mr. Erwin, there is no kind way
9 to say it: You are a drug dealer. You were a drug
10 dealer in '88. You were a drug dealer in this decade.

11 I can tell you having sentenced over the last
12 20 plus years drug dealers many of them are wonderful
13 fathers. There are two lives. It doesn't surprise
14 me. I've seen it many times.

15 And while I have received many letters from
16 family, friends, community, you are an individual who
17 was educated, some college, were a writer, a sports
18 writer for a while, and certainly within the community
19 you've shown a good side.

20 But as I've said many times, and you are not
21 the exception, when I see someone who commits these
22 kinds of acts, there are two different people shown,
23 one that may be shown to your family and community and
24 the other when you engage in the criminal activity at
25 exactly the same time that you are out there playing

1 on the street with the kids.

2 And you are out there working a conspiracy to
3 distribute oxycodone to some of those young people,
4 not the ones you are playing with, but others, and
5 that's someone's child. Whether it was the children
6 or the adults that ultimately ended up with them, they
7 will now live with those addictions and how to recover
8 from them and that's a life-long problem, life-long.

9 Disparity of sentencing. Mr. Murphy, I take
10 great exception to your comment that he should receive
11 no more or less than the doctors in this case. He is
12 different than the doctors, yes. Do you need a doctor
13 to write the script? Yes.

14 They weren't necessarily familiar with all of
15 the extent of this conspiracy. He was. He
16 orchestrated it, he manipulated everyone in that
17 regard, and he found the doctors who were the easy
18 marks: Who do I think can write those prescriptions?
19 And I'll bring these people in and I'll pay them. And
20 those doctors, by the way, did not have convictions.
21 Mr. Erwin does.

22 So when I consider all the 3553(a) factors,
23 there is no doubt in my mind, but for the break that
24 the government has given on the 5K, I would have been
25 happy sending Mr. Erwin to even a higher sentence, the

1 top of the Guidelines is totally and absolutely
2 sufficient but not greater than necessary, the
3 188 months. That is what I will sentence him to.

4 I'll also impose a term of three years of
5 supervised release.

6 There will be an alcohol, drug testing, and
7 treatment provision, a mental health treatment, and
8 because of his disclosure with regard to gambling, I
9 am going to have a gambling restriction as well.

10 Sentence is as follows:

11 It is the judgment of the Court that the
12 defendant, Christopher Erwin, is hereby committed to
13 the custody of the Bureau of Prisons to be imprisoned
14 for a term of 188 months.

15 Upon release from imprisonment, defendant
16 shall be placed on supervised release for a term of
17 three years. Within 72 hours of release from the
18 custody of the Bureau of Prisons, defendant shall
19 report in person to the Probation Office in the
20 district to which he is released.

21 While on supervised release, defendant shall
22 not commit another federal, state, or local crime,
23 shall be prohibited from possessing a firearm or other
24 dangerous device, shall not possess an illegal
25 controlled substance, and shall comply with the other

1 standard conditions that have been adopted by the
2 Court.

3 Defendant must submit to one drug test within
4 15 days of commencement of supervised release and at
5 least two tests thereafter as determined by the
6 probation officer.

7 As I have indicated, the following special
8 conditions will apply: Alcohol, drug testing, and
9 treatment, mental health treatment, and the gambling
10 exclusion provisions.

11 I find defendant does not have the ability to
12 pay a fine. I will waive the fine in this case.

13 It is ordered that the defendant shall pay to
14 the United States a total special assessment of \$100,
15 which is due immediately.

16 I'll allow a voluntary surrender, and I'll
17 recommend a facility as close as possible to his
18 family.

19 Finally, I advise the parties of their right
20 to appeal this sentence.

21 Anything else, counsel?

22 MR. GRIBKO: No, your Honor.

23 MR. MURPHY: No, your Honor.

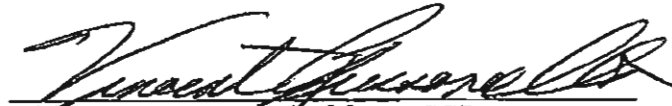
24 THE CLERK: All rise.

25 (Proceedings are concluded.)

C E R T I F I C A T E

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5 I, Vincent Russoniello, Official United States
6 Court Reporter and Certified Court Reporter of the
7 State of New Jersey, do hereby certify that the
8 foregoing is a true and accurate transcript of the
9 proceedings as taken stenographically by and before me
10 at the time, place and on the date hereinbefore set
11 forth.

12 I do further certify that I am neither a relative
13 nor employee nor attorney nor counsel of any of the
14 parties to this action, and that I am neither a
15 relative nor employee of such attorney or counsel and
16 that I am not financially interested in this action.
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22 
23 Vincent Russoniello, CCR
24 Certificate No. 675
Date: 9-13-13

\$	38 [1] - 6:20 39 [4] - 7:11, 7:15, 9:8, 9:12 3B1.1(a [1] - 6:22	achieve [1] - 14:23 action [2] - 37:14, 37:16 actions [3] - 13:24, 20:11, 20:16 active [1] - 13:1 activity [2] - 14:7, 33:24 acts [2] - 33:6, 33:22 added [2] - 6:6, 7:2 addict [2] - 19:14, 27:13 addicted [2] - 26:5, 27:1 addiction [2] - 12:13, 29:16 addictions [1] - 34:7 addictive [4] - 30:2, 30:9, 30:12, 30:24 addicts [9] - 19:19, 26:4, 26:6, 26:10, 26:15, 29:6, 29:10, 29:21 addition [1] - 17:15 additional [1] - 7:7 address [2] - 20:8, 27:14 addressed [1] - 5:11 adds [1] - 4:3 adjusted [2] - 7:3, 18:4 adjustment [2] - 6:24, 7:6 adjustments [1] - 6:21 admitted [1] - 27:2 adopted [1] - 36:1 adult [1] - 27:25 adults [1] - 34:6 advise [1] - 36:19 aggravated [1] - 6:3 ago [1] - 19:22 agree [1] - 10:13 agreed [6] - 4:3, 4:25, 8:24, 9:3, 10:1, 30:6 agreement [1] - 4:7 agreements [1] - 3:24 ahead [1] - 24:24 alcohol [2] - 35:6, 36:8 Allison [2] - 12:8, 16:7 ALLISON [1] - 16:7 allow [4] - 15:11, 15:23, 20:16, 36:16 allows [1] - 15:17 almost [5] - 11:10, 13:11, 23:17, 23:24, 23:25 AMERICA [1] - 1:5 amount [2] - 16:22, 16:23 amounts [1] - 27:10 AN [1] - 2:9	analysis [1] - 15:10 anger [1] - 18:18 anxiety [1] - 32:18 anyway [2] - 23:22, 31:5 appalling [1] - 31:11 apparent [1] - 9:19 appeal [1] - 36:20 appearances [1] - 3:4 appease [1] - 23:20 applicable [1] - 8:3 application [1] - 8:11 applications [1] - 11:12 apply [1] - 36:8 applying [1] - 22:7 appreciate [1] - 25:19 appropriate [4] - 6:23, 14:19, 15:9, 19:4 appropriately [1] - 29:13 argument [2] - 5:21, 22:14 arrest [5] - 6:8, 13:12, 21:11, 21:12, 25:17 arrested [5] - 16:16, 16:17, 18:23, 20:19, 21:4 Asbury [1] - 21:19 aspirations [1] - 21:1 assault [1] - 6:3 assessment [2] - 8:4, 36:14 assist [1] - 13:21 Assistant [1] - 3:7 assuming [1] - 16:3 astounding [1] - 28:4 astronomical [1] - 27:12 athletics [1] - 21:17 Atlantic [1] - 29:8 attempted [2] - 12:14, 32:24 attempting [1] - 12:25 attendant [1] - 14:18 ATTORNEY [1] - 1:17 Attorney [2] - 3:7, 25:13 attorney [2] - 37:13, 37:15 Attorney's [1] - 8:16 AUSA [1] - 1:18 awaits [1] - 15:5 aware [8] - 10:19, 10:23, 11:4, 11:22, 14:22, 15:18, 21:3, 23:6 Awareness [2] - 24:19, 24:21
\$1.99 [1] - 22:7 \$10 [1] - 24:2 \$100 [2] - 8:5, 36:14 \$25 [1] - 24:1 \$25,000 [1] - 8:1	4 401K [1] - 22:23 402 [1] - 1:12 42 [1] - 7:4		
,	5 5,000 [1] - 13:7 5K [2] - 13:14, 34:24 5K1.1 [2] - 8:11, 10:17		
'80s [1] - 22:6 '88 [1] - 33:10 '90s [1] - 31:18	6 6 [1] - 22:1 6-year-old [1] - 14:9 609)588-9516 [1] - 1:25 675 [1] - 37:24		
0	7 72 [1] - 35:17 753 [1] - 2:8		
08608 [1] - 1:12	8 8 [1] - 24:2 80 [1] - 19:18 88 [1] - 31:17		
1	9 9 [1] - 15:4		
1 [5] - 7:14, 7:16, 8:1, 11:9 10 [2] - 22:22, 31:24 12-364 [1] - 1:2 12th [1] - 8:14 1300 [1] - 13:9 15 [1] - 36:4 151 [1] - 11:9 162,000 [1] - 13:9 188 [4] - 11:10, 26:1, 35:3, 35:14 1988 [2] - 28:6, 31:20	A abiding [1] - 14:13 ability [3] - 12:24, 24:14, 36:11 able [2] - 13:21, 24:12 ABOVE [1] - 2:11 ABOVE-ENTITLED [1] - 2:11 absence [1] - 24:11 absolutely [1] - 35:1 abundance [1] - 4:13 abused [1] - 29:12 accept [1] - 17:24 acceptance [1] - 7:6 account [1] - 8:20 accurate [2] - 6:8, 37:8 ACCURATE [1] - 2:9		
2			
20 [7] - 7:17, 7:20, 15:2, 16:15, 26:8, 26:9, 33:12 2009 [1] - 13:6 2010 [1] - 13:6 2013 [2] - 1:7, 8:14 24 [1] - 21:11 240 [2] - 7:19, 15:2 25 [1] - 1:7 262 [1] - 7:18 275,000 [1] - 13:7 28 [1] - 2:8			
3			
3 [1] - 22:1 30 [1] - 23:2 32.2 [2] - 4:11, 4:15 327 [1] - 7:18 34 [3] - 9:8, 9:12, 11:8 3553(a [3] - 14:19, 28:18, 34:22			

B			
baby [3] - 22:11, 22:15, 22:17 background [1] - 22:8 ball [1] - 25:8 base [1] - 6:19 based [3] - 5:21, 6:19, 10:24 basis [1] - 8:13 basketball [1] - 25:9 BE [1] - 2:9 Beach [1] - 3:9 BEACH [1] - 3:10 bearable [1] - 18:2 became [3] - 16:24, 20:23, 21:2 becoming [1] - 30:23 beg [3] - 19:18, 19:19, 19:20 begin [3] - 3:20, 6:17, 28:18 behalf [4] - 1:18, 1:20, 3:8, 5:6 behaved [2] - 16:13, 18:23 behavior [3] - 20:10, 21:9, 31:19 behind [1] - 18:11 beholding [1] - 26:6 belie [1] - 12:25 benefit [1] - 15:3 best [2] - 19:25, 27:23 better [1] - 10:20 between [2] - 13:6, 17:18 beyond [2] - 6:10, 27:8 big [2] - 18:5, 27:17 billed [1] - 6:2 bit [3] - 17:20, 17:23, 18:3 blowing [1] - 24:3 bond [1] - 17:17 boo [2] - 17:22 boo-boo [1] - 17:22 Booker [1] - 15:10 born [2] - 33:3, 33:5 bottom [1] - 29:10 bought [1] - 21:20 boy [1] - 19:5 break [3] - 14:2, 27:19, 34:23 breakup [1] - 20:21 brief [2] - 12:17, 15:25	briefly [1] - 27:14 bring [1] - 34:19 brings [1] - 7:3 broke [1] - 22:24 brought [8] - 16:13, 20:16, 27:13, 27:15, 29:7, 29:8, 30:16 build [1] - 19:23 Bureau [3] - 15:12, 35:13, 35:18 burglary [2] - 28:8, 31:21 business [1] - 14:1 busses [1] - 21:14 buy [2] - 23:8, 27:5 BY [1] - 1:18	characteristics [2] - 31:13, 32:15 charge [1] - 5:12 charged [2] - 5:22, 32:5 charts [1] - 15:1 check [1] - 22:8 child [6] - 12:12, 17:17, 18:5, 32:22, 32:23, 34:5 childcare [1] - 24:15 children [1] - 34:5 choice [1] - 30:23 Chris [14] - 11:24, 12:4, 12:13, 13:11, 13:24, 14:7, 14:12, 15:13, 17:18, 18:6, 18:12, 18:19, 19:1, 19:15 Chris' [4] - 12:21, 14:3, 14:25, 18:13 Christie's [1] - 25:2 Christmas [1] - 21:25 CHRISTOPHER [1] - 1:7 Christopher [2] - 3:13, 35:12 chunk [1] - 27:17 church [1] - 24:18 circumstances [2] - 14:18, 28:19 City [1] - 29:8 city [1] - 23:8 CLARKSON [1] - 1:11 classified [1] - 15:17 clear [1] - 9:9 clearly [4] - 6:3, 6:24, 14:3, 14:7 CLERK [2] - 3:2, 36:24 client [4] - 5:8, 5:21, 15:10, 15:12 close [2] - 23:18, 36:17 closer [2] - 23:17, 23:19 closing [1] - 25:12 cocaine [1] - 31:23 cog [1] - 30:25 coke [1] - 23:8 college [3] - 20:25, 21:18, 33:17 Collin [7] - 14:8, 14:13, 17:18, 17:21, 18:4, 22:16, 27:25 Collin's [1] - 27:17 combat [1] - 24:22 coming [1] - 17:7 commencement [1] - 36:4	comment [1] - 34:10 comments [5] - 9:16, 11:18, 12:8, 12:19, 28:17 commit [1] - 35:22 commits [1] - 33:21 committed [4] - 21:25, 29:19, 33:5, 35:12 committing [2] - 32:9, 32:13 community [4] - 17:1, 33:16, 33:18, 33:23 company [1] - 21:22 complete [2] - 10:12, 20:10 completed [1] - 31:18 compliance [1] - 4:10 comply [2] - 4:15, 35:25 concern [2] - 11:1, 32:11 concluded [1] - 36:25 conditions [2] - 36:1, 36:8 conduct [1] - 4:4 connected [1] - 25:7 connection [2] - 3:17, 8:18 consent [2] - 3:21, 4:8 consider [7] - 10:9, 14:17, 14:21, 15:7, 15:9, 18:10, 34:22 considerably [1] - 24:14 consideration [3] - 12:7, 19:2, 23:22 considered [1] - 9:15 consistent [1] - 3:23 conspiracy [15] - 3:18, 7:2, 13:2, 14:5, 26:3, 26:4, 26:19, 28:23, 28:25, 31:11, 31:22, 32:10, 34:2, 34:15 conspirators [1] - 9:25 continuing [1] - 23:22 continuum [1] - 18:17 contrary [1] - 17:10 controlled [1] - 35:25 convicted [1] - 31:21 conviction [3] - 8:5, 22:5, 32:7 convictions [1] - 34:20 cooperate [2] - 9:3, 9:23 cooperated [1] - 13:11 cooperation [5] - 10:9, 10:23, 10:25, 13:12,
	C		
	cabs [1] - 21:15 calculating [1] - 6:17 calm [1] - 16:18 candid [1] - 12:8 cap [1] - 9:9 capped [1] - 7:19 care [2] - 21:5, 21:10 career [3] - 21:1, 21:15, 28:10 caretaker [1] - 14:10 case [9] - 8:25, 9:5, 11:7, 25:24, 26:9, 27:11, 27:23, 34:11, 36:12 casinos [3] - 24:3, 29:8, 31:7 catalysts [1] - 15:22 category [3] - 7:14, 7:16, 11:9 caught [4] - 23:3, 24:3, 31:5 caused [1] - 28:10 caution [1] - 4:13 CCR [3] - 1:24, 2:14, 37:23 certain [5] - 16:22, 16:23, 16:24, 29:14, 32:18 certainly [5] - 10:19, 15:22, 16:15, 24:16, 33:18 Certificate [1] - 37:24 Certified [1] - 37:6 CERTIFIED [1] - 2:9 certify [2] - 37:7, 37:12 change [2] - 4:4, 4:23 changed [1] - 17:12		

15:5 cooperators [1] - 10:7 corporate [1] - 22:2 corporation [2] - 21:20, 21:21 correct [4] - 5:15, 16:4, 25:14, 26:12 corroborated [2] - 10:5, 10:8 counsel [9] - 3:8, 3:24, 5:2, 5:5, 8:6, 15:3, 36:21, 37:13, 37:15 count [4] - 3:17, 3:23, 4:24, 8:5 County [1] - 6:1 course [3] - 4:5, 17:17, 25:24 COURT [24] - 1:1, 1:25, 2:15, 3:3, 3:11, 3:15, 4:16, 4:19, 5:17, 6:6, 6:10, 6:14, 8:16, 7:10, 8:10, 9:14, 11:17, 16:2, 16:6, 19:8, 20:3, 20:5, 25:21, 28:16 Court [15] - 4:9, 5:11, 5:16, 8:14, 20:9, 20:17, 27:17, 27:18, 27:24, 32:11, 32:14, 35:11, 36:2, 37:6 court [9] - 3:1, 5:12, 5:23, 12:2, 12:3, 16:14, 17:17, 24:17, 25:16 COURTHOUSE [1] - 1:11 courtroom [1] - 11:22 created [5] - 12:4, 26:4, 26:14, 31:1 creating [1] - 29:15 creator [1] - 29:2 crime [7] - 12:21, 29:17, 29:19, 32:9, 32:13, 33:2, 35:22 CRIMINAL [1] - 1:2 criminal [16] - 4:4, 5:20, 6:7, 7:12, 7:13, 7:14, 7:16, 11:9, 14:6, 20:24, 28:3, 28:4, 29:18, 31:16, 32:16, 33:24 criminality [1] - 12:4 criminals [5] - 26:16, 26:17, 26:18, 29:14, 29:20 culpable [1] - 26:21 current [1] - 25:1	custodial [1] - 32:8 custody [2] - 35:13, 35:18 D daddy [2] - 17:22, 18:3 danger [1] - 24:10 dangerous [1] - 35:24 Dara [1] - 16:1 DARRA [1] - 19:10 Darra [1] - 19:11 date [1] - 37:10 Date [1] - 37:24 daughter [2] - 19:24 days [2] - 30:2, 36:4 DEA [2] - 3:9, 25:14 deal [1] - 22:21 dealer [3] - 33:9, 33:10 dealers [1] - 33:12 dealt [3] - 28:6, 32:14, 32:19 dearly [1] - 14:9 decade [1] - 33:10 December [1] - 13:6 decent [1] - 22:10 decision [5] - 9:4, 14:2, 27:10, 27:20 decisions [2] - 16:21, 30:10 deep [1] - 17:2 defendant [10] - 3:1, 3:25, 4:6, 35:12, 35:15, 35:18, 35:21, 36:3, 36:11, 36:13 Defendant [2] - 1:8, 1:20 DEFENDANT [1] - 20:7 defendant's [1] - 28:3 defendants [1] - 26:9 defense [3] - 5:5, 6:14, 11:15 deliberately [1] - 30:10 Department [1] - 21:1 departure [10] - 8:11, 9:7, 9:8, 9:11, 9:13, 10:17, 10:19, 11:6, 11:7, 11:10 departures [2] - 10:22, 11:13 Depot [1] - 22:7 depressed [1] - 21:8 depression [1] - 32:19 descending [1] - 16:23	describe [1] - 14:13 desire [1] - 24:22 desperate [2] - 22:24, 27:8 despicable [1] - 22:3 despite [1] - 28:5 destructive [5] - 20:23, 21:2, 21:9, 30:24, 31:19 detailed [2] - 8:16, 8:19 details [1] - 9:2 deter [1] - 32:8 determined [1] - 36:5 deterrence [3] - 31:15, 32:11, 32:12 devastate [2] - 20:13, 24:11 devastation [1] - 18:7 device [1] - 35:24 Diego [1] - 20:25 difference [1] - 6:7 different [3] - 21:12, 33:22, 34:12 disagreement [1] - 8:6 disclosed [1] - 8:21 disclosure [1] - 35:8 discussions [1] - 8:21 dismissal [2] - 5:12, 6:2 dismissed [1] - 5:23 disparity [1] - 34:9 distribute [4] - 3:18, 3:19, 31:22, 34:3 distributed [1] - 15:24 district [1] - 35:20 DISTRICT [2] - 1:1, 1:1 divorce [1] - 20:21 doctor [3] - 15:21, 27:13, 34:12 doctors [13] - 8:22, 8:25, 9:3, 10:2, 12:22, 13:20, 26:7, 26:21, 26:24, 34:11, 34:12, 34:17, 34:20 doctors' [1] - 8:17 documented [1] - 32:17 documents [1] - 10:6 done [1] - 17:16 doubt [2] - 32:24, 34:23 down [3] - 9:8, 24:7, 27:24 downward [4] - 9:7, 9:11, 9:13, 22:25 downwardly [1] - 27:22 Dr [10] - 13:5, 13:8, 15:3,	15:4, 15:7, 15:8, 26:13, 29:7, 29:9 dream [2] - 13:25, 21:16 drive [1] - 30:17 driven [1] - 27:9 Drs [1] - 13:12 drug [14] - 9:21, 19:13, 19:21, 19:23, 30:12, 30:23, 31:11, 33:9, 33:10, 33:12, 35:6, 36:3, 36:8 drug-trafficking [1] - 9:21 drugs [8] - 6:20, 25:2, 26:5, 27:1, 27:4, 28:6, 30:9 due [1] - 36:15 E early [1] - 20:20 earner [1] - 24:13 easier [1] - 18:3 EAST [1] - 1:12 easy [1] - 34:17 educated [1] - 33:17 effect [1] - 28:25 effects [2] - 29:23, 30:1 effectuating [1] - 30:15 either [1] - 15:20 eligible [1] - 7:22 eliminate [1] - 24:9 emotional [2] - 21:7, 32:18 employee [2] - 37:13, 37:15 employment [1] - 22:9 end [7] - 14:2, 17:5, 17:23, 18:20, 23:21, 28:2 endeavor [1] - 13:21 endeavors [1] - 14:1 ended [1] - 34:6 enemies [2] - 23:17, 23:18 enforcement [1] - 21:2 engage [1] - 33:24 entering [1] - 4:7 ENTITLED [1] - 2:11 epidemic [2] - 23:9, 25:3 ERWIN [2] - 1:7, 16:7 Erwin [25] - 3:14, 3:16, 4:22, 5:6, 6:24, 8:15,

4

9:20, 11:7, 12:16, 15:20, 16:3, 16:7, 19:8, 20:4, 25:21, 26:2, 26:10, 26:13, 26:18, 29:1, 29:25, 33:8, 34:21, 34:25, 35:12

