
NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANGEL MARIE JORDAN,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX

RANDALL H. NUNN
Attorney at Law
P.O. Box 1525
Mineral Wells, Texas 76068
Telephone No. (940) 325-9120
rhmun@sbglobal.net
Attorney for Petitioner

NO. CR11647Bond \$ 25000
Current: \$2,500.00
Bondsman: Central Bail BondsDA209208
Code 3599-0003**The State of Texas v. ANGEL MARIE JORDAN**

Charge: Possession of Controlled Substance with Intent to Deliver
Four Grams or More But Less Than 200 Grams - Methamphetamine
Health and Safety Code § 481.112(d)
First Degree Felony

INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of **Young**, State of Texas, duly selected, impaneled, sworn, charged, and organized as such at the **January, February, March, April, May, June 2021** Term of the 90th Judicial District Court for said County, upon their oaths present in and to said Court, at said term that **Angel Marie Jordan**, hereinafter styled Defendant, on or about **July 2, 2020**, and before the presentment of this indictment, in the County and State aforesaid, did then and there knowingly possess, with intent to deliver, a controlled substance, namely methamphetamine, in an amount of four grams or more but less than 200 grams.

AGAINST THE PEACE AND DIGNITY OF THE STATE.



PRESIDING GRAND JUROR

NO. CR11662

Bond \$ 20,000
Current: \$20,000.00
Bondsman: Central Bail Bonds

20EX9960
DA209333
Code 3599-0003

The State of Texas v. ANGEL MARIE JORDAN

Charge: Possession Controlled Substance with Intent to Deliver
Four Grams or More But Less Than 200 Grams - Methamphetamine
Health and Safety Code § 481.112(d)
First Degree Felony

INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Young, State of Texas, duly selected, impaneled, sworn, charged, and organized as such at the **January, February, March, April, May, June 2021** Term of the 90th Judicial District Court for said County, upon their oaths present in and to said Court, at said term that **Angel Marie Jordan**, hereinafter styled Defendant, on or about **October 24, 2020**, and before the presentment of this indictment, in the County and State aforesaid, did then and there knowingly possess, with intent to deliver, a controlled substance, namely methamphetamine, in an amount of four grams or more but less than 200 grams .

AGAINST THE PEACE AND DIGNITY OF THE STATE.

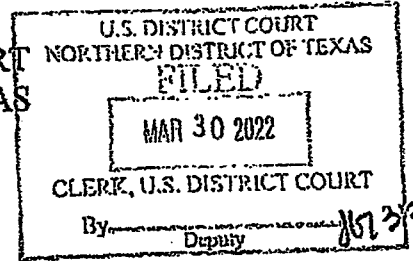


PRESIDING GRAND JUROR

3a-4a

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION



UNITED STATES OF AMERICA

v.

ANGEL MARIE JORDAN (01)

Case No. 7:22-CR-010-O
[Supersedes Indictment returned on March 9,
2022, as to Defendant Angel Marie Jordan
only.]

SUPERSEDING INFORMATION

The United States Attorney Charges:


Count One

Possession of Controlled Substance with Intent to Distribute
(Violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C))

On or about October 24, 2020, in the Wichita Falls Division of the Northern District of Texas, defendant **Angel Marie Jordan** did knowingly possess with intent to distribute a mixture and substance containing a detectable amount of methamphetamine, a schedule II controlled substance.

In violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C).

CHAD E. MEACHAM
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read 'SHAWN SMITH', is written over a horizontal line.

SHAWN SMITH
Assistant United States Attorney
Texas State Bar No. 24033206
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102
Telephone: 817.252.5200
Facsimile: 817.252.5455

22-10757

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.

ANGEL MARIE JORDAN,
Defendant - Appellant

Appeal from the United States District Court
For the Northern District of Texas
Wichita Falls Division
District Court No. 7:22-CR-010-O

UNITED STATES' UNOPPOSED MOTION TO DISMISS THE APPEAL OR,
ALTERNATIVELY, FOR EXTENSION OF TIME

The government moves to dismiss this appeal because the appellate waiver in Jordan's plea agreement bars his sole claim. Should the Court deny this motion, the government requests a 30-day extension of time from the denial to file a merits brief.