Erwin's [1] - 11:2

especially [1] - 25:15

ESQUIRE [1] - 1:19

essence [1] - 8:15

essentially [1] - 8:24

Eve [1] - 21:25

event [1] - 4:25

eventually [4] - 15:8, 21:15, 21:24, 23:10

exact [1] - 9:1

exactly [5] - 14:14, 26:22, 27:2, 33:25

exception [2] - 33:21, 34:10

exclusion [1] - 36:10

excuses [2] - 20:10, 20:12

expense [1] - 22:17

explain [2] - 16:12, 20:15

explained [3] - 16:19, 17:3, 17:6

explanation [3] - 16:20, 17:14, 24:8

extent [3] - 10:13, 11:10, 34:15

eyes [1] - 23:14

F

face [1] - 15:1

faces [1] - 7:17

facility [2] - 15:14, 36:17

fact [13] - 5:21, 5:25, 9:1, 12:4, 12:25, 13:4, 14:19, 17:10, 24:18, 25:25, 27:16, 28:21, 30:11

factor [1] - 10:15

factors [4] - 9:18, 10:10, 28:18, 34:22

failed [1] - 12:10

failures [1] - 14:1

familiar [1] - 34:14

family [11] - 14:8, 15:15, 18:12, 18:13, 20:14, 22:20, 22:22, 24:14, 33:16, 33:23, 36:18

father [4] - 12:11, 17:16, 19:5, 32:25

fathers [1] - 33:13

fear [2] - 14:14, 18:18

federal [1] - 35:22

Federal [1] - 15:12

feelings [1] - 12:9

few [1] - 18:17

figured [1] - 23:15

files [1] - 9:25

final [1] - 5:15

finally [7] - 16:18, 17:6, 28:2, 29:1, 29:23, 32:21, 36:19

financial [3] - 14:1, 14:4, 27:10

financially [3] - 22:13, 22:15, 37:16

findings [1] - 9:17

fine [3] - 7:25, 36:12

finished [1] - 12:19

firearm [1] - 35:23

fired [2] - 21:24, 22:4

first [4] - 11:19, 11:21, 21:13, 32:2

FISHER [1] - 1:11

FISHMAN [1] - 1:17

fits [1] - 24:21

five [6] - 6:25, 7:22, 9:7, 9:13, 10:19, 11:6

five-level [4] - 9:7, 9:13, 10:19, 11:6

flawed [1] - 17:12

FLW [1] - 1:2

following [1] - 36:7

FOLLOWING [1] - 2:9

follows [1] - 35:10

FOR [1] - 1:1

foregoing [1] - 37:8

forfeiture [2] - 3:23, 4:24

forgiveness [1] - 19:1

formality [1] - 4:5

forth [3] - 4:12, 8:13, 37:11

four [3] - 6:24, 7:2, 31:25

FREDA [1] - 1:14

friend [1] - 12:18

friends [5] - 18:13, 19:25, 23:18, 33:16

front [1] - 18:24

frustration [1] - 18:18

full [2] - 13:23, 16:6

G

gambling [4] - 31:8, 35:8, 35:9, 36:9

games [1] - 25:9

general [1] - 32:12

generally [1] - 10:8

given [7] - 10:24, 10:25, 11:1, 15:7, 28:6, 32:2, 34:24

goofball [1] - 25:11

government [15] - 3:8, 5:4, 6:11, 6:12, 8:10, 9:6, 9:12, 9:24, 11:14, 13:13, 13:15, 13:22, 25:23, 28:15, 34:24

Government [1] - 1:18

government's [2] - 8:14, 10:16

Governor [1] - 25:2

grant [2] - 7:10, 10:16

granted [1] - 13:14

great [1] - 34:10

greater [4] - 14:23, 26:6, 26:15, 35:2

greed [5] - 16:22, 23:11, 27:7, 30:7, 31:9

GRIBKO [11] - 1:18, 3:6, 4:1, 4:17, 6:12, 7:9, 8:8, 8:12, 11:14, 25:23, 36:22

Gribko [10] - 3:7, 3:20, 4:19, 7:7, 9:16, 10:18, 25:13, 25:22, 28:16, 29:13

guess [2] - 23:11, 32:6

guest [1] - 24:20

Guideline [3] - 6:22, 8:1, 14:25

Guidelines [5] - 6:18, 7:18, 7:22, 7:24, 35:1

guilty [4] - 3:17, 9:4, 10:3, 10:4

guns [1] - 25:17

guts [1] - 21:22

guy [2] - 25:8, 28:11

H

habit [1] - 30:22

half [1] - 11:10

hand [1] - 24:6

happy [1] - 34:25

hard [2] - 17:25, 24:13

harm [1] - 10:14

heading [1] - 32:9

health [3] - 32:20, 35:7, 36:9

hear [3] - 11:17, 11:19, 16:2

heard [1] - 10:18

hearing [1] - 4:7

hello [1] - 16:8

help [4] - 12:14, 24:9, 24:14, 24:22

helped [2] - 19:23, 19:24

hereby [2] - 35:12, 37:7

hereinbefore [1] - 37:10

heroin [1] - 23:6

hi [1] - 19:10

hid [1] - 25:17

high [1] - 21:17

higher [2] - 27:6, 34:25

highly [3] - 30:8, 30:24

himself [1] - 14:8

history [13] - 5:20, 6:7, 7:12, 7:13, 7:14, 7:16, 11:9, 28:3, 28:4, 29:18, 31:13, 31:16, 32:15

hit [1] - 17:2

hitchhiked [1] - 21:14

home [1] - 18:1

Home [1] - 22:7

honestly [1] - 19:25

Honor [38] - 3:6, 3:12, 4:1, 5:9, 6:5, 6:9, 6:13, 6:15, 7:9, 8:8, 8:9, 8:12, 11:16, 11:20, 11:21, 12:3, 12:19, 13:4, 13:14, 14:12, 14:15, 14:17, 14:21, 15:4, 15:6, 15:11, 15:18, 15:19, 16:1, 16:5, 16:8, 18:10, 18:24, 19:10, 25:23, 28:14, 36:22, 36:23

Honor's [1] - 12:7

HONORABLE [1] - 1:14

hope [3] - 15:19, 18:9, 20:15

horrible [1] - 16:21

hotel [1] - 29:9

hours [1] - 35:17

huge [1] - 27:10

Hugg [5] - 16:1, 19:11, 20:3, 26:8, 26:12

hugg [2] - 12:16, 19:9

HUGG [1] - 19:10

Human [1] - 22:2 human [1] - 11:24 humbled [1] - 17:12 hundred [1] - 27:12 hurt [2] - 14:8, 17:23 husband [2] - 12:9, 12:18	intelligence [1] - 29:24 intent [1] - 3:18 interactions [1] - 8:21 interested [1] - 37:16 intimately [1] - 9:1 investigation [1] - 5:3 investigation [1] - 10:8 investment [1] - 22:19 involve [1] - 13:19 involved [9] - 12:23, 22:20, 23:5, 23:16, 28:23, 30:14, 31:19, 31:22, 33:2 involvement [3] - 14:5, 23:23, 30:5 IS [1] - 2:9 issue [1] - 5:10 issues [1] - 32:18 itself [1] - 22:17	33:22 knows [1] - 27:21	living [1] - 22:10 local [2] - 21:19, 35:22 looking [1] - 6:21 Lopresti [5] - 13:5, 13:13, 15:5, 15:8, 30:16 Lopresti's [1] - 29:8 loss [1] - 13:25 lost [1] - 22:18 love [2] - 14:13, 20:22 loved [1] - 21:17 loves [2] - 14:9, 17:17 lower [2] - 15:17, 15:20
I	J	L	M
idea [3] - 26:20, 26:24, 31:10 illegal [1] - 35:24 imagine [1] - 18:8 immature [1] - 25:10 immediately [2] - 13:11, 36:15 impact [1] - 24:12 important [2] - 10:9, 11:3 importantly [1] - 10:2 impose [1] - 35:4 imposed [1] - 28:12 imprisoned [1] - 35:13 imprisonment [2] - 7:17, 35:15 IN [1] - 2:10 in-vitro [2] - 22:17, 22:20 include [1] - 3:23 including [1] - 9:24 incorrect [1] - 5:18 indeed [2] - 7:1, 32:4 indicated [5] - 5:23, 9:19, 9:23, 29:22, 36:7 indication [1] - 10:14 individual [2] - 12:12, 33:16 individuals [8] - 7:1, 10:21, 28:23, 28:25, 29:5, 30:14, 30:20, 32:4 ineligibility [2] - 31:24, 32:3 influenced [1] - 9:4 information [5] - 3:22, 4:2, 4:12, 4:18, 4:20 information [10] - 8:17, 9:22, 9:24, 10:5, 10:6, 10:11, 11:2, 13:16, 13:17, 13:18 initial [1] - 30:5 instead [1] - 17:22 instructed [1] - 30:16 insult [2] - 20:9, 23:10 insulted [1] - 29:24	jail [2] - 14:15, 28:1 James [1] - 3:13 JAMES [1] - 1:19 jealous [2] - 17:19, 17:20 jeopardizing [1] - 33:7 Jersey [2] - 15:15, 37:7 JERSEY [2] - 1:1, 1:12 job [4] - 13:25, 21:16, 22:6, 22:18 jobs [1] - 21:14 Johnny [1] - 25:11 Johnny-goofball [1] - 25:11 Joseph [1] - 3:7 JOSEPH [1] - 1:18 Judge [1] - 3:10 judgment [2] - 4:8, 35:11 JULY [1] - 1:7 July [1] - 8:14 justice [1] - 20:24	lady [1] - 21:24 Lahham [6] - 13:8, 13:13, 15:8, 26:13, 29:9, 30:15 Lahham's [2] - 15:4, 29:7 lapse [2] - 28:9, 29:18 large [3] - 21:20, 31:22, 32:3 last [4] - 14:4, 18:16, 28:20, 33:11 law [2] - 14:2, 21:1 lay [1] - 12:8 lead [1] - 13:12 leader [8] - 6:25, 8:20, 8:22, 9:20, 11:5, 12:5, 15:21, 29:3 leadership [1] - 13:1 learned [2] - 9:20, 30:10 least [3] - 7:23, 32:4, 36:5 leave [1] - 25:18 leaving [1] - 18:1 led [5] - 13:20, 21:9, 21:15, 22:3, 23:3 left [1] - 5:10 lengthy [2] - 25:24, 32:1 leniency [1] - 19:3 less [1] - 34:11 letter [10] - 5:11, 5:16, 5:17, 8:14, 9:15, 12:12, 14:11, 16:10, 19:12, 22:2 letters [6] - 5:5, 11:22, 12:1, 12:6, 24:8, 33:15 level [14] - 6:19, 6:20, 7:3, 7:5, 7:8, 7:11, 7:15, 9:7, 9:13, 10:19, 11:6, 11:8, 12:10, 15:17 levels [2] - 6:24, 7:2 life [10] - 19:23, 20:14, 20:18, 20:22, 22:11, 24:4, 27:17, 27:21, 34:8 life-long [2] - 34:8 likely [1] - 9:4 list [1] - 20:25 listened [1] - 19:22 live [2] - 20:18, 34:7 lives [4] - 18:15, 19:6, 24:23, 33:13	maintained [2] - 31:1 major [2] - 11:6, 20:24 man [7] - 16:13, 16:14, 16:15, 18:21, 18:22, 18:23, 19:2 manager [1] - 6:25 mandatory [1] - 8:4 manipulated [1] - 34:16 marijuana [1] - 23:1 marks [1] - 34:18 marriage [2] - 12:10, 32:21 married [1] - 22:11 MATTER [1] - 2:11 matter [5] - 6:18, 12:23, 27:16, 27:17, 32:16 matters [1] - 13:19 maximum [4] - 7:17, 7:20, 7:25, 15:1 meaningful [1] - 25:18 medical [2] - 9:25, 26:25 meet [2] - 13:14, 29:9 member [1] - 22:21 members [2] - 18:12, 18:13 memoranda [1] - 5:4 mental [3] - 32:19, 35:7, 36:9 mercy [1] - 19:4 merit [1] - 11:5 met [1] - 13:13 microphone [1] - 20:6 mid [1] - 22:12 mid-thirties [1] - 22:12 might [2] - 21:11, 22:4 million [2] - 8:1, 8:2 mind [3] - 11:7, 12:6, 34:23
K	keep [2] - 23:17, 23:18 kept [1] - 23:12 key [1] - 22:14 kid [1] - 24:25 kids [5] - 23:7, 25:4, 25:9, 25:11, 34:1 kind [4] - 23:12, 32:2, 32:13, 33:8 kinds [3] - 10:24, 32:1,		

miss [2] - 27:16, 27:21 mistreats [1] - 21:22 mom [1] - 18:1 moment [2] - 20:15, 31:14 mommy [1] - 17:22 money [4] - 22:14, 24:3, 26:7, 27:11 monsignor [1] - 24:20 month [4] - 10:20, 23:10, 28:20, 30:9 months [9] - 7:18, 7:19, 11:10, 15:2, 22:1, 22:22, 26:1, 35:3, 35:14 Morasco [1] - 25:13 morning [3] - 3:6, 3:10, 3:12 mortgages [1] - 22:22 most [4] - 9:22, 10:1, 18:4, 22:14 motion [3] - 8:13, 9:16, 10:17 movie [1] - 21:21 moving [1] - 7:7 MR [23] - 3:6, 3:10, 3:12, 4:1, 4:17, 5:9, 6:5, 6:9, 6:12, 6:15, 7:9, 8:8, 8:9, 8:12, 11:14, 11:15, 11:20, 16:5, 19:9, 20:4, 25:23, 36:22, 36:23 MS [2] - 16:7, 19:10 municipal [2] - 5:12, 5:23 Murphy [5] - 3:13, 4:22, 5:7, 11:19, 34:9 MURPHY [13] - 1:19, 3:12, 5:9, 6:5, 6:9, 6:15, 8:9, 11:15, 11:20, 16:5, 19:9, 20:4, 36:23 must [3] - 14:16, 15:6, 36:3 MY [1] - 2:10	34:12 neighborhood [1] - 25:10 neighbors [1] - 18:14 nervous [1] - 19:13 neutral [1] - 10:15 never [2] - 12:21, 17:18 NEW [2] - 1:1, 1:12 New [2] - 15:15, 37:7 news [1] - 30:3 newspaper [1] - 21:15 NO [1] - 1:2 no-billed [1] - 6:2 nobody [1] - 30:1 none [4] - 6:12, 11:14, 11:15, 14:6 note [3] - 3:21, 28:2, 32:17 noted [1] - 14:11 notes [1] - 24:5 NOTES [1] - 2:10 notice [4] - 4:3, 4:5, 4:6, 4:11 nowhere [1] - 20:18 number [4] - 5:5, 10:22, 29:5, 30:14 numbers [1] - 14:25 numerous [1] - 13:15	older [1] - 23:2 once [1] - 16:25 one [15] - 5:10, 7:8, 7:21, 12:10, 17:23, 21:6, 21:24, 22:18, 23:3, 25:15, 25:16, 28:2, 32:4, 33:23, 36:3 ones [1] - 34:4 open [1] - 3:1 operation [1] - 12:5 opportunity [4] - 5:8, 16:9, 20:8, 28:20 orchestrated [1] - 34:16 order [1] - 3:21 ordered [1] - 36:13 organization [1] - 15:22 organizer [1] - 6:25 originator [1] - 29:2 otherwise [1] - 4:4 outpouring [1] - 11:25 overtakes [1] - 21:21 own [1] - 20:14 oxycodone [9] - 3:19, 12:15, 13:8, 13:10, 14:5, 28:24, 29:23, 30:1, 34:3	people [23] - 11:22, 11:23, 12:1, 12:2, 17:1, 18:11, 18:15, 21:22, 22:3, 23:2, 23:16, 23:20, 24:23, 25:7, 26:5, 26:14, 26:23, 26:25, 27:3, 30:12, 33:22, 34:3, 34:19 percent [1] - 19:18 perhaps [2] - 11:3, 24:20 period [4] - 13:5, 13:6, 13:8, 31:2 perpetrate [1] - 29:17 person [8] - 14:12, 20:19, 21:11, 21:12, 28:5, 28:7, 28:9, 35:19 personally [1] - 16:12 pharmacist [1] - 30:18 phone [1] - 21:25 pick [1] - 25:9 pick-up-basketball [1] - 25:9 pills [11] - 15:23, 19:18, 23:6, 23:7, 23:9, 23:24, 24:17, 26:7, 27:11, 30:20, 30:22 place [2] - 11:8, 37:10 placed [1] - 35:16 places [1] - 11:9 played [1] - 21:17 playing [2] - 33:25, 34:4 plays [1] - 25:8 plea [4] - 3:17, 3:23, 4:6, 4:7 plead [2] - 9:4, 19:19 pleas [2] - 10:4, 13:12 pled [1] - 10:3 plus [2] - 5:22, 33:12 point [6] - 9:6, 16:24, 17:2, 21:5, 30:5, 31:6 pointed [1] - 14:25 points [6] - 6:6, 7:13, 12:13, 21:3, 28:4, 31:16 Police [1] - 20:25 portion [1] - 27:4 position [1] - 20:13 possess [2] - 3:18, 35:24 possessing [1] - 35:23 possible [2] - 15:14, 36:17 power [3] - 23:12, 31:8, 31:9 powerful [1] - 31:11
N name [3] - 16:6, 19:10, 29:11 nature [3] - 9:2, 10:13, 28:18 near [2] - 15:14, 20:18 necessarily [1] - 34:14 necessary [3] - 6:5, 14:23, 35:2 need [3] - 24:16, 31:15,	O objections [2] - 6:11, 6:14 obtaining [1] - 10:4 obviously [5] - 9:21, 11:1, 11:2, 17:13, 19:13 occasions [1] - 13:15 occur [1] - 14:14 Ocean [1] - 6:1 oddly [1] - 14:3 OF [4] - 1:1, 1:5, 2:10 offender [1] - 28:10 offenders [1] - 32:2 offense [6] - 6:19, 6:22, 7:3, 7:11, 7:15, 28:19 offered [1] - 24:20 office [2] - 29:7, 29:8 Office [2] - 8:16, 35:19 officer [2] - 5:15, 36:6 Official [1] - 37:5 OFFICIAL [2] - 1:25, 2:15 often [1] - 28:21 old [1] - 23:2	P painkillers [1] - 30:3 panic [4] - 16:17, 16:21, 21:8, 30:7 panicked [2] - 16:21, 30:6 paper [5] - 17:16, 18:24, 21:19, 23:15 parent [2] - 12:11, 18:2 parents [2] - 17:24, 20:20 Park [1] - 21:19 parole [2] - 31:24, 32:3 part [3] - 10:20, 18:5, 26:3 participation [1] - 13:1 particular [3] - 12:23, 13:25, 14:16 particularly [1] - 12:23 parties [4] - 4:3, 4:14, 36:19, 37:14 past [1] - 16:19 PAUL [1] - 1:17 pay [4] - 22:19, 34:19, 36:12, 36:13 paying [1] - 22:22	

powers [1] - 30:2 prescription [1] - 13:3 prescriptions [9] - 9:25, 12:25, 13:7, 13:9, 15:23, 29:10, 30:18, 34:18 present [4] - 3:1, 3:14, 12:2, 12:3 Presentence [2] - 5:3, 13:4 Press [1] - 21:20 pretrial [1] - 12:20 pretty [1] - 25:10 previous [1] - 22:5 price [1] - 27:6 prices [1] - 23:23 primary [2] - 14:10, 24:13 printout [2] - 5:19, 6:4 prison [1] - 21:13 Prisons [3] - 15:13, 35:13, 35:18 privy [1] - 9:22 probation [3] - 5:15, 7:21, 36:6 Probation [1] - 35:19 problem [4] - 12:13, 24:23, 30:25, 34:8 problems [3] - 12:21, 21:7, 26:25 proceed [2] - 5:1, 28:17 proceedings [2] - 36:25, 37:9 professionalism [1] - 25:15 Program [2] - 24:19, 24:21 prohibited [1] - 35:23 properly [1] - 14:15 property [1] - 22:19 Prosecutor [1] - 6:1 protects [1] - 24:7 provide [3] - 11:2, 16:6, 22:13 provided [8] - 8:16, 10:5, 10:7, 10:11, 10:21, 11:4, 13:18, 15:23 providers [1] - 32:20 providing [1] - 9:24 provision [4] - 4:3, 4:5, 4:12, 35:7 provisions [1] - 36:10 psychiatrist [1] - 21:7 public [2] - 24:18, 32:12	punishes [1] - 24:7 pure [1] - 27:7 purposes [1] - 14:23 pursuant [3] - 6:22, 10:22, 28:17 PURSUANT [1] - 2:8 put [1] - 13:24 putting [1] - 20:12	referenced [3] - 6:3, 31:16, 32:16 referred [1] - 6:1 reflections [1] - 20:17 regard [12] - 3:22, 5:11, 6:8, 9:17, 11:18, 12:9, 12:17, 12:18, 13:19, 32:20, 34:17, 35:8 regarding [1] - 5:19 relate [1] - 25:11 relationship [3] - 9:2, 32:23, 33:1 relationships [1] - 22:14 relative [2] - 37:12, 37:15 relayed [2] - 9:3, 13:16 release [8] - 7:23, 12:20, 35:5, 35:15, 35:16, 35:17, 35:21, 36:4 released [1] - 35:20 reliable [1] - 10:12 remarks [3] - 29:22, 31:9, 31:12 remember [1] - 24:25 reneged [1] - 22:21 Report [2] - 5:3, 13:4 report [5] - 5:8, 6:11, 25:2, 32:17, 35:19 REPORTER [2] - 1:25, 2:15 Reporter [2] - 37:6 representing [1] - 3:13 request [2] - 15:7, 15:11 requested [1] - 13:17 requesting [1] - 28:15 require [1] - 4:14 required [1] - 14:18 requires [1] - 4:11 resentment [1] - 18:18 resource [1] - 24:21 Resources [1] - 22:2 respectfully [2] - 15:6, 19:3 responsibility [5] - 7:6, 13:23, 17:10, 20:11, 24:6 responsible [1] - 17:11 rest [1] - 27:5 restate [1] - 19:12 restitution [1] - 8:3 restriction [1] - 35:9 result [4] - 7:14, 9:21, 10:10, 10:16 revealed [1] - 5:25	review [1] - 5:8 reviewing [1] - 10:1 rewarded [1] - 15:6 rise [2] - 3:2, 36:24 risk [1] - 10:14 role [2] - 6:21, 11:2 rolled [1] - 23:14 room [2] - 19:15, 29:9 ruining [1] - 20:14 Rule [1] - 4:10 rule [2] - 4:11, 4:13 run [2] - 17:22, 22:7 runners [1] - 29:6 RUSSONIELLO [2] - 1:24, 2:14 Russoniello [3] - 2:14, 37:5, 37:23
	Q qualify [1] - 7:5 quantity [1] - 6:19 quite [1] - 14:14		S S/Vincent [1] - 2:14 salvageable [1] - 11:24 San [1] - 20:25 satisfied [1] - 10:11 scare [1] - 25:4 Scared [1] - 24:25 scenario [1] - 27:23 scheme [11] - 8:17, 8:18, 8:20, 8:22, 9:21, 29:2, 29:3, 29:16, 30:15, 32:3, 32:6 school [1] - 21:17 script [2] - 26:19, 34:13 scripts [1] - 26:23 Scrooge [1] - 24:17 seat [2] - 3:15, 6:16 seated [1] - 3:5 SECTION [1] - 2:8 secure [2] - 22:8, 22:18 see [2] - 19:4, 33:21 seeing [1] - 16:17 seeking [3] - 9:12, 25:24, 25:25 self [6] - 15:12, 15:16, 20:23, 21:2, 21:9, 31:19 self-destructive [4] - 20:23, 21:2, 21:9, 31:19 self-surrender [2] - 15:12, 15:16 sell [3] - 23:2, 30:19 selling [3] - 19:17, 23:1, 24:2 sending [1] - 34:25
	R ran [1] - 26:20 range [4] - 8:1, 26:1, 28:15 ranges [2] - 8:6, 10:23 reaction [1] - 18:18 read [2] - 8:7, 13:5 reading [1] - 16:11 ready [2] - 11:17, 13:21 reality [1] - 16:25 realization [1] - 16:25 realize [2] - 23:8, 32:13 realized [1] - 23:11 realizes [2] - 14:6, 14:7 really [1] - 25:18 reason [3] - 25:5, 27:22, 30:21 reasons [4] - 13:24, 20:14, 20:15, 26:2 receive [1] - 34:10 received [9] - 4:6, 4:20, 5:2, 5:3, 5:19, 14:11, 24:8, 31:23, 33:15 receiving [1] - 32:7 recognize [2] - 12:3, 29:23 recognizes [1] - 14:3 recommend [1] - 36:17 recommendation [3] - 10:18, 15:13, 15:16 recommending [1] - 9:7 record [1] - 5:25 records [1] - 8:19 recover [1] - 34:7 recovering [2] - 19:13, 29:21 recruit [1] - 32:6 reference [1] - 5:13		

sense [2] - 17:5, 26:17 sent [1] - 6:2 sentence [20] - 14:20, 14:22, 15:1, 15:4, 15:5, 15:9, 15:20, 24:7, 25:24, 25:25, 28:7, 28:12, 29:1, 31:17, 31:24, 34:25, 35:3, 35:10, 36:20 SENTENCE [1] - 1:6 sentenced [4] - 14:15, 15:14, 32:5, 33:11 sentences [2] - 15:7, 32:1 Sentencing [1] - 6:22 sentencing [7] - 3:16, 5:4, 10:21, 11:18, 14:19, 14:24, 34:9 sentencings [1] - 28:22 seriously [1] - 32:14 service [1] - 24:18 set [4] - 4:12, 8:13, 22:16, 37:10 several [1] - 28:21 severely [1] - 32:14 shall [7] - 35:16, 35:18, 35:21, 35:23, 35:24, 35:25, 36:13 show [2] - 6:4, 14:12 shown [3] - 33:19, 33:22, 33:23 side [1] - 33:19 sign [1] - 4:23 signed [1] - 4:21 significance [1] - 28:12 significant [5] - 10:12, 11:6, 27:19, 28:6, 30:25 significantly [2] - 24:12, 27:24 similar [1] - 21:23 single [3] - 8:5, 19:21, 26:19 sister [1] - 22:21 sitting [1] - 19:14 situation [3] - 12:17, 13:25, 14:16 sleeping [1] - 23:9 small [3] - 21:22, 27:4, 27:10 society [4] - 24:7, 24:10, 24:17, 29:11 sold [2] - 15:24, 23:23 someone [1] - 33:21 sometimes [2] - 17:21,	27:15 son [11] - 14:8, 14:13, 19:25, 20:13, 24:12, 25:17, 27:14, 32:25, 33:3, 33:4, 33:5 sorry [1] - 24:5 sort [4] - 16:22, 17:24, 18:17, 21:9 speaker [1] - 24:20 special [4] - 8:4, 32:25, 36:7, 36:14 spent [1] - 10:20 spiral [1] - 22:25 sports [3] - 21:16, 21:17, 33:17 sports-writer [1] - 21:16 stable [2] - 22:13, 32:21 stand [1] - 12:6 standard [1] - 36:1 start [1] - 9:11 started [3] - 22:25, 23:1, 24:18 State [1] - 37:7 state [3] - 31:23, 32:1, 35:22 STATE [1] - 1:12 statement [1] - 15:25 statements [1] - 12:17 States [3] - 3:7, 36:14, 37:5 states [1] - 8:15 STATES [4] - 1:1, 1:5, 1:11, 1:17 statute [4] - 7:16, 7:21, 7:25, 14:22 statutory [1] - 7:19 stay [1] - 20:5 STENOGRAPHIC [1] - 2:10 stenographically [1] - 37:9 stipulation [2] - 4:17, 4:21 stipulations [1] - 3:24 stop [2] - 31:6, 31:9 Straight [1] - 24:25 straight [2] - 25:4, 25:5 STREET [1] - 1:12 street [4] - 24:1, 27:11, 30:19, 34:1 strong [2] - 11:25, 12:11 stupid [2] - 22:24, 27:9 style [1] - 24:4	submit [1] - 36:3 submitted [2] - 4:8, 9:15 submitting [2] - 4:14, 4:17 substance [1] - 35:25 substantial [3] - 31:2, 31:23, 32:7 suburbia [1] - 25:3 success [1] - 14:4 sufficient [3] - 5:7, 14:22, 35:2 suicide [1] - 22:1 Superseding [5] - 3:22, 4:2, 4:12, 4:18, 4:20 supervised [5] - 7:23, 35:5, 35:16, 35:21, 36:4 supply [1] - 30:12 support [3] - 11:25, 18:12, 30:22 supposed [1] - 22:19 surprise [1] - 33:13 surrender [3] - 15:12, 15:16, 36:16 sweetest [2] - 18:4, 19:5 system [1] - 32:1	they've [1] - 27:2 thinking [1] - 23:1 thirties [1] - 22:12 three [4] - 7:23, 7:24, 35:4, 35:17 thrill [1] - 23:12 Tim [1] - 3:9 timely [2] - 10:10, 10:15 Tims [1] - 25:15 TITLE [1] - 2:8 TO [2] - 2:8, 2:9 today [4] - 16:14, 18:11, 29:1, 29:22 together [1] - 22:23 took [2] - 21:14, 26:5 top [4] - 7:1, 26:1, 28:15, 35:1 Torres [2] - 9:17, 10:10 total [2] - 7:15, 36:14 totally [4] - 20:23, 21:2, 25:18, 35:1 towards [1] - 12:9 trafficking [1] - 9:21 trail [1] - 23:15 TRANSCRIPT [2] - 1:5, 2:9 transcript [1] - 37:8 TRANSCRIPTION [1] - 2:10 trapped [2] - 16:24, 23:14 treated [1] - 22:3 treating [1] - 25:14 treatment [4] - 35:7, 36:9 TRENTON [1] - 1:12 tried [2] - 17:3, 18:9 true [1] - 37:8 truthful [1] - 8:24 truthfully [1] - 12:11 turned [2] - 16:22, 30:7 tuning [2] - 7:12, 32:15 twenties [1] - 20:20 two [15] - 7:5, 12:6, 12:20, 12:22, 13:5, 16:19, 17:14, 19:22, 21:14, 22:22, 25:15, 32:4, 33:13, 33:22, 36:5 two-level [1] - 7:5 two-year [1] - 13:5
T			
table [1] - 3:9 tabs [2] - 13:8, 13:9 teens [1] - 21:8 term [6] - 14:15, 29:6, 32:8, 35:4, 35:14, 35:16 termination [1] - 22:4 terms [2] - 16:20, 17:14 terrible [1] - 20:21 terrified [1] - 25:1 test [1] - 36:3 testify [3] - 8:25, 10:2, 10:13 testimony [1] - 10:6 testing [2] - 35:6, 36:8 tests [1] - 36:5 THE [28] - 1:1, 1:14, 2:8, 2:10, 3:2, 3:3, 3:11, 3:15, 4:16, 4:19, 5:17, 6:6, 6:10, 6:14, 6:16, 7:10, 8:10, 9:14, 11:17, 16:2, 16:6, 19:8, 20:3, 20:5, 20:7, 25:21, 28:16, 36:24 thereafter [1] - 36:5 therefore [2] - 10:7, 11:5			
U			
U.S [4] - 1:25, 2:15, 8:16,			

25:12 ugly [1] - 20:21 ultimately [2] - 10:3, 34:6 unable [1] - 22:6 uncharged [1] - 26:11 under [9] - 7:16, 7:17, 7:21, 7:22, 7:25, 8:11, 14:17, 14:22, 15:9 undoubtedly [1] - 15:18 unfortunately [3] - 22:16, 30:23, 33:8 UNITED [4] - 1:1, 1:5, 1:11, 1:17 United [3] - 3:7, 36:14, 37:5 unless [1] - 28:12 up [7] - 16:11, 24:3, 25:9, 27:15, 32:9, 33:4, 34:6 upward [1] - 6:23 USC [1] - 2:8 USDJ [1] - 1:14 useful [2] - 10:3, 10:12 usual [1] - 26:17	weed [1] - 23:8 well-adjusted [1] - 18:4 white [1] - 25:3 whole [4] - 19:17, 24:4, 24:23, 26:4 widespread [1] - 30:13 wife [6] - 12:7, 15:25, 22:10, 23:13, 24:12, 25:17 wiffle [1] - 25:8 willing [2] - 12:16, 13:21 wish [2] - 3:21, 14:17 wished [1] - 13:22 WOLFSON [1] - 1:14 wonderful [2] - 18:4, 33:12 word [1] - 31:8 words [1] - 30:7 works [1] - 30:11 world [3] - 16:23, 18:5, 19:6 worth [1] - 14:7 write [4] - 12:24, 13:3, 34:13, 34:18 writer [3] - 21:16, 33:17, 33:18 wrote [5] - 12:2, 13:6, 13:9, 14:12, 22:1
V	Y
value [3] - 19:6, 24:1, 27:11 variances [1] - 11:13 various [1] - 10:21 varying [1] - 27:23 version [1] - 5:15 victimized [1] - 29:15 victims [2] - 26:16, 29:15 Vincent [2] - 37:5, 37:23 VINCENT [2] - 1:24, 2:14 vindictive [1] - 23:16 vitro [2] - 22:17, 22:20 voluntary [1] - 36:16	year [1] - 13:5 years [24] - 7:17, 7:20, 7:22, 7:23, 7:24, 12:20, 14:4, 15:2, 15:4, 16:15, 16:19, 17:14, 18:16, 18:17, 19:22, 23:2, 30:3, 31:24, 31:25, 32:8, 32:18, 33:12, 35:4, 35:17 young [5] - 17:1, 24:11, 24:23, 25:7, 34:3 yourself [1] - 33:2
W	Z
waited [1] - 22:15 waiting [1] - 20:25 waive [1] - 36:12 waived [1] - 4:10 wake [1] - 33:4 wake-up [1] - 33:4 walked [1] - 21:14 wants [1] - 16:3 watching [1] - 24:25 weakness [1] - 29:16 weapon [4] - 5:13, 5:14, 5:22, 6:4	zero [1] - 28:3



U.S. Department of Justice

*United States Attorney
District of New Jersey*

R. Joseph Gribko

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July 12, 2013

NOT ELECTRONICALLY FILED

Honorable Freda L. Wolfson
United States District Judge
Clarkson S. Fisher U.S. Courthouse
and Federal Building
402 E. State Street
Trenton, New Jersey 08608

Re: *United States v. Christopher Erwin*
Crim. No. 12-364-001

Dear Judge Wolfson:

Christopher Erwin is scheduled to be sentenced by Your Honor on July 25, 2013, at 11:00 a.m. In anticipation of this sentencing, the United States respectfully submits this letter in support of its motion for a downward departure from the otherwise applicable Sentencing Guidelines range. This motion is being made pursuant to section 5K1.1 of the Sentencing Guidelines, and it results from Christopher Erwin's substantial assistance in the investigation and prosecution of others who have committed criminal offenses.

Christopher Erwin has complied with his plea and cooperation agreement, having pleaded guilty before Your Honor in 2012. More importantly, he has cooperated with the Government and provided important information and assistance, which contributed to the prosecution and conviction of his co-conspirators, most notably Dr. Jacqueline Lopresti and Dr. Hassan Lahham. It is to this cooperation that the remainder of this letter will be addressed.

A. Standard Under U.S.S.G. § 5K1.1

The standard for determining downward departure motions made by the United States based on the cooperation of a defendant is set forth in section 5K1.1 of the Sentencing Guidelines. Section 5K1.1 provides:

Hon. Freda L. Wolfson
July 12, 2013

Page 2 of 4

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

- (a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:
 - (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
 - (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
 - (3) the nature and extent of the defendant's assistance;
 - (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
 - (5) the timeliness of the defendant's assistance.

See also United States v. Torres, 251 F.3d 138 (3d Cir.), cert. denied, 534 U.S. 936 (2001).

According to the Third Circuit in Torres, "a sentencing judge is not confined to section 5K1.1's enumerated factors." However, the sentencing judge is required "to provide a specific statement explaining what factors he or she applied and the role these factors played in the sentencing determination." Id. at 146. Additionally, the Third Circuit went on to state that the sentencing judge must "conduct an individual, fact-specific analysis when determining the extent of a defendant's substantial assistance. Finally, [the sentencing judge has an] obligation to communicate that analysis to the respective parties." Id. at 146.

Consistent with the decision in Torres, in ruling on the Government's motion for a downward departure under § 5K1.1, the Court must conduct a qualitative analysis and must examine and make specific findings concerning section 5K1.1's enumerated factors, as well as explain its consideration of any factors outside the non-exhaustive factors listed in section 5K1.1 Id. at 147.

Hon. Freda L. Wolfson
July 12, 2013

Page 3 of 4

B. The Cooperation of Christopher Erwin

As set forth in the Pre-Sentence Report ("P.S.R."), in 2009 and 2010, Christopher Erwin devised a scheme by which he obtained large amounts of oxycodone by having individuals (the "Runners") obtain prescriptions from doctors Lopresti and Lahham (the "Doctors"), then obtain oxycodone pills from pharmacies with those prescriptions, and then provide those oxycodone pills to Erwin or people working for him in exchange for a small amount of the pills or cash.

As the leader of this drug-trafficking scheme, Erwin is responsible for all of the prescriptions illegally obtained in connection with the conspiracy. This amounted to 6,912 grams of oxycodone, which carries a Base Offense Level of 38. (P.S.R. ¶ 116). In addition, he agreed to a four-point enhancement for his role as an organizer. (P.S.R. ¶ 117). Based on a total offense level of 39 (after acceptance of responsibility) and a criminal history category of I, the guideline range for imprisonment is 262 to 327 months, capped by the statutory maximum of 240 months. (P.S.R. ¶ 187).

After his arrest, Christopher Erwin agreed to plead guilty and to cooperate with the Government. Erwin's cooperation included meeting with the Government at debriefing sessions at which he was questioned extensively by representatives of the Government. During these meetings, Erwin described his role in the conspiracy and he answered questions about his dealings with other participants, including Dr. Lopresti and Dr. Lahham. He accepted responsibility for his criminal activities. Throughout the course of his cooperation, Erwin also reviewed and explained documents, including his records, medical files of conspirators, and the prescriptions that he and others received. Finally and most importantly, Christopher Erwin agreed to testify against the Doctors. The fact that Erwin agreed to testify was disclosed to the Doctors and was useful in obtaining guilty pleas from Dr. Lopresti and Dr. Lahham.

The information Christopher Erwin provided was corroborated by documents, by the information and testimony provided by other cooperators and by the facts and circumstances of the conspiracy. In sum, the information he provided was generally corroborated by further investigation.

Hon. Freda L. Wolfson
July 12, 2013

Page 4 of 4

Christopher Erwin's cooperation was also important and timely. First, the information he provided corroborated the information provided by other coconspirators, thus giving the Government further confidence in the accuracy of that information. Second, his review of the documents was, along with similar reviews by other cooperating witnesses, important to the Government's prosecution of the Doctors. Finally, the fact that Erwin agreed to testify against the Doctors was useful in obtaining guilty pleas from Dr. Lopresti and Dr. Lahham.

C. Conclusion

Cooperation by defendants in pharmaceutical diversion cases, is critical to the Government's efforts to address such crimes and bring their participants to justice. When a defendant foregoes his right to contest the charges against him and chooses to cooperate with the Government, the Government believes that he should gain a benefit from that cooperation. That is why the Government brings this motion. Moreover, the Government believes that a benefit to one such as Erwin also redounds to the benefit of the Government, as it sends a message to future potential defendants that cooperation can have a meaningful impact on the eventual penalties for their crimes.

Accordingly, the Government respectfully requests that the Court grant its motion for a downward departure from the otherwise applicable sentencing guidelines range and that the Court take Christopher Erwin's cooperation into account in mitigation of sentence.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

s/ R. Joseph Gribko
By: R. JOSEPH GRIBKO
Assistant United States Attorney

cc: James R. Murphy, Esq.
Donald Martenz, U.S.P.O.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 12-364 (FLW)

1

UNITED STATES OF AMERICA

v.

CHRISTOPHER ERWIN,
Defendant

:
: TRANSCRIPT OF
: SENTENCE
:
:
: JULY 25, 2013
:
:
:

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ

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

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: R. JOSEPH GRIBKO, AUSA
On behalf of the Government

JAMES R. MURPHY, ESQUIRE
On behalf of the Defendant

* * * * *
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER
(609) 588-9516

C E R T I F I C A T I O N

PURSUANT TO SECTION 753, TITLE 28, USC, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

A handwritten signature in cursive script, reading "Vincent Russoniello".

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court, defendant present.)

2 THE CLERK: All rise.

3 THE COURT: Thank you.

4 I'll have the appearances. Everyone else may
5 be seated.

6 MR. GRIBKO: Good morning, your Honor.

7 Assistant United States Attorney Joseph Gribko
8 on behalf of the government; and with me at counsel
9 table is Tim Beach of the DEA.

10 MR. BEACH: Good morning, Judge.

11 THE COURT: Thank you.

12 MR. MURPHY: Good morning, your Honor.

13 James R. Murphy representing Christopher
14 Erwin, who is present to my right.

15 THE COURT: Thank you. Have a seat, please.

16 We are here for the sentencing of Mr. Erwin in
17 connection with his guilty plea to a count of
18 conspiracy to distribute and possess with intent to
19 distribute oxycodone.

20 Before we begin, Mr. Gribko, I understand that
21 you wish to note that there has been a consent order
22 with regard to a Superseding Information that will
23 include a forfeiture count consistent with the plea
24 stipulations and the prior agreements of counsel and
25 the defendant.

1 MR. GRIBKO: Yes, your Honor.

2 The Superseding Information to which the
3 parties have agreed only adds the notice provision.
4 It doesn't otherwise change the criminal conduct. And
5 of course the notice provision here is a formality
6 because the defendant received notice in the plea
7 agreement at the plea hearing and in entering the
8 consent judgment which was already submitted to the
9 Court.

10 He's also waived any compliance with Rule
11 32.2, which is the rule that requires that the notice
12 provision be set forth in the Superseding Information.
13 However, in an abundance of caution, since the rule
14 seems to require it, the parties are submitting it to
15 comply with 32.2.

16 THE COURT: All right.

17 MR. GRIBKO: And I'm submitting a stipulation
18 and a Superseding Information.

19 THE COURT: Thank you, Mr. Gribko.

20 I've received the Superseding Information as
21 well as the stipulation which has been signed by both
22 Mr. Murphy and Mr. Erwin.

23 I will sign it as well. The only change is
24 the forfeiture count which, as we said, has already
25 been agreed to, in any event.

1 We will proceed at this time.

2 I know that counsel have received the
3 Presentence Investigation Report. I have received
4 sentencing memoranda from both the government as well
5 as from defense counsel as well as a number of letters
6 on behalf of Mr. Erwin.

7 Mr. Murphy, have you had sufficient
8 opportunity to review the report with your client?

9 MR. MURPHY: Yes, I have your Honor.

10 There is only one issue left and I believe I
11 addressed that in a letter to the Court with regard to
12 a dismissal of a charge in municipal court that had a
13 reference to a weapon.

14 There was no weapon. I just ask that the
15 probation officer correct that in the final version. I
16 did that by letter to the Court.

17 THE COURT: I have the letter, but I think
18 that you are incorrect.

19 I have received a printout regarding the
20 criminal history and apparently -- I know your
21 argument was based on the fact your client didn't
22 think he was charged with a weapon, plus because you
23 indicated for the municipal court to have dismissed
24 it, it wouldn't have been.

25 In fact, what the record revealed, it was

1 referred to the Ocean County Prosecutor, it was
2 no-billed, and then sent back for a dismissal. It
3 clearly was referenced as an aggravated assault with a
4 weapon. I can show you the printout.

5 MR. MURPHY: That's not necessary, your Honor.

6 THE COURT: I know it added no points. It
7 makes no difference on the criminal history in that
8 regard, but as an arrest it is accurate.

9 MR. MURPHY: Thank you, your Honor.

10 THE COURT: Beyond that, are there any
11 objections to the report by the government?

12 MR. GRIBKO: None from the government, your
13 Honor.

14 THE COURT: Any objections from the defense?

15 MR. MURPHY: No, your Honor.

16 THE COURT: All right. You may have a seat.

17 Then I will begin by calculating the
18 Guidelines in this matter:

19 The base offense level based on the quantity
20 of drugs is a level 38.

21 Looking at adjustments for role in the
22 offense, pursuant to Sentencing Guideline 3B1.1(a), I
23 find that it is appropriate to have an upward
24 adjustment of four levels, since Mr. Erwin was clearly
25 an organizer, leader, and manager of more than five

1 individuals, and indeed he is at the top of this
2 conspiracy. The four levels will be added.

3 That brings it to an adjusted offense level of
4 42.

5 I find that he would qualify for the two-level
6 adjustment for acceptance of responsibility.

7 Mr. Gribko, are you moving for the additional
8 one level?

9 MR. GRIBKO: Yes, your Honor.

10 THE COURT: I will grant that, and, thus, the
11 offense level is a 39.

12 Turning to criminal history:

13 There are no criminal history points, and as a
14 result he is in a criminal history category of 1.

15 With a total offense level of 39 and a
16 criminal history category of 1, under the statute he
17 faces a maximum of 20 years imprisonment; while under
18 the Guidelines it would have been 262 to 327 months,
19 it is capped at 240 months because of the statutory
20 maximum of 20 years.

21 Probation under the statute is one to
22 five years; he is not eligible under the Guidelines.

23 Supervised release is at least three years;
24 the Guidelines is three years.

25 The fine under the statute is a maximum of

1 \$1 million; with a Guideline range of \$25,000 to \$1
2 million.

3 Restitution is not applicable here.

4 There is the mandatory special assessment of
5 \$100 for the single count of conviction.

6 Counsel, any disagreement with the ranges as I
7 have read them to you?

8 MR. GRIBKO: No, your Honor.

9 MR. MURPHY: No, your Honor.

10 THE COURT: I understand that the government
11 has an application for a departure and under 5K1.1.

12 MR. GRIBKO: Yes, your Honor.

13 The basis for that motion is set forth in the
14 government's letter to the Court of July 12th, 2013.

15 In essence, it states that Mr. Erwin came into
16 the U.S. Attorney's Office and provided detailed
17 information about the scheme and about the doctors'
18 connection to the scheme.

19 He went through records, gave a detailed
20 account, as only he as the leader of the scheme could,
21 and disclosed discussions and interactions he had with
22 the doctors, as only he, the leader of the scheme
23 could.

24 He was essentially truthful and he agreed to
25 testify against both the doctors in this case.

1 The fact that he who knew intimately the exact
2 nature of the relationship and knew all of the details
3 agreed to cooperate, was relayed to the doctors, and
4 it likely influenced their decision to plead guilty in
5 this case and both of of them did.

6 So at this point the government is
7 recommending a five-level downward departure, and that
8 would be a departure from the 39 down to a 34, just to
9 be clear because I know because of the cap there is
10 some -- there may be some question as to where to
11 start, but that is the downward departure the
12 government is seeking from the 39 to the 34, that
13 five-level downward departure.

14 THE COURT: Thank you.

15 I've considered the letter that you submitted,
16 and your motion, Mr. Gribko, as well as your comments,
17 and I'll make my findings with regard to the Torres
18 factors at this time.

19 As you've indicated, and as is apparent from
20 all that I have learned, Mr. Erwin was the leader of
21 this drug-trafficking scheme. As a result, obviously,
22 he was privy to the most information about it.

23 You have indicated that he did cooperate by
24 providing the government with information, including
25 medical files of conspirators, prescriptions,

1 reviewing them with you, that he agreed most
2 importantly to testify against the doctors, who
3 ultimately pled guilty, and that it was useful in
4 obtaining those guilty pleas.

5 The information he provided was corroborated
6 by documents, other information, and testimony that
7 was provided by other cooperators, and that therefore
8 was generally corroborated by your investigation.

9 You consider his cooperation to be important,
10 and it was timely, and as a result the Torres factors
11 are satisfied in that the information provided was
12 significant and useful. It was complete and reliable.
13 He did agree to testify as to the nature and extent.
14 There is no indication of a risk of harm. It is a
15 neutral factor; and it was timely.

16 As a result, I will grant the government's
17 motion for a 5K1.1 departure.

18 I've heard your recommendation, Mr. Gribko,
19 for a five-level departure. Certainly, you are aware
20 that we have spent the better part of this month
21 sentencing various individuals and I've provided
22 departures for a number of them pursuant to their
23 cooperation, and I'm well aware of the ranges that
24 have been given out based upon the kinds of
25 cooperation given.

1 While I do obviously have some concern given
2 Mr. Erwin's role, obviously he did provide information
3 that was important that perhaps others could not have
4 provided because only he could have been aware of as
5 the leader, and therefore I find it would merit the
6 five-level departure, which is a major significant in
7 my mind departure in this case for Mr. Erwin.

8 That would place him at a level 34. With a
9 criminal history category of 1, it places him at 151
10 to 188 months. To some extent almost a half departure
11 in time.

12 Are there any other applications for
13 departures or variances?

14 MR. GRIBKO: None from the government.

15 MR. MURPHY: None from the defense, your
16 Honor.

17 THE COURT: Then I'm ready to hear your
18 comments with regard to sentencing.

19 Mr. Murphy, I'll hear from you first.

20 MR. MURPHY: Yes, your Honor.

21 First of all, I believe your Honor should be
22 aware from the letters and the people in the courtroom
23 that there are people that believe, as I do, that
24 Chris is a salvageable human being.

25 He has had a strong outpouring of support not

1 only in the letters, but by the people who are here
2 present in court. All those people who wrote to your
3 Honor, as well as those present in court, recognize
4 the criminality that Chris in fact created by being
5 the leader of this operation.

6 Two letters do stand out in my mind for your
7 Honor's consideration, and they are by his wife
8 Allison whose candid comments I think do lay out her
9 feelings towards her husband with regard to how he has
10 in one level failed their marriage, but also
11 truthfully has been a strong parent and father of
12 their child, as well as a letter by an individual who
13 had an addiction problem and who Chris, as she points
14 out, attempted to help even though she was getting
15 oxycodone from him.

16 Mrs. Erwin and Ms. Hugg are willing to make
17 brief statements with regard to their situation with
18 regard to their husband and their friend after I've
19 finished my comments, your Honor.