In a superseding information, Jordan was charged with one count of possession with intent to distribute methamphetamine, in violation of 21

U.S.C. §§ 841(a)(1) and (b)(1)(C). (ROA.27.) Under a plea agreement, she pled guilty to the sole charge, (ROA.143), and the district court sentenced her to a within-guideline 30-month prison term. (ROA.45.)

The government moves to dismiss the appeal because Jordan's plea agreement includes a waiver of her right to appeal from her conviction and sentence:

Defendant waives Defendant's rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal from Defendant's conviction and sentence. Defendant further waives Defendant's right to contest Defendant's conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. Defendant, however, reserves the rights to bring (a) a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error at sentencing; (b) to challenge the voluntariness of Defendant's plea of guilty or this waiver, and (c) to bring a claim of ineffective assistance of counsel.

(ROA.146.)

At arraignment, Jordan testified that she read and understood the waiver of appeal before she signed the plea agreement, she had discussed it with her counsel, and she was knowingly and voluntarily waiving her right to appeal as set forth in her plea agreement. (ROA.79-80.) The court found that Jordan's plea, including the appellate waiver, was knowing and voluntary.

(ROA.85.)

Jordan does not acknowledge the appeal waiver in her brief. On appeal, she asserts a violation of the Double Jeopardy Clause, and raises claims of whether the district court erred in the calculation of the drug quantity attributed to her at sentencing. None of her claims fall within the limited exceptions to this waiver. Because Jordan “can point to no evidence in the record that her explicit waiver, included in the written plea agreement and signed by her and her counsel, was not informed and voluntary,” this appeal should be dismissed. *United States v. Hoctel*, 154 F.3d 506, 508 (5th Cir. 1998) (dismissing the appeal based on an appellate waiver); *see also United States v. McKinney*, 406 F.3d 744, 746 (5th Cir. 2005) (same).

CONCLUSION

This Court should dismiss the appeal based on the waiver in the plea agreement. Should the Court deny this motion, the government requests an extension of time of 30 days from the denial to file a merits brief.

Respectfully submitted,

Chad E. Meacham
United States Attorney

/s/Leigha Simonton
Leigha Simonton
Assistant United States Attorney
Texas Bar No. 24033193
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: (214) 659-8669
leigha.simonton@usdoj.gov

CERTIFICATE OF CONFERENCE

I certify that I conferred with Randall Nunn, counsel for Jordan. He is opposed to dismissal of the appeal, but unopposed to the alternative extension request.

/s/Leigha Simonton
Leigha Simonton

CERTIFICATE OF SERVICE

I certify that this document was served on Jordan's attorney, Randall Nunn, through the Court's ECF system on November 10, 2022, and that: (1) any required privacy redactions have been made; (2) the electronic submission is an exact copy of the paper document; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

/s/Leigha Simonton
Leigha Simonton

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 441 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Calisto MT font.

/s/ Leigha Simonton

Leigha Simonton

10a-15a

NO. 22-10757

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ANGEL MARIE JORDAN,
Defendant-Appellant.

AN APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

District Court No. 7:22-CR-010-O

JORDAN'S RESPONSE AND OPPOSITION TO MOTION TO DISMISS
THE APPEAL

Defendant-Appellant Angel Marie Jordan files this Response and Opposition to the United States' Motion to Dismiss the Appeal and states, as hereinafter set forth, that the appeal waiver clause in Jordan's plea agreement does not bar her claim because (1) she has raised a claim under

the Double Jeopardy clause of the United States Constitution which cannot be dismissed because of an appeal waiver clause; and (2) the government has breached the plea agreement by filing "Government's Objections to the Presentence Report", after the signing of the plea agreement, that charged her with being a member of the conspiracy contrary to the charge in the Superseding Information agreed to by the Government, and seeking to frustrate the benefits of the plea agreement and render the benefits of the plea agreement illusory.