20 He has been on pretrial release for two years
21 without any problems. Chris' crime never could have
22 happened if it wasn't for the two doctors and
23 particularly involved in this particular matter.

24 He doesn't have the ability to write
25 prescriptions. Am I attempting to belie the fact of

1 his participation and his active leadership in this
2 conspiracy? No.

3 However, he can't write a prescription and
4 from the Presentence Report your Honor can in fact
5 read that Dr. Lopresti for a two-year period from the
6 period between 2009 and December 2010 wrote
7 prescriptions, over 5,000 prescriptions for 275,000
8 tabs of oxycodone. Dr. Lahham for the same period
9 wrote 1300 prescriptions for 162,000 tabs of
10 oxycodone.

11 Chris cooperated almost immediately after his
12 arrest. His cooperation did lead to the pleas by Drs.
13 Lopresti and Lahham. He met with the government, as
14 your Honor has granted the 5K, but he did meet with
15 the government on numerous occasions, gave them all
16 the information he had, and relayed any and all
17 information that they requested.

18 There was other information he provided with
19 regard to other matters that didn't involve the
20 doctors that may have not led anywhere, but he was
21 ready, willing, and able to assist in any endeavor the
22 government wished him to.

23 He does take full responsibility for his
24 actions. Chris can give reasons as to what put him in
25 this particular situation, the loss of his dream job,

1 the financial failures of his business endeavors, and
2 in the end it was his decision to break the law. He
3 clearly recognizes that. Oddly enough Chris' only
4 financial success in the last however so years has
5 been his involvement with the oxycodone conspiracy.

6 He now realizes that none of his criminal
7 activity was worth it. Chris clearly realizes that he
8 hurt himself, his family, his son, Collin, who he
9 loves dearly who is 6-year-old and who he is the
10 primary caretaker for.

11 As noted in every letter received by your
12 Honor by every person who wrote about Chris, they show
13 and describe his abiding love of his son, Collin, and
14 his fear of exactly what will occur when he quite
15 properly is sentenced to a jail term as your Honor I
16 believe must in this particular situation.

17 I just wish your Honor would consider under
18 all the attendant circumstances as required by the
19 sentencing, 3553(a), what in fact an appropriate
20 sentence would be.

21 Your Honor should consider, as you are well
22 aware under the statute, a sentence that is sufficient
23 but not greater than necessary to achieve the purposes
24 of sentencing.

25 As you pointed out, Chris' Guideline numbers

1 are off the charts. He did face a maximum sentence of
2 20 years or 240 months.

3 I only as counsel have the benefit of Dr.
4 Lahham's sentence by your Honor of 9 years. Dr.
5 Lopresti awaits her sentence. But if cooperation is
6 to be rewarded, your Honor, I must respectfully
7 request that you consider the sentences given to Dr.
8 Lahham and what you eventually may give Dr. Lopresti
9 when you consider the appropriate sentence under the
10 Booker analysis for my client.

11 I further request that your Honor allow my
12 client to self-surrender to the Federal Bureau of
13 Prisons, and that you make a recommendation that Chris
14 be sentenced to a facility, if possible, at or near
15 his family here in New Jersey.

16 The recommendation for the self-surrender
17 allows him to be classified at a lower level as your
18 Honor is undoubtedly aware.

19 My hope would have been that your Honor could
20 sentence Mr. Erwin to a sentence lower than either
21 doctor because, while he was the leader of this
22 organization, they were certainly the catalysts that
23 provided the prescriptions to allow the pills to be
24 sold and distributed.

25 His wife would like to make a brief statement

1 as well as Dara Hugg, your Honor.

2 THE COURT: I'll hear from them at this time,
3 and then I'm assuming Mr. Erwin wants to speak.
4 Correct?

5 MR. MURPHY: Yes he does, your Honor.

6 THE COURT: Provide your full name, please.

7 MS. ALLISON ERWIN: Allison Erwin.

8 Hello, your Honor. Thank you for the
9 opportunity to say something.

10 I know you've gotten my letter, and thank you
11 very much for reading it, so I won't take up too much
12 time. But I did want to personally explain that the
13 man who behaved in the way that brought him to this
14 court today is not the man that he has been for
15 20 years. It's not the man that he has been certainly
16 since the day he got arrested.

17 The day he got arrested I was seeing panic.
18 He was calm. It was over. It was finally over for
19 him. Over the past two years, he's explained it to me
20 and I've come to terms with his explanation that he
21 panicked, made horrible decisions, and then that panic
22 sort of turned to a certain amount of greed, and a
23 certain amount of descending into this world, and then
24 after a certain point he became trapped.

25 Once the realization of the reality of what

1 this was doing to young people in the community, it
2 hit him. But at that point he was in too deep as he
3 explained it to me. He couldn't get out if he tried
4 because they knew too much about him.

5 And in the end my sense is that, and he
6 explained it to me, that it was finally over and that
7 he would have to take what's coming to him and he
8 understands that.

9 He is not going to talk to you about not
10 taking responsibility. In fact, to the contrary, he's
11 going to talk about taking responsible for it. He is
12 humbled. He is changed. Is he flawed? Yes,
13 obviously, or we wouldn't be here. But over the
14 two years I've come to terms with his explanation.

15 What he is in addition to the things that you
16 have seen on paper that he has done, every father in
17 this court of course loves their child, but the bond
18 between Chris and Collin is something I've never seen.

19 It used to make me jealous, actually, it used
20 to make me a little bit jealous because I would be
21 going to work and sometimes when Collin would get a
22 boo-boo he would run to daddy instead of mommy and
23 that hurt a little bit. But in the end, it was one of
24 his parents and I had to sort of accept that, but it
25 was hard.

1 As a working mom leaving him home was only
2 bearable because he was with his other parent, his
3 daddy, and that made it a little bit easier to take.
4 Collin is the most well-adjusted, sweetest, wonderful
5 child in the world and a big part of that is because
6 of how Chris is with him.

7 I'm not going to go into the devastation. We
8 can all imagine what that is and I don't think I can
9 get through it if I tried. So I would just hope that
10 your Honor would consider that.

11 The people behind me here today are all here
12 in support of Chris. They are my family members and
13 my friends and Chris' family members his friends.
14 They are neighbors.

15 They are people who have been in our lives for
16 years, all of whom as I talked to them over the last
17 few years have had the same sort of continuum of
18 reaction, anger, fear, resentment, frustration over
19 Chris.

20 But in the end, at the end of the day, they
21 are here for him because they understand that the man
22 that they knew and the man that he has been since the
23 day he got arrested is not the man who behaved in the
24 way that is on paper in front of your your Honor.

25 I don't think any of us is asking for

1 forgiveness, I know Chris isn't, but only for
2 consideration of the man he was both before and after.

3 I would respectfully ask you for leniency and
4 for as much mercy as you see appropriate for the
5 father that he is to the sweetest little boy in the
6 world and the value that he has to all of our lives.

7 Thank you.

8 THE COURT: Thank you, Mrs. Erwin.

9 MR. MURPHY: Ms. Hugg.

10 MS. DARRA HUGG: Hi, your Honor. My name is
11 Darra Hugg.

12 I just want to restate what was in my letter.
13 Obviously, I'm nervous. I am a recovering drug
14 addict. And I don't think anybody sitting in this
15 room can say that without Chris I probably wouldn't be
16 here.

17 The whole time that I used -- he was selling
18 the pills, I would beg him for them, as did 80 percent
19 of the addicts. We would beg and plead, please,
20 please, and every day he would beg me to get off of
21 the drug, every single day.

22 And about two years ago I listened to him. I
23 did get off the drug. He's helped me build my life
24 back. He's helped my daughter. My daughter and his
25 son are best of friends and honestly I don't know

1 where I would be without him.

2 That's all I wanted to say. Thank you.

3 THE COURT: Thank you, Ms. Hugg.

4 MR. MURPHY: Mr. Erwin?

5 THE COURT: You can stay right there. There
6 is a microphone right there.

7 THE DEFENDANT: Okay.

8 Thank you for the opportunity to address the
9 Court. I will not insult anyone by using this time to
10 make excuses for my behavior. I take complete
11 responsibility for my actions.

12 But while there is no excuses for putting
13 myself in the position to devastate my son and my
14 family and ruining my own life, there are reasons, and
15 I hope taking a moment to explain these reasons will
16 allow you to understand that the actions that brought
17 me before this Court are not reflections of how the
18 way I live my life and they are also nowhere near the
19 person I had been since I was arrested.

20 In my early twenties, my parents went through
21 an ugly divorce and I had a terrible breakup with who
22 at the time I thought was the love of my life and I
23 became totally self-destructive.

24 At that time I was a criminal justice major in
25 college, on the waiting list for the San Diego Police

1 Department, with aspirations of a career in law
2 enforcement. But I became totally self-destructive.
3 I know the points aren't there, but you are aware of
4 the earlier, and I got arrested.

5 At that point, I didn't care what happened to
6 me. I think it's one of those things. I've always
7 had emotional problems and I went to a psychiatrist in
8 my teens, panic and depressed, whatever, you know, and
9 that led me to some sort of self-destructive behavior
10 which even when it was happening I didn't care. The
11 arrest of the person at 24, he might as well be a
12 different person than the arrest now.

13 When I got out of prison the first time, I
14 worked two jobs, walked, hitchhiked, took busses,
15 cabs, and eventually it led to a career at a newspaper
16 as a sports-writer which was my dream job because I
17 loved sports. I played athletics through high school
18 and some college.

19 The paper was a local paper, the Asbury Park
20 Press. It was bought by a large corporation. And if
21 you've ever seen a movie where a corporation overtakes
22 a small company and just guts it and mistreats people,
23 it was very similar to that.

24 Eventually, they fired one of my -- a lady on
25 Christmas Eve over the phone and she committed

1 suicide. Maybe within 3 to 6 months after, I wrote a
2 letter to corporate Human Resources saying that it was
3 despicable the way they treated people. It led to my
4 termination. I might as well have fired myself.

5 After that because of my previous conviction
6 in the '80s, I was unable to get another job. I was
7 applying at Home Depot. For a \$1.99, they could run
8 your background check. So I couldn't secure
9 employment.

10 My wife makes a decent living. We didn't have
11 a baby until later in life. We got married in our
12 mid-thirties. But a lot of it was to do because we
13 wanted to be financially stable and provide for the --
14 the key argument in most relationships are money. So
15 we waited to have the baby until we were financially
16 set, and unfortunately at the time Collin was an
17 in-vitro baby, so that was a little expense in itself.

18 I lost my job. I couldn't secure another one.
19 I had an investment property that was supposed to pay
20 for the in-vitro. I got involved with a family
21 member, my sister. She reneged on the deal and I was
22 paying two mortgages for 10 months. Not I, our family
23 together, and I went through my 401K and everything
24 and I was broke, and I got desperate and stupid and I
25 started this downward spiral.

1 I started selling marijuana thinking I would
2 just sell it to people over 30 years old and older and
3 it just -- one thing led to another and I was caught
4 in it.

5 And initially when I got involved with the
6 pills, I wasn't aware that they were like heroin. I
7 thought pills were for kids that wouldn't go to the
8 city to buy weed or coke. I didn't realize that it
9 was such an epidemic. I thought like sleeping pills.
10 Eventually -- I'm not going to insult you -- a month
11 or so into it I realized it. But greed and I guess
12 the thrill of the power kind of kept me in.

13 And when my wife says, you know, I was
14 trapped, I'm sure you probably rolled your eyes and
15 think that -- I figured there was such a paper trail
16 with this and the people involved are so vindictive
17 that you almost had to keep your enemies closer
18 than -- keep your friends close and your enemies
19 closer.

20 So it was like to appease people just so they
21 wouldn't tell on me and in the end I was told on
22 anyway. But that was the consideration in continuing
23 my involvement. It went on, my prices, what I sold
24 the pills for was just like I was almost giving them
25 away to -- not almost giving them away.

1 But if they had a street value of \$25, I was
2 selling them for like \$8 to \$10, you know, and I was
3 blowing money in casinos and I just got caught up in
4 the whole life style.

5 I know I got away from my notes. I'm sorry.

6 I know you have the responsibility to hand
7 down a sentence that protects society and punishes
8 those. My explanation and letters you have received
9 about me will help you to eliminate that I'm not a
10 danger to society.

11 My absence will not only devastate my young
12 son, but also significantly impact my wife who is able
13 to work as hard as she does as a primary earner in our
14 family because of my ability to help considerably with
15 childcare.

16 I certainly don't need to tell you or anyone
17 in this court what a Scrooge on society pills are. In
18 fact, my church has even started a public service
19 Awareness Program about it and I spoke to the
20 monsignor and offered to be a guest speaker or perhaps
21 a resource for the Awareness Program. It fits right
22 into my desire to do something to help combat this
23 problem among young people who have their whole lives
24 ahead of them.

25 I remember watching Scared Straight as a kid

1 and being terrified. I think that with the current
2 drugs and Governor Christie's report being an
3 epidemic, but this is white suburbia. I don't think
4 you can scare the kids straight. I think you have to
5 reason them straight maybe and I think that I could do
6 that.

7 I have always connected with young people.
8 I'm the guy who plays wiffle ball and
9 pick-up-basketball games with the kids in the
10 neighborhood. I'm pretty immature, like I'm a
11 Johnny-goofball, so I relate well to kids.

12 In closing, I would like to thank U.S.
13 Attorney Gribko and Morasco -- am I saying that
14 correct -- and the DEA for treating me with such
15 professionalism, and especially the two Tims, one is
16 in the court and the other one isn't. The day of the
17 arrest they hid their guns and let my wife and son
18 leave. It was really meaningful to me. I totally
19 appreciate that.

20 That's it. Thank you.

21 THE COURT: Thank you Mr. Erwin.

22 Mr. Gribko.

23 MR. GRIBKO: Your Honor, the government is of
24 course seeking a lengthy sentence in this case. In
25 fact, we are seeking not just a sentence within the

1 range, but the top of the range of 188 months.

2 The reasons for that are that Mr. Erwin wasn't
3 just part of this conspiracy; he was this conspiracy.
4 He created this whole conspiracy. He created addicts.
5 He took people who he knew to be addicted to drugs and
6 made them greater addicts, made them beholding to him
7 to get pills from doctors so that he could make money.

8 For every Ms. Hugg there are -- you've seen 20
9 something defendants in this case, 20 something
10 addicts who worked for Mr. Erwin. There were more,
11 there were many more, who were uncharged, and even
12 Ms. Hugg I believe, and she can correct me if I'm
13 wrong, went to Dr. Lahham with Mr. Erwin.

14 He created these people. He made them into
15 addicts, greater addicts than they were. He used them
16 and he made them into criminals. They are not victims
17 in the usual sense. They are criminals. But they are
18 criminals because Mr. Erwin used them.

19 He was this conspiracy. Every single script
20 came through him. It was his idea. He ran it. He's
21 more culpable than the doctors even because he knew
22 exactly what was going on. He knew exactly what these
23 people were doing with the scripts.

24 The doctors may have had an idea that these
25 people, many of whom had medical problems, had some

1 use of the drugs or were addicted to the drugs.
2 They've admitted that. But he knew exactly what was
3 going on. He knew that these people weren't even
4 getting the drugs. They were getting a small portion
5 and then they had to buy the rest back from him at a
6 higher price.

7 This wasn't even just pure greed. It was well
8 beyond that. It was not something desperate. It
9 wasn't anything stupid. It wasn't driven just by some
10 small financial decision. He made huge amounts of
11 money on this case. The street value of these pills
12 is astronomical and he was getting them a hundred at a
13 time every time he brought an addict to a doctor.

14 I want to briefly address his son because it's
15 been brought up sometimes.

16 The fact of the matter is, he's going to miss
17 a big chunk of Collin's life, no matter what the Court
18 does here. Even if the Court were to give him a
19 significant break, which I don't believe you should,
20 it was his decision to do so. It was his decision to
21 do this. He knows he's going to miss his life.

22 That should not be a reason for downwardly
23 varying in any way. As the best case scenario here,
24 even if this Court were to significantly go down,
25 Collin would be an adult by the time he gets out of

1 jail.

2 Finally, I want to end on one note and that is
3 the defendant's criminal history. He has zero
4 criminal history points which is astonishing because
5 he is the same person despite what he says now that
6 dealt drugs in 1988 and was given a significant
7 sentence at that time. It is the same person who did
8 a burglary back at that time.

9 He is the same person. This lapse of time
10 only caused him to not be a career offender here.
11 He's the same guy. He did it then, he did it now, and
12 unless a significance sentence is imposed he may even
13 do it again.

14 Your Honor, I don't have anything further.
15 The government is requesting the top of the range.

16 THE COURT: Thank you Mr. Gribko.

17 I'll proceed with my comments pursuant to the
18 3553(a) factors, and I'll begin with the nature and
19 circumstances of the offense.

20 I've had the opportunity over this last month
21 to speak often, several times a day, in fact, doing
22 all the sentencings that I have been doing of the
23 individuals who were involved in this conspiracy.
24 I've talked about oxycodone. I've talked about the
25 effect of this conspiracy on individuals.

1 And finally today I sentence you, Mr. Erwin,
2 who, yes, was the creator, originator of the scheme,
3 the leader of the scheme.

4 I will tell you, as well, that having seen a
5 number of the individuals who were your -- we've used
6 the term -- runners, those who were the addicts that
7 were brought to Dr. Lahham's office or brought to Dr.
8 Lopresti's office or brought to Atlantic City casinos
9 to meet with Dr. Lahham in his hotel room to get
10 prescriptions, those addicts are at the bottom of
11 society, many of them, little to their name, and you
12 used and abused them.

13 I think appropriately when Mr. Gribko said
14 they are now criminals, in a certain way they were
15 also victims. They were victimized by you creating
16 the scheme and using their weakness, their addiction
17 to perpetrate this crime. Some of them had no
18 criminal history at all, not just because of a lapse
19 of time, but they hadn't committed another crime.
20 Others may have. Now, they are all criminals and
21 addicts, some recovering.

22 You've indicated in your remarks today that
23 you finally recognize the effects of oxycodone. I
24 don't want to have my intelligence insulted, Mr.
25 Erwin. I don't think you ever didn't know what the

1 effects of oxycodone were. There is nobody out there
2 these days who doesn't understand the addictive powers
3 of painkillers. It's been in the news for years.
4 It's out there.

5 So your initial involvement, as you point out,
6 yes, was it agreed, was it you panicked -- I'm not
7 sure of the words -- panic turned to greed, you knew
8 what you were doing. You knew these were highly
9 addictive drugs. It wasn't after a month that you
10 learned it. You made your decisions deliberately. In
11 fact, it's the only way it works, because when you
12 supply an addictive drug, people want more.

13 This was widespread. I can't believe the
14 number of individuals that were involved in
15 effectuating this scheme, how many went to Lahham, to
16 Lopresti, that you brought there, that you instructed
17 others to drive them there, and come out with these
18 prescriptions, take them to the pharmacist, get them,
19 sell them on the street, and sell some of them back to
20 these same individuals or give them some of the pills,
21 and that was the reason they were in on this, to get
22 the pills and support their habit.

23 It is becoming unfortunately a drug of choice
24 of many, so highly addictive, so highly destructive.
25 You were a significant cog in the problem. You

1 created it, you maintained it, and maintained it for a
2 substantial period of time.

3 And to say you didn't know how to get out
4 because they knew too much about you and you would be
5 caught, you were going to get caught anyway at some
6 point. You didn't want to stop.

7 You tell me that you went to casinos. You
8 were gambling. You even used the word "power" in your
9 remarks, not just greed, but power. Doesn't that stop
10 you even to think about saying the idea of being
11 "powerful" in a drug conspiracy? It is appalling.

12 Some of those remarks will also go to the
13 history and characteristics are, but I'll get to be in
14 a moment.

15 The need for deterrence. You've already
16 referenced, and you've got no criminal history points
17 because it was back in 88 and the sentence was
18 completed in the '90s, but you've told me about why
19 you got involved in self-destructive behavior back in
20 1988.

21 You were convicted back then of burglary. You
22 were involved in a large conspiracy to distribute
23 cocaine. You received a very substantial state
24 sentence, 10 years, parole ineligibility of
25 four years. That says a lot because I know in the

1 state system those kinds of lengthy sentences are not
2 given out for first time offenders and that kind of
3 parole ineligibility. This was a large scheme.

4 Indeed, at least one or two of the individuals
5 I've already sentenced were also charged in that
6 scheme. You knew who to recruit, I guess. But the
7 prior conviction and receiving such a substantial
8 custodial term did not deter you years later from
9 committing this crime and heading up another
10 conspiracy.

11 Deterrence, yes, is a concern for this Court
12 as to you. Also, a general deterrence that the public
13 realize that committing this kind of crime will be
14 dealt with seriously and severely by the Court.

15 Turning to your history and characteristics.
16 I've already referenced the prior criminal matter. I
17 do note, it is documented in the report, that you've
18 had certain emotional issues over many years, anxiety
19 and depression and you've dealt with some mental
20 health providers in that regard.

21 But you had a stable marriage. You finally
22 had had a child and much is being made of the
23 relationship with your child. I do not in any way
24 doubt that you have been or attempted to be a good
25 father to your son and that there is a special

1 relationship.

2 You, though, involved yourself in this crime
3 after your son was born. You can't say it was a
4 wake-up call and you wanted out of this when your son
5 was born. You had that son when you committed these
6 acts. You knew what you were doing and you knew what
7 you were jeopardizing.

8 Unfortunately, Mr. Erwin, there is no kind way
9 to say it: You are a drug dealer. You were a drug
10 dealer in '88. You were a drug dealer in this decade.

11 I can tell you having sentenced over the last
12 20 plus years drug dealers many of them are wonderful
13 fathers. There are two lives. It doesn't surprise
14 me. I've seen it many times.

15 And while I have received many letters from
16 family, friends, community, you are an individual who
17 was educated, some college, were a writer, a sports
18 writer for a while, and certainly within the community
19 you've shown a good side.

20 But as I've said many times, and you are not
21 the exception, when I see someone who commits these
22 kinds of acts, there are two different people shown,
23 one that may be shown to your family and community and
24 the other when you engage in the criminal activity at
25 exactly the same time that you are out there playing

1 on the street with the kids.

2 And you are out there working a conspiracy to
3 distribute oxycodone to some of those young people,
4 not the ones you are playing with, but others, and
5 that's someone's child. Whether it was the children
6 or the adults that ultimately ended up with them, they
7 will now live with those addictions and how to recover
8 from them and that's a life-long problem, life-long.

9 Disparity of sentencing. Mr. Murphy, I take
10 great exception to your comment that he should receive
11 no more or less than the doctors in this case. He is
12 different than the doctors, yes. Do you need a doctor
13 to write the script? Yes.

14 They weren't necessarily familiar with all of
15 the extent of this conspiracy. He was. He
16 orchestrated it, he manipulated everyone in that
17 regard, and he found the doctors who were the easy
18 marks: Who do I think can write those prescriptions?
19 And I'll bring these people in and I'll pay them. And
20 those doctors, by the way, did not have convictions.
21 Mr. Erwin does.

22 So when I consider all the 3553(a) factors,
23 there is no doubt in my mind, but for the break that
24 the government has given on the 5K, I would have been
25 happy sending Mr. Erwin to even a higher sentence, the

1 top of the Guidelines is totally and absolutely
2 sufficient but not greater than necessary, the
3 188 months. That is what I will sentence him to.

4 I'll also impose a term of three years of
5 supervised release.

6 There will be an alcohol, drug testing, and
7 treatment provision, a mental health treatment, and
8 because of his disclosure with regard to gambling, I
9 am going to have a gambling restriction as well.

10 Sentence is as follows:

11 It is the judgment of the Court that the
12 defendant, Christopher Erwin, is hereby committed to
13 the custody of the Bureau of Prisons to be imprisoned
14 for a term of 188 months.

15 Upon release from imprisonment, defendant
16 shall be placed on supervised release for a term of
17 three years. Within 72 hours of release from the
18 custody of the Bureau of Prisons, defendant shall
19 report in person to the Probation Office in the
20 district to which he is released.

21 While on supervised release, defendant shall
22 not commit another federal, state, or local crime,
23 shall be prohibited from possessing a firearm or other
24 dangerous device, shall not possess an illegal
25 controlled substance, and shall comply with the other

1 standard conditions that have been adopted by the
2 Court.

3 Defendant must submit to one drug test within
4 15 days of commencement of supervised release and at
5 least two tests thereafter as determined by the
6 probation officer.

7 As I have indicated, the following special
8 conditions will apply: Alcohol, drug testing, and
9 treatment, mental health treatment, and the gambling
10 exclusion provisions.

11 I find defendant does not have the ability to
12 pay a fine. I will waive the fine in this case.

13 It is ordered that the defendant shall pay to
14 the United States a total special assessment of \$100,
15 which is due immediately.

16 I'll allow a voluntary surrender, and I'll
17 recommend a facility as close as possible to his
18 family.

19 Finally, I advise the parties of their right
20 to appeal this sentence.

21 Anything else, counsel?

22 MR. GRIBKO: No, your Honor.

23 MR. MURPHY: No, your Honor.

24 THE CLERK: All rise.

25 (Proceedings are concluded.)

C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.


Vincent Russoniello, CCR
Certificate No. 675
Date: 9-13-13

\$	38 [1] - 6:20 39 [4] - 7:11, 7:15, 9:8, 9:12 3B1.1(a [1] - 6:22	achieve [1] - 14:23 action [2] - 37:14, 37:16 actions [3] - 13:24, 20:11, 20:16 active [1] - 13:1 activity [2] - 14:7, 33:24 acts [2] - 33:6, 33:22 added [2] - 6:6, 7:2 addict [2] - 19:14, 27:13 addicted [2] - 26:5, 27:1 addiction [2] - 12:13, 29:16 addictions [1] - 34:7 addictive [4] - 30:2, 30:9, 30:12, 30:24 addicts [9] - 19:19, 26:4, 26:6, 26:10, 26:15, 29:6, 29:10, 29:21 addition [1] - 17:15 additional [1] - 7:7 address [2] - 20:8, 27:14 addressed [1] - 5:11 adds [1] - 4:3 adjusted [2] - 7:3, 18:4 adjustment [2] - 6:24, 7:6 adjustments [1] - 6:21 admitted [1] - 27:2 adopted [1] - 36:1 adult [1] - 27:25 adults [1] - 34:6 advise [1] - 36:19 aggravated [1] - 6:3 ago [1] - 19:22 agree [1] - 10:13 agreed [6] - 4:3, 4:25, 8:24, 9:3, 10:1, 30:6 agreement [1] - 4:7 agreements [1] - 3:24 ahead [1] - 24:24 alcohol [2] - 35:6, 36:8 Allison [2] - 12:8, 16:7 ALLISON [1] - 16:7 allow [4] - 15:11, 15:23, 20:16, 36:16 allows [1] - 15:17 almost [5] - 11:10, 13:11, 23:17, 23:24, 23:25 AMERICA [1] - 1:5 amount [2] - 16:22, 16:23 amounts [1] - 27:10 AN [1] - 2:9	analysis [1] - 15:10 anger [1] - 18:18 anxiety [1] - 32:18 anyway [2] - 23:22, 31:5 appalling [1] - 31:11 apparent [1] - 9:19 appeal [1] - 36:20 appearances [1] - 3:4 appease [1] - 23:20 applicable [1] - 8:3 application [1] - 8:11 applications [1] - 11:12 apply [1] - 36:8 applying [1] - 22:7 appreciate [1] - 25:19 appropriate [4] - 6:23, 14:19, 15:9, 19:4 appropriately [1] - 29:13 argument [2] - 5:21, 22:14 arrest [5] - 6:8, 13:12, 21:11, 21:12, 25:17 arrested [5] - 16:16, 16:17, 18:23, 20:19, 21:4 Asbury [1] - 21:19 aspirations [1] - 21:1 assault [1] - 6:3 assessment [2] - 8:4, 36:14 assist [1] - 13:21 Assistant [1] - 3:7 assuming [1] - 16:3 astounding [1] - 28:4 astronomical [1] - 27:12 athletics [1] - 21:17 Atlantic [1] - 29:8 attempted [2] - 12:14, 32:24 attempting [1] - 12:25 attendant [1] - 14:18 ATTORNEY [1] - 1:17 Attorney [2] - 3:7, 25:13 attorney [2] - 37:13, 37:15 Attorney's [1] - 8:16 AUSA [1] - 1:18 awaits [1] - 15:5 aware [8] - 10:19, 10:23, 11:4, 11:22, 14:22, 15:18, 21:3, 23:6 Awareness [2] - 24:19, 24:21
\$1.99 [1] - 22:7 \$10 [1] - 24:2 \$100 [2] - 8:5, 36:14 \$25 [1] - 24:1 \$25,000 [1] - 8:1	401K [1] - 22:23 402 [1] - 1:12 42 [1] - 7:4		
.	5		
'80s [1] - 22:6 '88 [1] - 33:10 '90s [1] - 31:18	5,000 [1] - 13:7 5K [2] - 13:14, 34:24 5K1.1 [2] - 8:11, 10:17		
0	6		
08608 [1] - 1:12	6 [1] - 22:1 6-year-old [1] - 14:9 609)588-9516 [1] - 1:25 675 [1] - 37:24		
1	7		
1 [5] - 7:14, 7:16, 8:1, 11:9 10 [2] - 22:22, 31:24 12-364 [1] - 1:2 12th [1] - 8:14 1300 [1] - 13:9 15 [1] - 36:4 151 [1] - 11:9 162,000 [1] - 13:9 188 [4] - 11:10, 26:1, 35:3, 35:14 1988 [2] - 28:6, 31:20	72 [1] - 35:17 753 [1] - 2:8		
2	8		
20 [7] - 7:17, 7:20, 15:2, 16:15, 26:8, 26:9, 33:12 2009 [1] - 13:6 2010 [1] - 13:6 2013 [2] - 1:7, 8:14 24 [1] - 21:11 240 [2] - 7:19, 15:2 25 [1] - 1:7 262 [1] - 7:18 275,000 [1] - 13:7 28 [1] - 2:8	8 [1] - 24:2 80 [1] - 19:18 88 [1] - 31:17		
3	9		
3 [1] - 22:1 30 [1] - 23:2 32.2 [2] - 4:11, 4:15 327 [1] - 7:18 34 [3] - 9:8, 9:12, 11:8 3553(a [3] - 14:19, 28:18, 34:22	9 [1] - 15:4		
	A		
	abiding [1] - 14:13 ability [3] - 12:24, 24:14, 36:11 able [2] - 13:21, 24:12 ABOVE [1] - 2:11 ABOVE-ENTITLED [1] - 2:11 absence [1] - 24:11 absolutely [1] - 35:1 abundance [1] - 4:13 abused [1] - 29:12 accept [1] - 17:24 acceptance [1] - 7:6 account [1] - 8:20 accurate [2] - 6:8, 37:8 ACCURATE [1] - 2:9		

B baby [3] - 22:11, 22:15, 22:17 background [1] - 22:8 ball [1] - 25:8 base [1] - 6:19 based [3] - 5:21, 6:19, 10:24 basis [1] - 8:13 basketball [1] - 25:9 BE [1] - 2:9 Beach [1] - 3:9 BEACH [1] - 3:10 bearable [1] - 18:2 became [3] - 16:24, 20:23, 21:2 becoming [1] - 30:23 beg [3] - 19:18, 19:19, 19:20 begin [3] - 3:20, 6:17, 28:18 behalf [4] - 1:18, 1:20, 3:8, 5:6 behaved [2] - 16:13, 18:23 behavior [3] - 20:10, 21:9, 31:19 behind [1] - 18:11 beholding [1] - 26:6 belie [1] - 12:25 benefit [1] - 15:3 best [2] - 19:25, 27:23 better [1] - 10:20 between [2] - 13:6, 17:18 beyond [2] - 6:10, 27:8 big [2] - 18:5, 27:17 billed [1] - 6:2 bit [3] - 17:20, 17:23, 18:3 blowing [1] - 24:3 bond [1] - 17:17 boo [2] - 17:22 boo-boo [1] - 17:22 Booker [1] - 15:10 born [2] - 33:3, 33:5 bottom [1] - 29:10 bought [1] - 21:20 boy [1] - 19:5 break [3] - 14:2, 27:19, 34:23 breakup [1] - 20:21 brief [2] - 12:17, 15:25	briefly [1] - 27:14 bring [1] - 34:19 brings [1] - 7:3 broke [1] - 22:24 brought [8] - 16:13, 20:16, 27:13, 27:15, 29:7, 29:8, 30:16 build [1] - 19:23 Bureau [3] - 15:12, 35:13, 35:18 burglary [2] - 28:8, 31:21 business [1] - 14:1 busses [1] - 21:14 buy [2] - 23:8, 27:5 BY [1] - 1:18 C cabs [1] - 21:15 calculating [1] - 6:17 calm [1] - 16:18 candid [1] - 12:8 cap [1] - 9:9 capped [1] - 7:19 care [2] - 21:5, 21:10 career [3] - 21:1, 21:15, 28:10 caretaker [1] - 14:10 case [9] - 8:25, 9:5, 11:7, 25:24, 26:9, 27:11, 27:23, 34:11, 36:12 casinos [3] - 24:3, 29:8, 31:7 catalysts [1] - 15:22 category [3] - 7:14, 7:16, 11:9 caught [4] - 23:3, 24:3, 31:5 caused [1] - 28:10 caution [1] - 4:13 CCR [3] - 1:24, 2:14, 37:23 certain [5] - 16:22, 16:23, 16:24, 29:14, 32:18 certainly [5] - 10:19, 15:22, 16:15, 24:16, 33:18 Certificate [1] - 37:24 Certified [1] - 37:6 CERTIFIED [1] - 2:9 certify [2] - 37:7, 37:12 change [2] - 4:4, 4:23 changed [1] - 17:12	characteristics [2] - 31:13, 32:15 charge [1] - 5:12 charged [2] - 5:22, 32:5 charts [1] - 15:1 check [1] - 22:8 child [6] - 12:12, 17:17, 18:5, 32:22, 32:23, 34:5 childcare [1] - 24:15 children [1] - 34:5 choice [1] - 30:23 Chris [14] - 11:24, 12:4, 12:13, 13:11, 13:24, 14:7, 14:12, 15:13, 17:18, 18:6, 18:12, 18:19, 19:1, 19:15 Chris' [4] - 12:21, 14:3, 14:25, 18:13 Christie's [1] - 25:2 Christmas [1] - 21:25 CHRISTOPHER [1] - 1:7 Christopher [2] - 3:13, 35:12 chunk [1] - 27:17 church [1] - 24:18 circumstances [2] - 14:18, 28:19 City [1] - 29:8 city [1] - 23:8 CLARKSON [1] - 1:11 classified [1] - 15:17 clear [1] - 9:9 clearly [4] - 6:3, 6:24, 14:3, 14:7 CLERK [2] - 3:2, 36:24 client [4] - 5:8, 5:21, 15:10, 15:12 close [2] - 23:18, 36:17 closer [2] - 23:17, 23:19 closing [1] - 25:12 cocaine [1] - 31:23 cog [1] - 30:25 coke [1] - 23:8 college [3] - 20:25, 21:18, 33:17 Collin [7] - 14:8, 14:13, 17:18, 17:21, 18:4, 22:16, 27:25 Collin's [1] - 27:17 combat [1] - 24:22 coming [1] - 17:7 commencement [1] - 36:4	comment [1] - 34:10 comments [5] - 9:16, 11:18, 12:8, 12:19, 28:17 commit [1] - 35:22 commits [1] - 33:21 committed [4] - 21:25, 29:19, 33:5, 35:12 committing [2] - 32:9, 32:13 community [4] - 17:1, 33:16, 33:18, 33:23 company [1] - 21:22 complete [2] - 10:12, 20:10 completed [1] - 31:18 compliance [1] - 4:10 comply [2] - 4:15, 35:25 concern [2] - 11:1, 32:11 concluded [1] - 36:25 conditions [2] - 36:1, 36:8 conduct [1] - 4:4 connected [1] - 25:7 connection [2] - 3:17, 8:18 consent [2] - 3:21, 4:8 consider [7] - 10:9, 14:17, 14:21, 15:7, 15:9, 18:10, 34:22 considerably [1] - 24:14 consideration [3] - 12:7, 19:2, 23:22 considered [1] - 9:15 consistent [1] - 3:23 conspiracy [15] - 3:18, 7:2, 13:2, 14:5, 26:3, 26:4, 26:19, 28:23, 28:25, 31:11, 31:22, 32:10, 34:2, 34:15 conspirators [1] - 9:25 continuing [1] - 23:22 continuum [1] - 18:17 contrary [1] - 17:10 controlled [1] - 35:25 convicted [1] - 31:21 conviction [3] - 8:5, 22:5, 32:7 convictions [1] - 34:20 cooperate [2] - 9:3, 9:23 cooperated [1] - 13:11 cooperation [5] - 10:9, 10:23, 10:25, 13:12,

15:5 cooperators [1] - 10:7 corporate [1] - 22:2 corporation [2] - 21:20, 21:21 correct [4] - 5:15, 16:4, 25:14, 26:12 corroborated [2] - 10:5, 10:8 counsel [9] - 3:8, 3:24, 5:2, 5:5, 8:6, 15:3, 36:21, 37:13, 37:15 count [4] - 3:17, 3:23, 4:24, 8:5 County [1] - 6:1 course [3] - 4:5, 17:17, 25:24 COURT [24] - 1:1, 1:25, 2:15, 3:3, 3:11, 3:15, 4:16, 4:19, 5:17, 6:6, 6:10, 6:14, 6:16, 7:10, 8:10, 9:14, 11:17, 16:2, 16:6, 19:8, 20:3, 20:5, 25:21, 28:16 Court [15] - 4:9, 5:11, 5:16, 8:14, 20:9, 20:17, 27:17, 27:18, 27:24, 32:11, 32:14, 35:11, 36:2, 37:6 court [9] - 3:1, 5:12, 5:23, 12:2, 12:3, 16:14, 17:17, 24:17, 25:16 COURTHOUSE [1] - 1:11 courtroom [1] - 11:22 created [5] - 12:4, 26:4, 26:14, 31:1 creating [1] - 29:15 creator [1] - 29:2 crime [7] - 12:21, 29:17, 29:19, 32:9, 32:13, 33:2, 35:22 CRIMINAL [1] - 1:2 criminal [16] - 4:4, 5:20, 6:7, 7:12, 7:13, 7:14, 7:16, 11:9, 14:6, 20:24, 28:3, 28:4, 29:18, 31:16, 32:16, 33:24 criminality [1] - 12:4 criminals [5] - 26:16, 26:17, 26:18, 29:14, 29:20 culpable [1] - 26:21 current [1] - 25:1	custodial [1] - 32:8 custody [2] - 35:13, 35:18 D daddy [2] - 17:22, 18:3 danger [1] - 24:10 dangerous [1] - 35:24 Dara [1] - 16:1 DARRA [1] - 19:10 Darra [1] - 19:11 date [1] - 37:10 Date [1] - 37:24 daughter [2] - 19:24 days [2] - 30:2, 36:4 DEA [2] - 3:9, 25:14 deal [1] - 22:21 dealer [3] - 33:9, 33:10 dealers [1] - 33:12 dealt [3] - 28:6, 32:14, 32:19 dearly [1] - 14:9 decade [1] - 33:10 December [1] - 13:6 decent [1] - 22:10 decision [5] - 9:4, 14:2, 27:10, 27:20 decisions [2] - 16:21, 30:10 deep [1] - 17:2 defendant [10] - 3:1, 3:25, 4:6, 35:12, 35:15, 35:18, 35:21, 36:3, 36:11, 36:13 Defendant [2] - 1:8, 1:20 DEFENDANT [1] - 20:7 defendant's [1] - 28:3 defendants [1] - 26:9 defense [3] - 5:5, 6:14, 11:15 deliberately [1] - 30:10 Department [1] - 21:1 departure [10] - 8:11, 9:7, 9:8, 9:11, 9:13, 10:17, 10:19, 11:6, 11:7, 11:10 departures [2] - 10:22, 11:13 Depot [1] - 22:7 depressed [1] - 21:8 depression [1] - 32:19 descending [1] - 16:23	describe [1] - 14:13 desire [1] - 24:22 desperate [2] - 22:24, 27:8 despicable [1] - 22:3 despite [1] - 28:5 destructive [5] - 20:23, 21:2, 21:9, 30:24, 31:19 detailed [2] - 8:16, 8:19 details [1] - 9:2 deter [1] - 32:8 determined [1] - 36:5 deterrence [3] - 31:15, 32:11, 32:12 devastate [2] - 20:13, 24:11 devastation [1] - 18:7 device [1] - 35:24 Diego [1] - 20:25 difference [1] - 6:7 different [3] - 21:12, 33:22, 34:12 disagreement [1] - 8:6 disclosed [1] - 8:21 disclosure [1] - 35:8 discussions [1] - 8:21 dismissal [2] - 5:12, 6:2 dismissed [1] - 5:23 disparity [1] - 34:9 distribute [4] - 3:18, 3:19, 31:22, 34:3 distributed [1] - 15:24 district [1] - 35:20 DISTRICT [2] - 1:1, 1:1 divorce [1] - 20:21 doctor [3] - 15:21, 27:13, 34:12 doctors [13] - 8:22, 8:25, 9:3, 10:2, 12:22, 13:20, 26:7, 26:21, 26:24, 34:11, 34:12, 34:17, 34:20 doctors' [1] - 8:17 documented [1] - 32:17 documents [1] - 10:6 done [1] - 17:16 doubt [2] - 32:24, 34:23 down [3] - 9:8, 24:7, 27:24 downward [4] - 9:7, 9:11, 9:13, 22:25 downwardly [1] - 27:22 Dr [10] - 13:5, 13:8, 15:3,	15:4, 15:7, 15:8, 26:13, 29:7, 29:9 dream [2] - 13:25, 21:16 drive [1] - 30:17 driven [1] - 27:9 Drs [1] - 13:12 drug [14] - 9:21, 19:13, 19:21, 19:23, 30:12, 30:23, 31:11, 33:9, 33:10, 33:12, 35:6, 36:3, 36:8 drug-trafficking [1] - 9:21 drugs [8] - 6:20, 25:2, 26:5, 27:1, 27:4, 28:6, 30:9 due [1] - 36:15 E early [1] - 20:20 earner [1] - 24:13 easier [1] - 18:3 EAST [1] - 1:12 easy [1] - 34:17 educated [1] - 33:17 effect [1] - 28:25 effects [2] - 29:23, 30:1 effectuating [1] - 30:15 either [1] - 15:20 eligible [1] - 7:22 eliminate [1] - 24:9 emotional [2] - 21:7, 32:18 employee [2] - 37:13, 37:15 employment [1] - 22:9 end [7] - 14:2, 17:5, 17:23, 18:20, 23:21, 28:2 endeavor [1] - 13:21 endeavors [1] - 14:1 ended [1] - 34:6 enemies [2] - 23:17, 23:18 enforcement [1] - 21:2 engage [1] - 33:24 entering [1] - 4:7 ENTITLED [1] - 2:11 epidemic [2] - 23:9, 25:3 ERWIN [2] - 1:7, 16:7 Erwin [25] - 3:14, 3:16, 4:22, 5:6, 6:24, 8:15,

9:20, 11:7, 12:16, 15:20, 16:3, 16:7, 19:8, 20:4, 25:21, 26:2, 26:10, 26:13, 26:18, 29:1, 29:25, 33:8, 34:21, 34:25, 35:12	fathers [1] - 33:13	G	harm [1] - 10:14
Erwin's [1] - 11:2	fear [2] - 14:14, 18:18	gambling [4] - 31:8, 35:8, 35:9, 36:9	heading [1] - 32:9
especially [1] - 25:15	federal [1] - 35:22	games [1] - 25:9	health [3] - 32:20, 35:7, 36:9
ESQUIRE [1] - 1:19	Federal [1] - 15:12	general [1] - 32:12	hear [3] - 11:17, 11:19, 16:2
essence [1] - 8:15	feelings [1] - 12:9	generally [1] - 10:8	heard [1] - 10:18
essentially [1] - 8:24	few [1] - 18:17	given [7] - 10:24, 10:25, 11:1, 15:7, 28:6, 32:2, 34:24	hearing [1] - 4:7
Eve [1] - 21:25	figured [1] - 23:15	goofball [1] - 25:11	hello [1] - 16:8
event [1] - 4:25	files [1] - 9:25	government [15] - 3:8, 5:4, 6:11, 6:12, 8:10, 9:6, 9:12, 9:24, 11:14, 13:13, 13:15, 13:22, 25:23, 28:15, 34:24	help [4] - 12:14, 24:9, 24:14, 24:22
eventually [4] - 15:8, 21:15, 21:24, 23:10	final [1] - 5:15	Government [1] - 1:18	helped [2] - 19:23, 19:24
exact [1] - 9:1	finally [7] - 16:18, 17:6, 28:2, 29:1, 29:23, 32:21, 36:19	government's [2] - 8:14, 10:16	heraby [2] - 35:12, 37:7
exactly [5] - 14:14, 26:22, 27:2, 33:25	financial [3] - 14:1, 14:4, 27:10	Governor [1] - 25:2	hereinbefore [1] - 37:10
exception [2] - 33:21, 34:10	financially [3] - 22:13, 22:15, 37:16	grant [2] - 7:10, 10:16	heroin [1] - 23:6
exclusion [1] - 36:10	findings [1] - 9:17	granted [1] - 13:14	hi [1] - 19:10
excuses [2] - 20:10, 20:12	fine [3] - 7:25, 36:12	great [1] - 34:10	hid [1] - 25:17
expense [1] - 22:17	finished [1] - 12:19	greater [4] - 14:23, 26:6, 26:15, 35:2	high [1] - 21:17
explain [2] - 16:12, 20:15	firearm [1] - 35:23	greed [5] - 16:22, 23:11, 27:7, 30:7, 31:9	higher [2] - 27:6, 34:25
explained [3] - 16:19, 17:3, 17:6	fired [2] - 21:24, 22:4	GRIBKO [11] - 1:18, 3:6, 4:1, 4:17, 6:12, 7:9, 8:8, 8:12, 11:14, 25:23, 36:22	highly [3] - 30:8, 30:24
explanation [3] - 16:20, 17:14, 24:8	first [4] - 11:19, 11:21, 21:13, 32:2	Gribko [10] - 3:7, 3:20, 4:19, 7:7, 9:16, 10:18, 25:13, 25:22, 28:16, 29:13	himself [1] - 14:8
extent [3] - 10:13, 11:10, 34:15	FISHER [1] - 1:11	guess [2] - 23:11, 32:6	history [13] - 5:20, 6:7, 7:12, 7:13, 7:14, 7:16, 11:9, 28:3, 28:4, 29:18, 31:13, 31:16, 32:15
eyes [1] - 23:14	FISHMAN [1] - 1:17	guest [1] - 24:20	hit [1] - 17:2
	fits [1] - 24:21	Guideline [3] - 6:22, 8:1, 14:25	hitchhiked [1] - 21:14
	five [6] - 6:25, 7:22, 9:7, 9:13, 10:19, 11:6	Guidelines [5] - 6:18, 7:18, 7:22, 7:24, 35:1	home [1] - 18:1
	five-level [4] - 9:7, 9:13, 10:19, 11:6	guilty [4] - 3:17, 9:4, 10:3, 10:4	Home [1] - 22:7
	flawed [1] - 17:12	guns [1] - 25:17	honestly [1] - 19:25
	FLW [1] - 1:2	guts [1] - 21:22	Honor [38] - 3:6, 3:12, 4:1, 5:9, 6:5, 6:9, 6:13, 6:15, 7:9, 8:8, 8:9, 8:12, 11:16, 11:20, 11:21, 12:3, 12:19, 13:4, 13:14, 14:12, 14:15, 14:17, 14:21, 15:4, 15:6, 15:11, 15:18, 15:19, 16:1, 16:5, 16:8, 18:10, 18:24, 19:10, 25:23, 28:14, 36:22, 36:23
	following [1] - 36:7	guy [2] - 25:8, 28:11	Honor's [1] - 12:7
	FOLLOWING [1] - 2:9		HONORABLE [1] - 1:14
	follows [1] - 35:10		hope [3] - 15:19, 18:9, 20:15
	FOR [1] - 1:1		horrible [1] - 16:21
	foregoing [1] - 37:8		hotel [1] - 29:9
	forfeiture [2] - 3:23, 4:24		hours [1] - 35:17
	forgiveness [1] - 19:1		huge [1] - 27:10
	formality [1] - 4:5		Hugg [5] - 16:1, 19:11, 20:3, 26:8, 26:12
	forth [3] - 4:12, 8:13, 37:11		hugg [2] - 12:16, 19:9
	four [3] - 6:24, 7:2, 31:25		HUGG [1] - 19:10
	FREDA [1] - 1:14		
	friend [1] - 12:18		
	friends [5] - 18:13, 19:25, 23:18, 33:16		
	front [1] - 18:24		
	frustration [1] - 18:18		
	full [2] - 13:23, 16:6		
		</	

Human [1] - 22:2 human [1] - 11:24 humbled [1] - 17:12 hundred [1] - 27:12 hurt [2] - 14:8, 17:23 husband [2] - 12:9, 12:18	Intelligence [1] - 29:24 intent [1] - 3:18 Interactions [1] - 8:21 Interested [1] - 37:16 intimately [1] - 9:1 Investigation [1] - 5:3 investigation [1] - 10:8 Investment [1] - 22:19 Involve [1] - 13:19 Involved [9] - 12:23, 22:20, 23:5, 23:16, 28:23, 30:14, 31:19, 31:22, 33:2 involvement [3] - 14:5, 23:23, 30:5 IS [1] - 2:9 Issue [1] - 5:10 Issues [1] - 32:18 Itself [1] - 22:17	33:22 knows [1] - 27:21	living [1] - 22:10 local [2] - 21:19, 35:22 looking [1] - 6:21 Lopresti [5] - 13:5, 13:13, 15:5, 15:8, 30:16 Lopresti's [1] - 29:8 loss [1] - 13:25 lost [1] - 22:18 love [2] - 14:13, 20:22 loved [1] - 21:17 loves [2] - 14:9, 17:17 lower [2] - 15:17, 15:20
I	J	L	M
idea [3] - 26:20, 26:24, 31:10 illegal [1] - 35:24 imagine [1] - 18:8 immature [1] - 25:10 Immediately [2] - 13:11, 36:15 Impact [1] - 24:12 important [2] - 10:9, 11:3 Importantly [1] - 10:2 impose [1] - 35:4 Imposed [1] - 28:12 Imprisoned [1] - 35:13 imprisonment [2] - 7:17, 35:15 IN [1] - 2:10 in-vitro [2] - 22:17, 22:20 Include [1] - 3:23 including [1] - 9:24 incorrect [1] - 5:18 indeed [2] - 7:1, 32:4 Indicated [5] - 5:23, 9:19, 9:23, 29:22, 36:7 Indication [1] - 10:14 individual [2] - 12:12, 33:16 individuals [8] - 7:1, 10:21, 28:23, 28:25, 29:5, 30:14, 30:20, 32:4 ineligibility [2] - 31:24, 32:3 influenced [1] - 9:4 Information [5] - 3:22, 4:2, 4:12, 4:18, 4:20 information [10] - 8:17, 9:22, 9:24, 10:5, 10:6, 10:11, 11:2, 13:16, 13:17, 13:18 Initial [1] - 30:5 Instead [1] - 17:22 Instructed [1] - 30:16 Insult [2] - 20:9, 23:10 Insulted [1] - 29:24	jail [2] - 14:15, 28:1 James [1] - 3:13 JAMES [1] - 1:19 jealous [2] - 17:19, 17:20 Jeopardizing [1] - 33:7 Jersey [2] - 15:15, 37:7 JERSEY [2] - 1:1, 1:12 job [4] - 13:25, 21:16, 22:6, 22:18 Jobs [1] - 21:14 Johnny [1] - 25:11 Johnny-goofball [1] - 25:11 Joseph [1] - 3:7 JOSEPH [1] - 1:18 Judge [1] - 3:10 Judgment [2] - 4:8, 35:11 JULY [1] - 1:7 July [1] - 8:14 justice [1] - 20:24	lady [1] - 21:24 Lahham [6] - 13:8, 13:13, 15:8, 26:13, 29:9, 30:15 Lahham's [2] - 15:4, 29:7 lapse [2] - 28:9, 29:18 large [3] - 21:20, 31:22, 32:3 last [4] - 14:4, 18:16, 28:20, 33:11 law [2] - 14:2, 21:1 lay [1] - 12:8 lead [1] - 13:12 leader [8] - 6:25, 8:20, 8:22, 9:20, 11:5, 12:5, 15:21, 29:3 leadership [1] - 13:1 learned [2] - 9:20, 30:10 least [3] - 7:23, 32:4, 36:5 leave [1] - 25:18 leaving [1] - 18:1 led [5] - 13:20, 21:9, 21:15, 22:3, 23:3 left [1] - 5:10 lengthy [2] - 25:24, 32:1 leniency [1] - 19:3 less [1] - 34:11 letter [10] - 5:11, 5:16, 5:17, 8:14, 9:15, 12:12, 14:11, 16:10, 19:12, 22:2 letters [6] - 5:5, 11:22, 12:1, 12:6, 24:8, 33:15 level [14] - 6:19, 6:20, 7:3, 7:5, 7:8, 7:11, 7:15, 9:7, 9:13, 10:19, 11:6, 11:8, 12:10, 15:17 levels [2] - 6:24, 7:2 life [10] - 19:23, 20:14, 20:18, 20:22, 22:11, 24:4, 27:17, 27:21, 34:8 life-long [2] - 34:8 likely [1] - 9:4 list [1] - 20:25 listened [1] - 19:22 live [2] - 20:18, 34:7 lives [4] - 18:15, 19:6, 24:23, 33:13	maintained [2] - 31:1 major [2] - 11:6, 20:24 man [7] - 16:13, 16:14, 16:15, 18:21, 18:22, 18:23, 19:2 manager [1] - 6:25 mandatory [1] - 8:4 manipulated [1] - 34:16 marijuana [1] - 23:1 marks [1] - 34:18 marriage [2] - 12:10, 32:21 married [1] - 22:11 MATTER [1] - 2:11 matter [5] - 6:18, 12:23, 27:16, 27:17, 32:16 matters [1] - 13:19 maximum [4] - 7:17, 7:20, 7:25, 15:1 meaningful [1] - 25:18 medical [2] - 9:25, 26:25 meet [2] - 13:14, 29:9 member [1] - 22:21 members [2] - 18:12, 18:13 memoranda [1] - 5:4 mental [3] - 32:19, 35:7, 36:9 mercy [1] - 19:4 merit [1] - 11:5 met [1] - 13:13 microphone [1] - 20:6 mid [1] - 22:12 mid-thirties [1] - 22:12 might [2] - 21:11, 22:4 million [2] - 8:1, 8:2 mind [3] - 11:7, 12:6, 34:23

miss [2] - 27:16, 27:21 mistreats [1] - 21:22 mom [1] - 18:1 moment [2] - 20:15, 31:14 mommy [1] - 17:22 money [4] - 22:14, 24:3, 26:7, 27:11 monsignor [1] - 24:20 month [4] - 10:20, 23:10, 28:20, 30:9 months [9] - 7:18, 7:19, 11:10, 15:2, 22:1, 22:22, 26:1, 35:3, 35:14 Morasco [1] - 25:13 morning [3] - 3:8, 3:10, 3:12 mortgages [1] - 22:22 most [4] - 9:22, 10:1, 18:4, 22:14 motion [3] - 8:13, 9:16, 10:17 movie [1] - 21:21 moving [1] - 7:7 MR [23] - 3:6, 3:10, 3:12, 4:1, 4:17, 5:9, 6:5, 6:9, 6:12, 6:15, 7:9, 8:8, 8:9, 8:12, 11:14, 11:15, 11:20, 16:5, 19:9, 20:4, 25:23, 36:22, 36:23 MS [2] - 16:7, 19:10 municipal [2] - 5:12, 5:23 Murphy [5] - 3:13, 4:22, 5:7, 11:19, 34:9 MURPHY [13] - 1:19, 3:12, 5:9, 6:5, 6:9, 6:15, 8:9, 11:15, 11:20, 16:5, 19:9, 20:4, 36:23 must [3] - 14:16, 15:6, 36:3 MY [1] - 2:10	34:12 neighborhood [1] - 25:10 neighbors [1] - 18:14 nervous [1] - 19:13 neutral [1] - 10:15 never [2] - 12:21, 17:18 NEW [2] - 1:1, 1:12 New [2] - 15:15, 37:7 news [1] - 30:3 newspaper [1] - 21:15 NO [1] - 1:2 no-billed [1] - 6:2 nobody [1] - 30:1 none [4] - 6:12, 11:14, 11:15, 14:6 note [3] - 3:21, 28:2, 32:17 noted [1] - 14:11 notes [1] - 24:5 NOTES [1] - 2:10 notice [4] - 4:3, 4:5, 4:6, 4:11 nowhere [1] - 20:18 number [4] - 5:5, 10:22, 29:5, 30:14 numbers [1] - 14:25 numerous [1] - 13:15	older [1] - 23:2 once [1] - 16:25 one [15] - 5:10, 7:8, 7:21, 12:10, 17:23, 21:6, 21:24, 22:18, 23:3, 25:15, 25:16, 28:2, 32:4, 33:23, 36:3 ones [1] - 34:4 open [1] - 3:1 operation [1] - 12:5 opportunity [4] - 5:8, 16:8, 20:8, 28:20 orchestrated [1] - 34:16 order [1] - 3:21 ordered [1] - 36:13 organization [1] - 15:22 organizer [1] - 6:25 originator [1] - 29:2 otherwise [1] - 4:4 outpouring [1] - 11:25 overtakes [1] - 21:21 own [1] - 20:14 oxycodone [9] - 3:19, 12:15, 13:8, 13:10, 14:5, 28:24, 29:23, 30:1, 34:3	people [23] - 11:22, 11:23, 12:1, 12:2, 17:1, 18:11, 18:15, 21:22, 22:3, 23:2, 23:16, 23:20, 24:23, 25:7, 26:5, 26:14, 26:23, 26:25, 27:3, 30:12, 33:22, 34:3, 34:19 percent [1] - 19:18 perhaps [2] - 11:3, 24:20 period [4] - 13:5, 13:6, 13:8, 31:2 perpetrate [1] - 29:17 person [8] - 14:12, 20:19, 21:11, 21:12, 28:5, 28:7, 28:9, 35:19 personally [1] - 16:12 pharmacist [1] - 30:18 phone [1] - 21:25 pick [1] - 25:9 pick-up-basketball [1] - 25:9 pills [11] - 15:23, 19:18, 23:6, 23:7, 23:9, 23:24, 24:17, 26:7, 27:11, 30:20, 30:22 place [2] - 11:8, 37:10 placed [1] - 35:16 places [1] - 11:9 played [1] - 21:17 playing [2] - 33:25, 34:4 plays [1] - 25:8 plea [4] - 3:17, 3:23, 4:6, 4:7 plead [2] - 9:4, 19:19 pleas [2] - 10:4, 13:12 pled [1] - 10:3 plus [2] - 5:22, 33:12 point [6] - 9:6, 16:24, 17:2, 21:5, 30:5, 31:6 pointed [1] - 14:25 points [6] - 6:6, 7:13, 12:13, 21:3, 28:4, 31:16 Police [1] - 20:25 portion [1] - 27:4 position [1] - 20:13 possess [2] - 3:18, 35:24 possessing [1] - 35:23 possible [2] - 15:14, 36:17 power [3] - 23:12, 31:8, 31:9 powerful [1] - 31:11
N name [3] - 16:6, 19:10, 29:11 nature [3] - 9:2, 10:13, 28:18 near [2] - 15:14, 20:18 necessarily [1] - 34:14 necessary [3] - 6:5, 14:23, 35:2 need [3] - 24:16, 31:15,	O objections [2] - 6:11, 6:14 obtaining [1] - 10:4 obviously [5] - 9:21, 11:1, 11:2, 17:13, 19:13 occasions [1] - 13:15 occur [1] - 14:14 Ocean [1] - 6:1 oddly [1] - 14:3 OF [4] - 1:1, 1:5, 2:10 offender [1] - 28:10 offenders [1] - 32:2 offense [6] - 6:19, 6:22, 7:3, 7:11, 7:15, 28:19 offered [1] - 24:20 office [2] - 29:7, 29:8 Office [2] - 8:16, 35:19 officer [2] - 5:15, 36:6 Official [1] - 37:5 OFFICIAL [2] - 1:25, 2:15 often [1] - 28:21 old [1] - 23:2	P painkillers [1] - 30:3 panic [4] - 16:17, 16:21, 21:8, 30:7 panicked [2] - 16:21, 30:6 paper [5] - 17:16, 18:24, 21:19, 23:15 parent [2] - 12:11, 18:2 parents [2] - 17:24, 20:20 Park [1] - 21:19 parole [2] - 31:24, 32:3 part [3] - 10:20, 18:5, 26:3 participation [1] - 13:1 particular [3] - 12:23, 13:25, 14:16 particularly [1] - 12:23 parties [4] - 4:3, 4:14, 36:19, 37:14 past [1] - 16:19 PAUL [1] - 1:17 pay [4] - 22:19, 34:19, 36:12, 36:13 paying [1] - 22:22	

powers [1] - 30:2 prescription [1] - 13:3 prescriptions [9] - 9:25, 12:25, 13:7, 13:9, 15:23, 29:10, 30:18, 34:18 present [4] - 3:1, 3:14, 12:2, 12:3 Presentence [2] - 5:3, 13:4 Press [1] - 21:20 pretrial [1] - 12:20 pretty [1] - 25:10 previous [1] - 22:5 price [1] - 27:6 prices [1] - 23:23 primary [2] - 14:10, 24:13 printout [2] - 5:19, 6:4 prison [1] - 21:13 Prisons [3] - 15:13, 35:13, 35:18 privy [1] - 9:22 probation [3] - 5:15, 7:21, 36:6 Probation [1] - 35:19 problem [4] - 12:13, 24:23, 30:25, 34:8 problems [3] - 12:21, 21:7, 26:25 proceed [2] - 5:1, 28:17 proceedings [2] - 36:25, 37:9 professionalism [1] - 25:15 Program [2] - 24:19, 24:21 prohibited [1] - 35:23 properly [1] - 14:15 property [1] - 22:19 Prosecutor [1] - 6:1 protects [1] - 24:7 provide [3] - 11:2, 16:6, 22:13 provided [8] - 8:16, 10:5, 10:7, 10:11, 10:21, 11:4, 13:18, 15:23 providers [1] - 32:20 providing [1] - 9:24 provision [4] - 4:3, 4:5, 4:12, 35:7 provisions [1] - 36:10 psychiatrist [1] - 21:7 public [2] - 24:18, 32:12	punishes [1] - 24:7 pure [1] - 27:7 purposes [1] - 14:23 pursuant [3] - 6:22, 10:22, 28:17 PURSUANT [1] - 2:8 put [1] - 13:24 putting [1] - 20:12 Q qualify [1] - 7:5 quantity [1] - 6:19 quite [1] - 14:14 R ran [1] - 26:20 range [4] - 8:1, 26:1, 28:15 ranges [2] - 8:6, 10:23 reaction [1] - 18:18 read [2] - 8:7, 13:5 reading [1] - 16:11 ready [2] - 11:17, 13:21 reality [1] - 16:25 realization [1] - 16:25 realize [2] - 23:8, 32:13 realized [1] - 23:11 realizes [2] - 14:6, 14:7 really [1] - 25:18 reason [3] - 25:5, 27:22, 30:21 reasons [4] - 13:24, 20:14, 20:15, 26:2 receive [1] - 34:10 received [9] - 4:6, 4:20, 5:2, 5:3, 5:19, 14:11, 24:8, 31:23, 33:15 receiving [1] - 32:7 recognize [2] - 12:3, 29:23 recognizes [1] - 14:3 recommend [1] - 36:17 recommendation [3] - 10:18, 15:13, 15:16 recommending [1] - 9:7 record [1] - 5:25 records [1] - 8:19 recover [1] - 34:7 recovering [2] - 19:13, 29:21 recruit [1] - 32:6 reference [1] - 5:13	referenced [3] - 6:3, 31:16, 32:16 referred [1] - 6:1 reflections [1] - 20:17 regard [12] - 3:22, 5:11, 6:8, 9:17, 11:18, 12:9, 12:17, 12:18, 13:19, 32:20, 34:17, 35:8 regarding [1] - 5:19 relate [1] - 25:11 relationship [3] - 9:2, 32:23, 33:1 relationships [1] - 22:14 relative [2] - 37:12, 37:15 relayed [2] - 9:3, 13:16 release [8] - 7:23, 12:20, 35:5, 35:15, 35:16, 35:17, 35:21, 36:4 released [1] - 35:20 reliable [1] - 10:12 remarks [3] - 29:22, 31:9, 31:12 remember [1] - 24:25 reneged [1] - 22:21 Report [2] - 5:3, 13:4 report [5] - 5:8, 6:11, 25:2, 32:17, 35:19 REPORTER [2] - 1:25, 2:15 Reporter [2] - 37:6 representing [1] - 3:13 requested [1] - 13:17 requesting [1] - 28:15 require [1] - 4:14 required [1] - 14:18 requires [1] - 4:11 resentment [1] - 18:18 resource [1] - 24:21 Resources [1] - 22:2 respectfully [2] - 15:6, 19:3 responsibility [5] - 7:6, 13:23, 17:10, 20:11, 24:6 responsible [1] - 17:11 rest [1] - 27:5 restate [1] - 19:12 restitution [1] - 8:3 restriction [1] - 35:9 result [4] - 7:14, 9:21, 10:10, 10:16 revealed [1] - 5:25	review [1] - 5:8 reviewing [1] - 10:1 rewarded [1] - 15:6 rise [2] - 3:2, 36:24 risk [1] - 10:14 role [2] - 6:21, 11:2 rolled [1] - 23:14 room [2] - 19:15, 29:9 ruining [1] - 20:14 Rule [1] - 4:10 rule [2] - 4:11, 4:13 run [2] - 17:22, 22:7 runners [1] - 29:6 RUSSONIELLO [2] - 1:24, 2:14 Russoniello [3] - 2:14, 37:5, 37:23 S S/Vincent [1] - 2:14 salvageable [1] - 11:24 San [1] - 20:25 satisfied [1] - 10:11 scare [1] - 25:4 Scared [1] - 24:25 scenario [1] - 27:23 scheme [11] - 8:17, 8:18, 8:20, 8:22, 9:21, 29:2, 29:3, 29:16, 30:15, 32:3, 32:6 school [1] - 21:17 script [2] - 26:19, 34:13 scripts [1] - 26:23 Scrooge [1] - 24:17 seat [2] - 3:15, 6:16 seated [1] - 3:5 SECTION [1] - 2:8 secure [2] - 22:8, 22:18 see [2] - 19:4, 33:21 seeing [1] - 16:17 seeking [3] - 9:12, 25:24, 25:25 self [6] - 15:12, 15:16, 20:23, 21:2, 21:9, 31:19 self-destructive [4] - 20:23, 21:2, 21:9, 31:19 self-surrender [2] - 15:12, 15:16 sell [3] - 23:2, 30:19 selling [3] - 19:17, 23:1, 24:2 sending [1] - 34:25

sense [2] - 17:5, 26:17 sent [1] - 6:2 sentence [20] - 14:20, 14:22, 15:1, 15:4, 15:5, 15:9, 15:20, 24:7, 25:24, 25:25, 28:7, 28:12, 29:1, 31:17, 31:24, 34:25, 35:3, 35:10, 36:20 SENTENCE [1] - 1:6 sentenced [4] - 14:15, 15:14, 32:5, 33:11 sentences [2] - 15:7, 32:1 Sentencing [1] - 6:22 sentencing [7] - 3:16, 5:4, 10:21, 11:18, 14:19, 14:24, 34:9 sentencings [1] - 28:22 seriously [1] - 32:14 service [1] - 24:18 set [4] - 4:12, 8:13, 22:16, 37:10 several [1] - 28:21 severely [1] - 32:14 shall [7] - 35:16, 35:18, 35:21, 35:23, 35:24, 35:25, 36:13 show [2] - 6:4, 14:12 shown [3] - 33:19, 33:22, 33:23 side [1] - 33:19 sign [1] - 4:23 signed [1] - 4:21 significance [1] - 28:12 significant [5] - 10:12, 11:6, 27:19, 28:6, 30:25 significantly [2] - 24:12, 27:24 similar [1] - 21:23 single [3] - 8:5, 19:21, 26:19 sister [1] - 22:21 sitting [1] - 19:14 situation [3] - 12:17, 13:25, 14:16 sleeping [1] - 23:9 small [3] - 21:22, 27:4, 27:10 society [4] - 24:7, 24:10, 24:17, 29:11 sold [2] - 15:24, 23:23 someone [1] - 33:21 sometimes [2] - 17:21,	27:15 son [11] - 14:8, 14:13, 19:25, 20:13, 24:12, 25:17, 27:14, 32:25, 33:3, 33:4, 33:5 sorry [1] - 24:5 sort [4] - 16:22, 17:24, 18:17, 21:9 speaker [1] - 24:20 special [4] - 8:4, 32:25, 36:7, 36:14 spent [1] - 10:20 spiral [1] - 22:25 sports [3] - 21:16, 21:17, 33:17 sports-writer [1] - 21:16 stable [2] - 22:13, 32:21 stand [1] - 12:6 standard [1] - 36:1 start [1] - 9:11 started [3] - 22:25, 23:1, 24:18 State [1] - 37:7 state [3] - 31:23, 32:1, 35:22 STATE [1] - 1:12 statement [1] - 15:25 statements [1] - 12:17 States [3] - 3:7, 36:14, 37:5 states [1] - 8:15 STATES [4] - 1:1, 1:5, 1:11, 1:17 statute [4] - 7:16, 7:21, 7:25, 14:22 statutory [1] - 7:19 stay [1] - 20:5 STENOGRAPHIC [1] - 2:10 stenographically [1] - 37:9 stipulation [2] - 4:17, 4:21 stipulations [1] - 3:24 stop [2] - 31:6, 31:9 Straight [1] - 24:25 straight [2] - 25:4, 25:5 STREET [1] - 1:12 street [4] - 24:1, 27:11, 30:19, 34:1 strong [2] - 11:25, 12:11 stupid [2] - 22:24, 27:9 style [1] - 24:4	submit [1] - 36:3 submitted [2] - 4:8, 9:15 submitting [2] - 4:14, 4:17 substance [1] - 35:25 substantial [3] - 31:2, 31:23, 32:7 suburbia [1] - 25:3 success [1] - 14:4 sufficient [3] - 5:7, 14:22, 35:2 suicide [1] - 22:1 Superseding [5] - 3:22, 4:2, 4:12, 4:18, 4:20 supervised [5] - 7:23, 35:5, 35:16, 35:21, 36:4 supply [1] - 30:12 support [3] - 11:25, 18:12, 30:22 supposed [1] - 22:19 surprise [1] - 33:13 surrender [3] - 15:12, 15:16, 36:16 sweetest [2] - 18:4, 19:5 system [1] - 32:1	they've [1] - 27:2 thinking [1] - 23:1 thirties [1] - 22:12 three [4] - 7:23, 7:24, 35:4, 35:17 thrill [1] - 23:12 Tim [1] - 3:9 timely [2] - 10:10, 10:15 Tims [1] - 25:15 TITLE [1] - 2:8 TO [2] - 2:8, 2:9 today [4] - 16:14, 18:11, 29:1, 29:22 together [1] - 22:23 took [2] - 21:14, 26:5 top [4] - 7:1, 26:1, 28:15, 35:1 Torres [2] - 9:17, 10:10 total [2] - 7:15, 36:14 totally [4] - 20:23, 21:2, 25:18, 35:1 towards [1] - 12:9 trafficking [1] - 9:21 trail [1] - 23:15 TRANSCRIPT [2] - 1:5, 2:9 transcript [1] - 37:8 TRANSCRIPTION [1] - 2:10 trapped [2] - 16:24, 23:14 treated [1] - 22:3 treating [1] - 25:14 treatment [4] - 35:7, 36:9 TRENTON [1] - 1:12 tried [2] - 17:3, 18:9 true [1] - 37:8 truthful [1] - 8:24 truthfully [1] - 12:11 turned [2] - 16:22, 30:7 turning [2] - 7:12, 32:15 twenties [1] - 20:20 two [15] - 7:5, 12:6, 12:20, 12:22, 13:5, 16:19, 17:14, 19:22, 21:14, 22:22, 25:15, 32:4, 33:13, 33:22, 36:5 two-level [1] - 7:5 two-year [1] - 13:5
T			
table [1] - 3:9 tabs [2] - 13:8, 13:9 teens [1] - 21:8 term [6] - 14:15, 29:6, 32:8, 35:4, 35:14, 35:16 termination [1] - 22:4 terms [2] - 16:20, 17:14 terrible [1] - 20:21 terrified [1] - 25:1 test [1] - 36:3 testify [3] - 8:25, 10:2, 10:13 testimony [1] - 10:6 testing [2] - 35:6, 36:8 tests [1] - 36:5 THE [28] - 1:1, 1:14, 2:8, 2:10, 3:2, 3:3, 3:11, 3:15, 4:16, 4:19, 5:17, 6:6, 6:10, 6:14, 6:16, 7:10, 8:10, 9:14, 11:17, 16:2, 16:6, 19:8, 20:3, 20:5, 20:7, 25:21, 28:16, 36:24 thereafter [1] - 36:5 therefore [2] - 10:7, 11:5			
U			
			U.S [4] - 1:25, 2:15, 8:16,

25:12 ugly [1] - 20:21 ultimately [2] - 10:3, 34:6 unable [1] - 22:6 uncharged [1] - 26:11 under [9] - 7:16, 7:17, 7:21, 7:22, 7:25, 8:11, 14:17, 14:22, 15:9 undoubtedly [1] - 15:18 unfortunately [3] - 22:16, 30:23, 33:8 UNITED [4] - 1:1, 1:5, 1:11, 1:17 United [3] - 3:7, 36:14, 37:5 unless [1] - 28:12 up [7] - 16:11, 24:3, 25:9, 27:15, 32:9, 33:4, 34:6 upward [1] - 6:23 USC [1] - 2:8 USDJ [1] - 1:14 useful [2] - 10:3, 10:12 usual [1] - 26:17	weed [1] - 23:8 well-adjusted [1] - 18:4 white [1] - 25:3 whole [4] - 19:17, 24:4, 24:23, 26:4 widespread [1] - 30:13 wife [6] - 12:7, 15:25, 22:10, 23:13, 24:12, 25:17 wiffle [1] - 25:8 willing [2] - 12:16, 13:21 wish [2] - 3:21, 14:17 wished [1] - 13:22 WOLFSON [1] - 1:14 wonderful [2] - 18:4, 33:12 word [1] - 31:8 words [1] - 30:7 works [1] - 30:11 world [3] - 16:23, 18:5, 19:6 worth [1] - 14:7 write [4] - 12:24, 13:3, 34:13, 34:18 writer [3] - 21:16, 33:17, 33:18 wrote [5] - 12:2, 13:6, 13:9, 14:12, 22:1
V	Y
value [3] - 19:6, 24:1, 27:11 variances [1] - 11:13 various [1] - 10:21 varying [1] - 27:23 version [1] - 5:15 victimized [1] - 29:15 victims [2] - 26:16, 29:15 Vincent [2] - 37:5, 37:23 VINCENT [2] - 1:24, 2:14 vindictive [1] - 23:16 vitro [2] - 22:17, 22:20 voluntary [1] - 36:16	year [1] - 13:5 years [24] - 7:17, 7:20, 7:22, 7:23, 7:24, 12:20, 14:4, 15:2, 15:4, 16:15, 16:19, 17:14, 18:16, 18:17, 19:22, 23:2, 30:3, 31:24, 31:25, 32:8, 32:18, 33:12, 35:4, 35:17 young [5] - 17:1, 24:11, 24:23, 25:7, 34:3 yourself [1] - 33:2
W	Z
waited [1] - 22:15 waiting [1] - 20:25 waive [1] - 36:12 waived [1] - 4:10 wake [1] - 33:4 wake-up [1] - 33:4 walked [1] - 21:14 wants [1] - 16:3 watching [1] - 24:25 weakness [1] - 29:16 weapon [4] - 5:13, 5:14, 5:22, 6:4	zero [1] - 28:3

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHRISTOPHER ERWIN	:	HON. PETER G. SHERIDAN
	:	
v.	:	CIV. No. 12-CR-364 (PGS)
	:	CRIM. No. 17-CV-5156 (PGS)
UNITED STATES OF AMERICA	:	

AFFIDAVIT OF JAMES R. MURPHY

James R. Murphy, Esq., being duly sworn, states:

1. I am an attorney admitted to practice in the State of New Jersey and in this Court. I have been admitted to practice law since 1978. I am a certified criminal trial attorney. I submit this affidavit pursuant to the Court's order waiving the attorney-client privilege between my former client, Christopher Erwin ("Movant" or "Erwin"), and me in connection with the claim of ineffective assistance of counsel raised in Erwin's § 2255 petition.

2. On May 9, 2011, a forty-five-page complaint (the "Complaint") was filed against Erwin and a twenty-one alleged co-conspirators, charging them with conspiracy to distribute oxycodone, in violation of 21 U.S.C. § 846. Erwin was the lead defendant and the Complaint alleged that he managed a large-scale oxycodone distribution ring (called the "Erwin Organization" in the Complaint) that operated throughout the State of New Jersey and elsewhere. The Complaint alleged that the Erwin Organization's modus operandi was to obtain medically unnecessary prescriptions for oxycodone from licensed physicians Hassan Lahham and Jacqueline Lopresti, in defendant Erwin's and others' names, in exchange for cash. It further alleged that Erwin's customers, posing as patients, filled the prescriptions at various pharmacies in New Jersey and New York, and that Erwin Organization obtained hundreds of thousands of oxycodone tablets, which were sold illegally on the black market.

3. On May 16, 2011, the defendant was arrested, and I was appointed to represent him. I then met with him for approximately one and one-half hours. (See Hourly Worksheets attached hereto as Exhibit A). During this meeting, Erwin and I discussed the detailed factual allegations in the Complaint, and Erwin acknowledged that the allegations were generally accurate. I then advised him that his potential exposure was not limited to the twenty-year statutory cap set forth in the Complaint, but could be increased should the Government include substantive counts or enhancements related to Erwin's alleged role in the conspiracy.

4. At this time, Erwin advised that he believed that the Government had him "dead to rights" and asked about his options for a reduction in his sentence. Accordingly, I informed Erwin about the possibility of cooperation with the Government, and advised him that if he wanted to cooperate in an effort to reduce his exposure, that it would be wise to get in early, especially given his alleged role as the leader of the conspiracy. I further advised him that if he decided to cooperate, that would necessarily involve pleading guilty, rather than attempting to disprove the Government's case. I further noted that if he wanted me to attempt to cooperate early I would have little opportunity to obtain discovery from the Government. Erwin immediately stated that he wanted to plead guilty and cooperate and asked me to attempt to schedule a meeting with the Government as quickly as possible.

5. In accordance with Erwin's direction, I set up a meeting with the Government (a "Proffer Session") as quickly as possible. Specifically, we scheduled the initial Proffer Session for May 23, 2011, approximately a week after Erwin's arrest. In preparation for the Proffer Session, on May 20, 2011, I had a half-hour telephone conference with Erwin, in which we discussed the nature of cooperation with the Government, and in which he reiterated that he

wanted to cooperate in an attempt to reduce his sentence, rather than test the Government's allegations.

6. On May 23, 2011, Erwin and I met with the Government for approximately four and one half hours. During this meeting, we discussed the details of the conspiracy alleged in the Complaint. Erwin admitted his involvement in that conspiracy, including his leadership role (although he asserted that other co-conspirators, specifically Steven Sampson, were equally culpable). Specifically, he admitted that he recruited numerous other individuals (including many of the alleged co-conspirators charged in the Complaint, as well as others), and paid them to obtain medically unnecessary prescriptions for oxycodone from Dr. Lahham, Dr. Lopresti and other doctors. Erwin further admitted that he and his co-conspirators then filled the prescriptions at various pharmacies in New Jersey and New York, and then sold hundreds of thousands of oxycodone tablets illegally on the black market.

7. We thereafter met with the Government on four additional dates to continue to provide information: a three-hour Proffer Session on June 27, 2011; a three-hour Proffer Session on March 16, 2012; a two-hour Proffer Session May 24, 2012; and a half-hour Proffer Session on August 30, 2012.

8. Contrary to the allegations set forth in Erwin's Motion, there was no significant discussion of a marijuana operation in upstate New York at any of the Proffer Sessions. I recall only a brief and vague discussion of the topic in an early Proffer Session, and Erwin never asked me to follow up with the Government about the topic thereafter.

9. On March 26, 2012, the Government provided Erwin with a letter outlining a proposed plea agreement (the "Plea Agreement") (A copy of the Plea Agreement is attached hereto as Exhibit B).

10. Schedule A of the Plea Agreement contained a stipulations to specific Sentencing Guidelines. Specifically:

- a. The parties agree that Christopher Erwin is responsible for approximately 6,912 g of oxycodone, which is the equivalent of 46,310 kg of marijuana. Accordingly, the applicable guideline is U.S.S.G. § 2D1.1(c)(1). This guideline carries a Base Offense Level of 38.
- b. Christopher Erwin was the organizer or leader of a criminal activity that involved five or more participants or was otherwise excessive. This results in an increase of 4 levels pursuant to U.S.S.G. § 3B1.1(a).
- c. Christopher Erwin has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore a downward adjustment of two points for acceptance of responsibility is appropriate if Christopher Erwin's acceptance of responsibility continues through the date of sentencing. See U.S.S.G § 3E1.1(a).
- d. Christopher Erwin has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the authorities of his intentions to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Christer Erwin enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G § 3E1.1(a), and if in addition Christopher Erwin's offense level under the Guidelines prior to the operation of U.S.S.G § 3E1.1(a) is 16 or greater, Christopher Erwin will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G § 3E1.1(b).
- e. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Christopher Erwin will be 39.
- f. The parties agree not to seek or argue for any upward or downward departure or adjustment not set forth herein.

11. Upon receipt of the Plea Agreement, I reviewed it with Erwin at length. We specially discussed all of the stipulations including the amount of drugs set forth in the stipulations, and the fact that he was stipulating to being an organizer or leader. Although he was not happy with these proposed enhancements, Erwin agreed to them, and signed the Plea Agreement.

12. On May 24, 2012, Erwin pled guilty to a one-count information, pursuant to the terms of the Plea Agreement.

13. On July 8, 2013, I received a copy of the draft Presentence Report ("Draft PSR"). I thereafter discussed the Draft PSR at length with Erwin. We specially discussed all of the enhancements including the amount of drugs, and the enhancement for to being an organizer or leader. After this discussion, at Erwin's direction, I wrote a letter to Probation setting forth a number of objections to the Draft PSR, but not objecting to either the amount of drugs or the enhancement for leader. (A copy of my letter to Probation is attached hereto as Exhibit C).

14. On July 12, 2013, I received a copy of the Government's Sentencing Memorandum (a copy of the Government's Sentencing Memorandum is attached hereto as Exhibit D). The only cooperation mentioned in the Government's Sentencing Memorandum was Erwin's cooperation against Dr. Lopresti and Lahham. This was unsurprising, as that had been the focus of all of the Proffer Sessions with the Government.

15. That same day, July 12, 2013, I sent a copy of the Government's Sentencing Memorandum to Erwin. I thereafter discussed the Government's Sentencing Memorandum at length with Erwin. He expressed no surprise that the only cooperation mentioned in the Sentencing Memorandum was his cooperation against Dr. Lopresti and Dr. Lahham. At no time did Erwin ask me to bring any additional cooperation, including the marijuana growing operation, to the Government's attention.

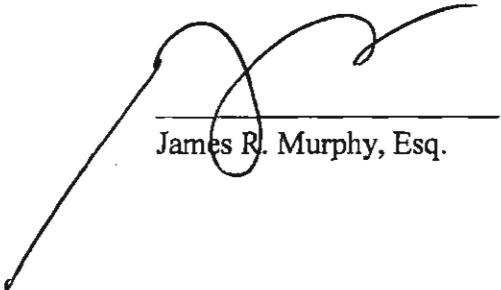
16. On July 14, 2013, after discussion with Erwin, I filed a Sentencing Memorandum on his behalf. (A copy of the Defendant's Sentencing Memorandum is attached hereto as Exhibit E). Erwin reviewed and authorized this document before I filed it. The only mention of

cooperation in the Defendant's Sentencing Memorandum is Erwin's cooperation against Dr. Lopresti and Lahham.

17. On July 25, 2013, the District Court conducted a sentencing hearing where Erwin was sentenced to a term of imprisonment of 188 months.

I swear that all of the foregoing statements made by me are true to the best of my knowledge. I know that if any of the foregoing statements made by me knowingly are false, I may be subject to punishment.

4/4/18
Date


James R. Murphy, Esq.

IN COURT HOURLY WORKSHEET

Client Name:

Case Number:

Voucher Number:

Date	Brief Description of Services	Arraignment and/or Plea	Bail and Detention Hearings	Motion Hearings	Trial	Sentencing Hearings	Revocation Hearings	Appeals Court	Other
05/17/2011	Bail hearing -J. Bongiovanni		0.2						
05/24/2012	Plea hearing J. Wolfson	0.5							
07/25/2013	Sentence hearing					0.8			
	Grand Total	0.5	0.2	0.0	0.0	0.8	0.0	0.0	0.0

TOTAL IN-COURT: 1.5 HOURS * \$125.00 = \$187.50

OUT OF COURT HOURLY WORKSHEET

Client Name:

Case Number:

Voucher Number:

Date	Brief Description of Services	Interviews and Conferences	Obtaining and Reviewing Records	Legal Research and Brief Writing	Travel time	Investigative and Other Work
05/16/2011	TC w/ court rep Ervin. Rev 45 pg complaint	0.1	2.6			
05/16/2011	Tel conf w/ Allison E. PIS. Mtg w/ wife Bail pkg.	3.0	3.0			
05/17/2011	Mtg w/ client bef court	1.2				
05/17/2011	Mtg w/ wife family aft court	0.5				
05/18/2011	News articles on Ervin		0.3			
05/20/2011	Tel conf w/ client & prep w/ profiler	0.5				
05/23/2011	Profiler session US Atty 10:30- 3pm	4.5				
06/08/2011	Tracking warrant 7 TC w/ Chris	0.2	0.1			
06/24/2011	Tel C w/ Chris on profiler session	0.4				
06/27/2011	Profiler session w/ AUSA	3.0				
07/14/2011	DEA forfeit 19K notice TC w/ client	0.4				
08/01/2011	Tel conf and 3 pg narrative by client on bail	0.4	0.4			
08/03/2011	Ltr faxed to Judge Bongiovanni bail mod		0.2			
08/30/2011	Signed continuance		0.1			
10/24/2011	Conf and 6 pg memo w/ Chris on issues	1.0	0.8			
12/20/2011	Conf and memo w/ Chris on issues	1.2				
12/21/2011	TC w/ Chris, Gribko, PIS on 12/27 mtg	0.7				
12/26/2011	Research other oxy sent			3.0		
12/27/2011	Mtg w/ client to discuss case	1.5				
01/05/2012	TC w/ Chris on bracelet issue	0.4				
01/10/2012	Conf w/ Chris on bail mod request	1.0				
01/11/2012	Prep bail mod cert ltr & order w/ J. Bongiovanni		1.0			
01/12/2012	TC w/ Gribko Digiacomo bail mod OK	0.4				
03/07/2012	Tel conf w/ gribko & Chris on Coop plea	0.4				
03/13/2012	Tel conf w/ client profiler	0.3				
03/15/2012	Tel conf w/ Ervin (3) on further coop7 info	0.7				
03/16/2012	Profiler session w/ Gov	3.0				
03/22/2012	Tel Conf w/ AUSA Gribko	0.2				
03/22/2012	Rev d 7 other def plea agreements		1.5			
03/22/2012	Tel conf w/ client on other D's plea Ag	0.4				

Client Name:

Case Number:

OUT OF COURT HOURLY WORKSHEET

Voucher Number:

Date	Brief Description of Services	Interviews and Conferences	Obtaining and Reviewing Records	Legal Research and Brief Writing	Travel time	Investigative and Other Work
03/27/2012	Reed and Revd Plea & Coop Plea Conf w/ client	1.0	2.0			
05/07/2012	TC w/ client (3); Gribko . PTS & prep f/ proffer	1.0	0.2			
05/08/2012	Proffer session w/ client at US Atty	2.0				
05/08/2012	Mtg w/ client to rev & sign plea agreements	1.0				
05/22/2012	Reed & revd plea memo w/ client	1.3				
05/24/2012	Mtg w/ client RJ1 . info waiver before plea	1.0				
07/24/2012	Tel conf w/ Chris, Gribko PTS casale bail mod	0.7				
07/25/2012	Ltr a nd prop Bail mod order J. Bongiovanni		0.3			
08/29/2012	Tel conf chris on mtg w/ US Atty	0.2				
08/30/2012	Mtg w/ AUSA and Chris	0.5				
01/16/2013	rev 5 pg forfeiture order w/ Vhris & wife	0.8				
02/12/2013	forward forfeiture order Gribko		0.1			
05/20/2013	Prep f/ mtg. w/ P.O. Leuken & client		0.5			
05/20/2013	Tel conf w/ client on mtg w/ prob	0.3				
05/21/2013	Mtg w/ client prior to Prob	0.2				
05/21/2013	Mtg w/ prob . client PSR interview	1.3				
06/21/2013	Tel conf w/ client & wife on Allison ltr	0.4				
07/10/2013	Reed and revd net worth stnt and financials f/ client		0.6			
07/11/2013	Revd DPSR : Tel conf w client (3); Gribko (2) Rev ltrs	1.5	3.5			
07/12/2013	Reed and revd 5K 1.1 ltr f/ Gribko		0.4			
07/12/2013	Tel conf and email 5K ltr	0.3				
07/14/2013	Tel conf w/ client on sent memo (4)	0.8				
07/14/2013	Sentence memo prepared w/ ltrs			4.0		
07/14/2013	Ltr to Sr.P.O. Leaken w/ DPSr comments		1.5			
07/16/2013	Reed and revd FPSR		1.2			
07/22/2013	Tel conf Gribko add forfeit to info	0.2				
07/22/2013	Conf w/Allison on her concerns	0.4				
07/23/2013	Conf w/ client on FPSR	0.5				
07/23/2013	Tel conf w/ client on Lacey arrest	0.4				
07/23/2013	Ltr to court w/ ltrs and lacey arrest issye		0.2			

OUT OF COURT HOURLY WORKSHEET

Client Name:

Case Number:

Voucher Number:

Date	Brief Description of Services	Interviews and Conferences	Obtaining and Reviewing Records	Legal Research and Brief Writing	Travel time	Investigative and Other Work
07/24/2013	Tel conf w/ client on Latham sent	0.3				
07/24/2013	Rev Latham OC and news article		0.2			
07/24/2013	Prep for sentence		3.0			
07/24/2013	Tel conf w/ client and rev his stmt	0.4	0.3			
07/25/2013	Mtg w/ client before and after sentence	1.2				
07/26/2013	Tel conf w/ client on sent	0.2				
07/29/2013	Rev final copy JDC w/ SCR		0.1			
Grand Total		43.3	24.1	7.0	0.0	0.0

TOTAL OUT-OF-COURT: 74.4 HOURS * \$125.00 = \$9,300.00

OTHER EXPENSE WORKSHEET

Client Name:

Case Number:

Voucher Number:

Date	Brief Description of Expense	TRAVEL EXPENSES					OTHER EXPENSES				
		Rate	Miles	Milage Expense	Parking	Meals	Lodging	Copying	Postage	Toll Calls	Other
05/17/2011	Parking bail				5.00						
05/23/2011	Parking proffer session				9.00						
	Grand Total		0.0	\$0.00	\$14.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		TOTAL TRAVEL EXPENSES: \$14.00					TOTAL OTHER EXPENSES: \$				

1 CIR/DIST/DIV CODE		2 PERSON REPRESENTED Christopher Erwin		VOUCHER NUMBER			
3 MAG DKT/DEF NUMBER		4 DIST DKT/DEF NUMBER 12-364-01 (FLW)		5 APPEALS DKT/DEF NUMBER			
6 OTHER DKT NUMBER							
7 IN CASE/MATTER OF (Case Name)		8 PAYMENT CATEGORY ☐ Felony ☐ Petty Offense ☐ Misdemeanor ☐ Other ☐ Appeal		9 TYPE PERSON REPRESENTED ☐ Adult Defendant ☐ Appellant ☐ Juvenile Defendant ☐ Appellee ☐ Other			
10 REPRESENTATION TYPE (See Instructions)							
11 OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) (If more than one offense, list (up to five) major offenses charged, accordingly to severity of offense)							
12 ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix), AND MAILING ADDRESS Telephone Number _____			13 COURT ORDER ☐ O Appointing Counsel ☐ C Co-Counsel ☐ F Subs For Federal Defender ☐ R Subs For Retained Attorney ☐ P Subs For Panel Attorney ☐ Y Standby Counsel Prior Attorney's _____ Appointment Dates _____ ☐ Because the above-named person represented has testified under oath or has otherwise satisfied this Court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 12 is appointed to represent this person in this case, OR ☐ Other (See Instructions) _____ Signature of Presiding Judicial Officer or By Order of the Court _____ Date of Order _____ Nunc Pro Tunc Date _____ Repayment or partial repayment ordered from the person represented for this service at time appointment ☐ YES ☐ NO				
						14 NAME AND MAILING ADDRESS OF LAW FIRM (Only provide per instructions)	
CLAIM FOR SERVICES AND EXPENSES			FOR COURT USE ONLY				
CATEGORIES (Attach itemization of services with dates)		HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH ADJUSTED HOURS	MATH/TECH ADJUSTED AMOUNT	ADDITIONAL REVIEW	
In	a Arraignment and/or Pleas	0.5					
	b Bail and Detention Hearings	0.2					
	c Motion Hearings						
	d Trial						
	e Sentencing Hearings	0.8					
	f Revocation Hearings						
	g Appeals Court						
	h Other (Specify on additional sheets)						
	(RATE PER HOUR = \$ 125.00) TOTALS		1.5	187.50			
	Out of	a Interviews and Conferences	43.3				
b Obtaining and reviewing records		34.1					
c Legal research and brief writing		7.0					
d Travel time							
e Investigative and other work (Specify on additional sheets)							
(RATE PER HOUR = \$ 125.00) TOTALS		74.4	9,300.00				
17 Travel Expenses (lodging, parking, meals, mileage, etc.)			14.00				
18 Other Expenses (other than expert, transcripts, etc.)			0.00				
GRAND TOTALS (CLAIMED AND ADJUSTED):			9,501.50				
19 CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE TO: _____			20 APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION		21 CASE DISPOSITION		
22 CLAIM STATUS ☐ Final Payment ☐ Interim Payment Number _____ ☐ Supplemental Payment Have you previously applied to the court for compensation and/or reimbursement for this representation? ☐ YES ☐ NO If yes, were you paid? ☐ YES ☐ NO Other than from the Court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? ☐ YES ☐ NO If yes, give details on additional sheets I swear or affirm the truth or correctness of the above statements. Signature of Attorney _____ Date _____							
APPROVED FOR PAYMENT - COURT USE ONLY							
23 IN COURT COMP		24 OUT OF COURT COMP		25 TRAVEL EXPENSES			
26 OTHER EXPENSES		27 TOTAL AMT. APPR / CERT					
28 SIGNATURE OF THE PRESIDING JUDICIAL OFFICER				DATE			
28a JUDGE/MAG JUDGE CODE							
29 IN COURT COMP.		30 OUT OF COURT COMP		31 TRAVEL EXPENSES			
32 OTHER EXPENSES		33 TOTAL AMT. APPROVED					
34 SIGNATURE OF CHIEF JUDGE, COURT OF APPEALS (OR DELEGATE) Payment approved in excess of the statutory threshold amount.				DATE			
34a JUDGE CODE							



U.S. Department of Justice

United States Attorney
District of New Jersey

RJG/PL AGR
2010R00301

402 E. State St., Room 430
Trenton, NJ 08608

609-989-2190

March 26, 2012

James R. Murphy, Esq.
947 State Road
Suite 205
Princeton, NJ 08540

Re: Plea Agreement with Christopher Erwin

Dear Mr. Murphy:

This letter sets forth the plea agreement between your client, Christopher Erwin, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Christopher Erwin to a one-count Information, to be filed in this district, which charges that Christopher Erwin did knowingly and intentionally conspire to distribute and possess with intent to distribute oxycodone, a Schedule II controlled substance, contrary to Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), in violation of Title 21, United States Code, Section 846. If Christopher Erwin enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Christopher Erwin for his participation in a conspiracy to distribute and possess with intent to distribute oxycodone from January 2009 through December 2010, as set forth more specifically in the Information. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Christopher Erwin may be commenced against him, notwithstanding the expiration of the limitations period after Christopher Erwin signs the agreement.

COPY

Sentencing

The violation of 21 U.S.C. § 846 to which Christopher Erwin agrees to plead guilty carries a statutory maximum prison sentence of 20 years, and a statutory maximum fine equal to the greatest of: (1) \$1,000,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Christopher Erwin is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Christopher Erwin ultimately will receive.

Further, in addition to imposing any other penalty on Christopher Erwin, the sentencing judge: (1) will order Christopher Erwin to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Christopher Erwin to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Christopher Erwin, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) may deny Christopher Erwin certain statutorily defined benefits, pursuant to 21 U.S.C. §§ 862 and 862a; and (5) pursuant to 21 U.S.C. § 841, must require Christopher Erwin to serve a term of supervised release of at least 3 years, which will begin at the expiration of any term of imprisonment imposed. Should Christopher Erwin be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Christopher Erwin may be sentenced to not more than 2 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Christopher Erwin by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Christopher Erwin's activities and relevant conduct with respect to this case.

Stipulations

This Office and Christopher Erwin agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Christopher Erwin from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Christopher Erwin waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

Christopher Erwin agrees that as part of his acceptance of responsibility and pursuant to 21 U.S.C. § 853, Christopher Erwin will consent to the entry of a forfeiture money judgment in the amount of \$1,000,000.00 in United States currency (the "Forfeiture Money Judgment"). Defendant acknowledges that the \$1,000,000 is subject to forfeiture as property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of a narcotics violation.

Payment of the Forfeiture Money Judgment shall be made by certified or bank check, with the criminal docket number noted on the face of the check, payable to the United States Marshals Service. On or before the date he enters his plea of guilty pursuant to this agreement, Christopher Erwin shall cause said check to be hand-delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102.

If the Forfeiture Money Judgment is not paid on or before the date Christopher Erwin enters his plea of guilty pursuant to this agreement, interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Furthermore, if Christopher Erwin fails to pay any portion of the Forfeiture Money Judgment on or before the date of his guilty plea, Christopher Erwin consents to the forfeiture of any other property alleged to be subject to forfeiture in the Information, including substitute assets, in full or partial satisfaction of the money judgment, and remains responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full.

Christopher Erwin agrees to consent to the entry of orders of forfeiture for the Forfeiture Money Judgment and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Christopher Erwin understands that the Forfeiture Money Judgment is part of the sentence that may be imposed in this case and

waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

Christopher Erwin hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense(s) may result in him being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense(s) regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

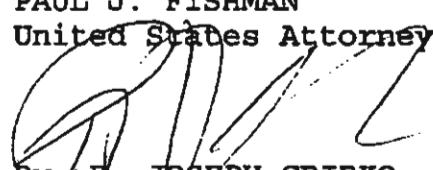
This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Christopher Erwin. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against Christopher Erwin.

No Other Promises

This agreement constitutes the plea agreement between Christopher Erwin and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: R. JOSEPH GRIBKO
Assistant U.S. Attorney

APPROVED:



Nelson S.T. Thayer, Jr.
Attorney In Charge, Trenton Office

I have received this letter from my attorney, James R. Murphy, Esq. I have read this letter. My attorney and I have discussed the letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. I understand the letter fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:

Christopher Erwin

Date:

I have discussed with my client this letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. My client understands the letter fully and wants to plead guilty pursuant to this plea agreement.

James R. Murphy, Esq.

Date:

Plea Agreement With Christopher Erwin

Schedule A

1. This Office and Christopher Erwin recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Christopher Erwin nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Christopher Erwin within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and Christopher Erwin further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2011 applies in this case. The Guidelines dictate that, for calculation purposes, 1 gram of oxycodone is equivalent to 6700 grams of marijuana. U.S.S.G. § 2D1.1 n.10(E). The parties agree that Christopher Erwin is responsible for approximately 6,912 g of oxycodone, which is the equivalent of 46,310 kg of marijuana. Accordingly, the applicable guideline is U.S.S.G. § 2D1.1(c)(1). This guideline carries a Base Offense Level of 38.

3. Christopher Erwin was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. This results in an increase of 4 levels, pursuant to U.S.S.G. § 3B1.1 (a).

4. As of the date of this letter, Christopher Erwin has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Christopher Erwin's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

5. As of the date of this letter, Christopher Erwin has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Christopher Erwin enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in

addition Christopher Erwin's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, Christopher Erwin will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

6. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Christopher Erwin will be 39 (collectively, the "agreed total Guidelines offense level").

7. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

8. Christopher Erwin knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from a total Guidelines offense level of 39. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from a total Guidelines offense level of 39. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

9. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.



U.S. Department of Justice

United States Attorney
District of New Jersey

R. Joseph Gribko
Assistant U.S. Attorney

Clarkson S. Fisher Federal Building
402 East State Street, Room 430
Trenton, New Jersey 08608

Tele 609 989 2190
Fax 609 989 2275

RJG/COOP.AGR

CONFIDENTIAL - NOT TO BE FILED
WITH THE CLERK'S OFFICE

March 26, 2012

James R. Murphy, Esq.
947 State Road
Suite 205
Princeton, NJ 08540

Re: Cooperation Agreement with Christopher Erwin

Dear Mr. Murphy:

This letter sets forth the understandings between your client, Christopher Erwin, and the United States Attorney for the District of New Jersey ("this Office") concerning Christopher Erwin's cooperation with this Office. This cooperation agreement supplements the plea agreement dated March 26, 2012, between the same parties, which will be filed in open court (the "plea agreement"). The plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties.

Christopher Erwin and this Office agree that this cooperation agreement will be disclosed to the Court but not filed with the Clerk's Office. Christopher Erwin further agrees not to reveal his cooperation, or any information derived therefrom, to any third party (other than the Court) without prior consent of this Office.

Christopher Erwin and this Office further agree that this cooperation agreement is contingent upon the entry of a guilty plea by Christopher Erwin pursuant to the provisions of the plea agreement. In the event that Christopher Erwin does not enter a guilty plea pursuant to the provisions of the plea agreement, this Office will be released from its obligations under this cooperation agreement.

Scope of Cooperation

Christopher Erwin shall cooperate fully with this Office. As part of that obligation, Christopher Erwin shall truthfully disclose all information concerning all matters about which this Office and other Government agencies designated by this Office may inquire and shall not commit or attempt to commit any additional crimes. Christopher Erwin also agrees to be available at all reasonable times requested by representatives of the Government and shall truthfully testify in all proceedings, including grand jury and trial proceedings, as to any subject about which he is questioned. Furthermore, Christopher Erwin agrees to provide to this Office, upon request, all documents and other materials relating to matters about which this Office inquires.

Full cooperation includes participating, if requested, in affirmative investigative techniques, such as making telephone calls, tape recording conversations, and introducing law enforcement officials to other individuals. All such activity by Christopher Erwin must be conducted only at the express direction and under the supervision of this Office and federal law enforcement personnel.

If as part of this obligation to cooperate, Christopher Erwin provides self-incriminating statements, the statements shall be subject to the protections, terms, and conditions set forth in U.S.S.G. § 1B1.8 (a) & (b). Nothing, however, shall prevent the use of such statements in a prosecution for false statements, perjury, or obstruction of justice, or prevent the derivative use of such statements.

Informing the Court About Cooperation

The determination whether Christopher Erwin has fully complied with this agreement and provided substantial assistance to the Government rests solely in the discretion of this Office. If this Office determines in its sole discretion that Christopher Erwin has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offenses, this Office:

(1) will move the sentencing judge, pursuant to Section 5K1.1 of the Sentencing Guidelines, to depart from the otherwise applicable guideline range. Whether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range is a matter committed solely to the discretion of the sentencing judge. Christopher Erwin may not withdraw his plea if

this Office determines that Christopher Erwin has not rendered substantial assistance or has not fully complied with the terms of this agreement, or if the Court refuses to grant in whole or in part the Government's motion for a downward departure.

Other Provisions

This cooperation agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement and Christopher Erwin's cooperation to the attention of other prosecuting offices, if requested to do so.

Breach of Agreement

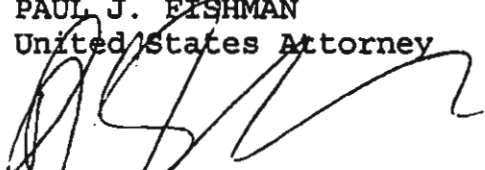
Should Christopher Erwin withdraw from or violate any provision of this cooperation agreement or the plea agreement, or commit or attempt to commit any additional federal, state, or local crimes, or intentionally give materially false, incomplete, or misleading testimony or information, this Office will be released from its obligations under this agreement and the plea agreement, including any obligation to file a motion under U.S.S.G. § 5K1.1, but Christopher Erwin may not withdraw the guilty plea entered into pursuant to the plea agreement. In addition, Christopher Erwin shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by Christopher Erwin, and all such information, statements, and leads therefrom may be used against Christopher Erwin. Any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by Christopher Erwin may be commenced, notwithstanding the expiration of the limitations period after Christopher Erwin signs the agreement. Christopher Erwin agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Christopher Erwin signs the agreement. With respect to any prosecution referred to in this agreement, Christopher Erwin further waives any right to claim that statements made by him before or after the execution of this agreement, including any statements made pursuant to any prior agreement between Christopher Erwin and this Office, or any leads from Christopher Erwin's statements, should be suppressed under that prior agreement or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), U.S.S.G. § 1B1.8, or otherwise.

No Other Promises

Christopher Erwin acknowledges that no additional promises, agreements or conditions have been made other than those set forth in this cooperation agreement and in the plea agreement, and none will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: R. Joseph Gribko
Assistant U.S. Attorney

APPROVED:



Nelson S.T. Thayer, Jr.
Attorney In Charge, Trenton Office

I have received this cooperation agreement from my attorney, James R. Murphy, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this cooperation agreement and acknowledge that the plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:

Christopher Erwin

Date:

James R. Murphy, Esq.

Date:

Law Office Of
JAMES R. MURPHY

947 STATE ROAD
SUITE 205
PRINCETON, N.J. 08540

TELEPHONE
(609) 497-1994
FACSIMILE
(609) 497-1967

JAMES R. MURPHY

FLORENCE V. HUGHES

Certified by the Supreme Court
of New Jersey as a Criminal Trial Attorney
jrm26@att.net

Of Counsel
Member N.J. & Fl. Bars
fvhughes@att.net

Via email only Thomas_Leaken@njp.uscourts.gov

July 14, 2013

Thomas A. Leaken
Supervising U.S. Probation Officer
Camden, New Jersey 08101-3497

RE: USA v. CHRISTOPHER ERWIN
Criminal No. 12 Cr. 364 (FLW)
Draft Pre-sentence Report Comments

Dear Mr. Leaken

I reviewed the DPSR with Mr. Erwin on Sunday , July 14, 2013. As a result , I have the following comments , corrections and requests:

Front page: Bail is 1 Million not 100K

Para. 161 Mr. Erwin should have zero points for this conviction . Same was more then 15 years from his present conduct even when you factor in his incarceration of 4 years as you must view JOC to determine jail time prior to sentence date 10/19/90 and parole end date of 6/4/96. The Information recites a beginning date of January 2009 thru December 2010 as the time of the Conspiracy.

Para 167 Mr Erwin's mother was the Director of elderly care at Brick Memorial . She is retired.

Para 171. His sister Karen is a technician. His brother Michael is a Operations Manager for GTS Welco .

Para 172 His wife's maiden name is Garvey.

Para 176 Mr Erwin has undergone mental health treatment since his late teens and for the past 15 years has seen Dr. Ashok Patel.

Para. 177 Mr. Erwin voluntarily blacklisted himself from all casinos by registering same with the N.J. Casino Control Commission.

Para 178. Mr. Erwin has a new partner, Kevin Riccatelli. Mr. Cammarotta is no longer associated with the business.

Para 183 Counsel for Mr. Erwin emailed detailed financial information to Mr. Leaken on July 11, 2013 including 2011 tax return , net worth statement and net worth back up information.

Para 184 **Is not for Mr. Erwin.** The Erwins purchased the home in 2005 for \$275K. The present mortgage has the following amount due -Bal. \$281,410.00 + Past due amount \$51,238.00 -Total \$332,648.00 . The present value of the home is \$205K and thus underwater. In 2008 during a refinance the deed and mortgage were placed in Allison Erwin's name alone because of her good credit. The mortgage payment is \$2595.00 per month. Mr. Erwin owns a 2004 Ford F350 with a value of \$6,200.00. Various landscaping equipment in Mr. Erwin's name has a net value of \$4,500.00

Para 185. Information supplied on July 11, 2013

Para 187 Paragraph correctly states CHC as 1 and level 39 as opposed to para 161 which has 3 CH Points. As Category I level 39 the Guideline sentence range is correctly stated as 262-327 months.. The statutory maximum is 240 months.

Very truly yours,

James R. Murphy

cc:Joseph.Gribko@usdoj.com
chrise98@yahoo.com



U.S. Department of Justice

*United States Attorney
District of New Jersey*

R. Joseph Gribko

*402 East State Street
Newark, NJ 07102*

(609)989-2020

July 12, 2013

NOT ELECTRONICALLY FILED

Honorable Freda L. Wolfson
United States District Judge
Clarkson S. Fisher U.S. Courthouse
and Federal Building
402 E. State Street
Trenton, New Jersey 08608

Re: *United States v. Christopher Erwin*
Crim. No. 12-364-001

Dear Judge Wolfson:

Christopher Erwin is scheduled to be sentenced by Your Honor on July 25, 2013, at 11:00 a.m. In anticipation of this sentencing, the United States respectfully submits this letter in support of its motion for a downward departure from the otherwise applicable Sentencing Guidelines range. This motion is being made pursuant to section 5K1.1 of the Sentencing Guidelines, and it results from Christopher Erwin's substantial assistance in the investigation and prosecution of others who have committed criminal offenses.

Christopher Erwin has complied with his plea and cooperation agreement, having pleaded guilty before Your Honor in 2012. More importantly, he has cooperated with the Government and provided important information and assistance, which contributed to the prosecution and conviction of his co-conspirators, most notably Dr. Jacqueline Lopresti and Dr. Hassan Lahham. It is to this cooperation that the remainder of this letter will be addressed.

A. Standard Under U.S.S.G. § 5K1.1

The standard for determining downward departure motions made by the United States based on the cooperation of a defendant is set forth in section 5K1.1 of the Sentencing Guidelines. Section 5K1.1 provides:

Hon. Freda L. Wolfson
July 12, 2013

Page 2 of 4

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

- (a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:
 - (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
 - (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
 - (3) the nature and extent of the defendant's assistance;
 - (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
 - (5) the timeliness of the defendant's assistance.

See also United States v. Torres, 251 F.3d 138 (3d Cir.), cert. denied, 534 U.S. 936 (2001).

According to the Third Circuit in Torres, "a sentencing judge is not confined to section 5K1.1's enumerated factors." However, the sentencing judge is required "to provide a specific statement explaining what factors he or she applied and the role these factors played in the sentencing determination." Id. at 146. Additionally, the Third Circuit went on to state that the sentencing judge must "conduct an individual, fact-specific analysis when determining the extent of a defendant's substantial assistance. Finally, [the sentencing judge has an] obligation to communicate that analysis to the respective parties." Id. at 146.

Consistent with the decision in Torres, in ruling on the Government's motion for a downward departure under § 5K1.1, the Court must conduct a qualitative analysis and must examine and make specific findings concerning section 5K1.1's enumerated factors, as well as explain its consideration of any factors outside the non-exhaustive factors listed in section 5K1.1 Id. at 147.

Hon. Freda L. Wolfson
July 12, 2013

Page 3 of 4

B. The Cooperation of Christopher Erwin

As set forth in the Pre-Sentence Report ("P.S.R."), in 2009 and 2010, Christopher Erwin devised a scheme by which he obtained large amounts of oxycodone by having individuals (the "Runners") obtain prescriptions from doctors Lopresti and Lahham (the "Doctors"), then obtain oxycodone pills from pharmacies with those prescriptions, and then provide those oxycodone pills to Erwin or people working for him in exchange for a small amount of the pills or cash.

As the leader of this drug-trafficking scheme, Erwin is responsible for all of the prescriptions illegally obtained in connection with the conspiracy. This amounted to 6,912 grams of oxycodone, which carries a Base Offense Level of 38. (P.S.R. ¶ 116). In addition, he agreed to a four-point enhancement for his role as an organizer. (P.S.R. ¶ 117). Based on a total offense level of 39 (after acceptance of responsibility) and a criminal history category of I, the guideline range for imprisonment is 262 to 327 months, capped by the statutory maximum of 240 months. (P.S.R. ¶ 187).

After his arrest, Christopher Erwin agreed to plead guilty and to cooperate with the Government. Erwin's cooperation included meeting with the Government at debriefing sessions at which he was questioned extensively by representatives of the Government. During these meetings, Erwin described his role in the conspiracy and he answered questions about his dealings with other participants, including Dr. Lopresti and Dr. Lahham. He accepted responsibility for his criminal activities. Throughout the course of his cooperation, Erwin also reviewed and explained documents, including his records, medical files of conspirators, and the prescriptions that he and others received. Finally and most importantly, Christopher Erwin agreed to testify against the Doctors. The fact that Erwin agreed to testify was disclosed to the Doctors and was useful in obtaining guilty pleas from Dr. Lopresti and Dr. Lahham.

The information Christopher Erwin provided was corroborated by documents, by the information and testimony provided by other cooperators and by the facts and circumstances of the conspiracy. In sum, the information he provided was generally corroborated by further investigation.

Hon. Freda L. Wolfson
July 12, 2013

Page 4 of 4

Christopher Erwin's cooperation was also important and timely. First, the information he provided corroborated the information provided by other coconspirators, thus giving the Government further confidence in the accuracy of that information. Second, his review of the documents was, along with similar reviews by other cooperating witnesses, important to the Government's prosecution of the Doctors. Finally, the fact that Erwin agreed to testify against the Doctors was useful in obtaining guilty pleas from Dr. Lopresti and Dr. Lahham.

C. Conclusion

Cooperation by defendants in pharmaceutical diversion cases, is critical to the Government's efforts to address such crimes and bring their participants to justice. When a defendant foregoes his right to contest the charges against him and chooses to cooperate with the Government, the Government believes that he should gain a benefit from that cooperation. That is why the Government brings this motion. Moreover, the Government believes that a benefit to one such as Erwin also redounds to the benefit of the Government, as it sends a message to future potential defendants that cooperation can have a meaningful impact on the eventual penalties for their crimes.

Accordingly, the Government respectfully requests that the Court grant its motion for a downward departure from the otherwise applicable sentencing guidelines range and that the Court take Christopher Erwin's cooperation into account in mitigation of sentence.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

s/ R. Joseph Gribko
By: R. JOSEPH GRIBKO
Assistant United States Attorney

cc: James R. Murphy, Esq.
Donald Martenz, U.S.P.O.

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FLORENCE V. HUGHES

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Of Counsel
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Via email Jackie_Gore@njdcourts.gov
NOT TO BE ELECTRONICALLY FILED

July 14 , 2013

Hon. Freda L. Wolfson , U.S.D.J.
United States District Court
402 East State Street
Trenton, New Jersey 08608

RE: USA v. CHRISTOPHER ERWIN
Docket No. 12 Cr. 364- 1 (FLW)
Sentencing Memorandum
Sentencing Date: July 25, 2013 @ 11:00am

Dear Judge Wolfson:

Please accept this letter memorandum in lieu of a more formal sentencing memorandum, wherein Christopher Erwin requests that Your Honor consider his position as to an appropriate sentence.

Guideline Calculations

Mr. Erwin pursuant to the Guidelines has a total offense level of 39 and as we maintain a criminal history category of I for a guideline range of imprisonment of 262-327 months. However the statutory maximum is 240 months.

Mr. Erwin has the benefit of a 5K1.1 motion , made by the Government that will be addressed under the heading Substantial Assistance..

Booker Considerations

As a Post-Booker sentence, the factors to be considered in imposing a sentence are recited in 18 U.S.C. Section 3553(a). Under Section 3553 (a) , Your Honor is to fashion a sentence which is "sufficient , but not greater than necessary" to achieve the purposes of sentencing set forth in Section 3553(a)(2):

The court, in determining the particular sentence to be imposed, shall consider:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;" 18 U.S.C. Section 3553(a)

The Presentence Investigation Report and Pertinent Background

Counsel reviewed the Draft PSR with Mr. Erwin on Sunday, July 14, 2013 and emailed comments to Probation and AUSA Gribko that morning. The only Guideline issue raised was whether Mr. Erwin should have received 3 CH Points for his 1988 arrest and 1990 conviction. However ,the DPSR correctly stated his CH Category as 1 .

Mr. Erwin despite his prior record was able to secure a position as a sports writer for the Asbury Park Press for 14 years. He met his wife Allison at the Press. She was a reporter. They were married on June 5, 1998. He loved his work and considered it his dream job. Unfortunately the paper was bought by Gannett that in its corporate wisdom fired a long time employee, Mary Walsh , over the phone on Christmas Eve. Ms. Walsh later committed suicide. Mr Erwin wrote Corporate Human Resources of his disapproval as to the matter and was subsequently terminated.

This lead to a series of investments that to this date have not developed serious income. The most problematic was the purchase of the home where his family resides. Same was originally and investment property with a buyer. However his sister begged him to allow her to reside there with an eventual purchase that never took place. The Erwin's moved in to save the situation . The house is not worth the monies owed.

Mr. Erwin has a son that is the light of his life. Colin is 6 and Your Honor will see in the attached letters that Colin and his father have a very special relationship.

Mr Erwin does have significant health and mental health issues. As noted in the DPSR he has been treated anxiety and depression since his teen years. He is taking Lexapro . He is seeing

Dr. Abenante and previously saw Dr. Patel for mental and emotional treatment. He admits to being a compulsive gambler , but has completely divorced himself from that addiction .

Mr. Erwin will be the first to admit he involved himself in criminal activity because of his problematic financial condition. He is not an addict . As the Court is aware the case involves two physicians that without their complicity the Conspiracy would never occurred.

Letters

Mr. Erwin has received an outpouring of support from friends neighbors and family members in letters to Your Honor. Fifteen are attached. If more arrive prior to sentencing they will be forwarded to Your Honor. One theme stands out– Mr Erwin's love and devotion to his six year old son Colin. No letter sugar coats Mr. Erwin 's conduct. Two letters stand out- that of his wife's and a letter from Dara Hugg a user he tried to help.

Allison Erwin notes he has not always been a good husband , but he has been an outstanding father to Colin.

Dara Hugg credits him with helping her towards eventual drug treatment.

All of the letters present picture of an individual who is anything but your expectation of a major drug dealer. They point to a man who has made a colossal bad decision in his attempt to solve his financial problems.

Substantial Assistance

The Government has made a 5K1.1 motion . Mr. Erwin cooperated with the Government almost immediately after his release on bail . He had multiple proffer sessions with the Government where he answered all the Government's questions about his and the other defendant's participation in the conspiracy. He was ready willing and able to give significant testimony against Drs. Lopresti and Lahham. As the Government points out in their 5K1.1 motion Lahan and Lopresti were made aware of this cooperation and same undoubtedly played a major part in their decision to plead. Dr. Lahham was apparently proceeding to trial as late as early this year. **Absent the criminal activity and financial greed of the physicians , the crime cannot occur.**

As the Government points out Mr. Erwin should be rewarded for their cooperation

Conclusion

For all of the reasons set forth herein ,Christopher Erwin respectfully requests that the Court depart downward from his identified guideline range to reflect his substantial assistance to the Government and further taking into consideration a sentence which is "sufficient , but not

greater than necessary" to achieve the purposes of sentencing set forth in Section 3553(a)(2).

Respectfully submitted,

James R. Murphy

cc:Joseph.Gribko@usdoj.com

chrise98@yahoo.com

Thomas_Leaken@njp.uscourts.gov

Appendix M

DLD-193

May 28, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **19-3849**

CHRISTOPHER ERWIN, Appellant

VS.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 3:17-cv-05156)

Present: RESTREPO, PORTER and SCIRICA, Circuit Judges

Submitted are:

- 1) Appellant's notice of appeal, which may be construed as a motion for a certificate of appealability pursuant to 28 U.S.C. § 2253(c); and
- 2) By the Clerk for possible dismissal due to a jurisdictional defect in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability is granted in part, limited to the following issue: 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 claims, given the assertions in his motion and the email from counsel which he included as an exhibit? See 28 U.S.C. § 2255(b); United States v. Booth, 432 F.3d 542, 545 (3d Cir. 2005); see also 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). The question of jurisdiction is referred to the merits panel.

By the Court,

s/ David J. Porter

Circuit Judge

Dated: March 9, 2021

NMR/cc: Mr. Christopher Erwin
Joseph Z. Amsel, Esq.
Mark E. Coyne, Esq.