The government filed its Motion to Dismiss the Appeal based on the appeal waiver clause in the plea agreement signed by Jordan and the government on April 18, 2022. Jordan's plea agreement contained an appeal waiver clause, waiving most of her appeal rights. However, the Double Jeopardy claim raised by Jordan in her appeal is not a claim that can be dismissed by reason of an appeal waiver clause in a plea agreement. Where double jeopardy denies a state or the federal government the power to proceed against a defendant then a guilty plea does not bar a challenge to the government's authority to impose punishment on the plea. Where the government is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that a conviction and

sentence on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty. *See, Menna v. New York*, 423 U.S. 61, 62 (1975).

Furthermore, the waiver of appeal clause in the plea agreement is not enforceable because the government breached the plea agreement by its intemperate and inaccurate charges leveled against Jordan, after execution of the plea agreement, which plea agreement was based on a charge of possession of a controlled substance with intent to distribute to a person. In filings with the district court that sought to deny Jordan the benefit of a 3-level reduction in sentence recommended by the Probation Officer in the Presentence Interview Report, claiming that Jordan should be denied the reduction because "she facilitated its [the drug conspiracy] perpetuation and lied about it when caught red-handed" and "she actively participated in the conspiracy, she pretended to work as DPS-CI to keep herself out of jail, and she continued to minimize and lie to authorities to attempt to shield herself from prosecution." These charges, raised in the Government's Objection to the Presentence Report, filed on June 8, 2022, represented a change in the Government's theory of the case (now saying that Jordan "actively participated in the conspiracy") that was in conflict with what was agreed to

in the Plea Agreement. As a result of the conduct of the Government, after execution of the plea agreement, the Government has lost its right to enforce the waiver of appeal by reason of its breach of the plea agreement. See, *United States v. Casillas*, 853 F.3d 215, 217 (5th Cir. 2017); *United States v. Roberts*, 624 F.3d 241, 244 (5th Cir. 2010). Furthermore, where the Government has breached a plea agreement, the defendant is necessarily released from any appeal provision contained therein). See *United States v. Keresztury*, 293 F.3d 750, 757 (5th Cir. 2002).

CONCLUSION

This Court should deny the Government's motion to dismiss the appeal based on Jordan's double jeopardy claim (which can be determined by the record in this case) and the Government's breach of the plea agreement by making charges against Defendant-Appellant Jordan that she "actively participated in the conspiracy" and "lied about it when caught red-handed," neither of which is true, thereby attempting to deprive Jordan of the benefit of a 3-level sentence reduction recommended by the Probation Officer in the Presentence Investigation Report, in violation of the government's obligation to comply with the plea agreement in good faith and its violation of the obligation "not [to] bring any additional charges against Defendant

based on the conduct underlying and related to the Defendant's plea of guilty" as stated in Section 7 of the plea agreement.

Respectfully submitted,

s/Randall H. Nunn

Randall H. Nunn

Attorney at Law

Texas Bar No. 15137500

P.O. Box 1525

Mineral Wells, Texas 76068

(940) 325-9120

rhunn@sbcglobal.net

CERTIFICATE OF SERVICE

RANDALL H. NUNN, after being first duly sworn states:

1. On the 17th day of November, 2022 I served, via the Fifth Circuit CM/ECF system, the Response of Appellant to the Motion to Dismiss the Appeal on Leigha Simonton, Esq., Assistant United States Attorney, 1100 Commerce Street, Third Floor, Dallas, Texas 75242.
2. On the 17th day of November, 2022, I deposited a copy of the Response of the Appellant to the Motion to Dismiss the Appeal in the U.S. Mail, first-class, postage prepaid, addressed to the Defendant-Appellant, Angel Marie Jordan, No. 85205-509, FPC Bryan, Federal Prison Camp, P.O. Box 2149, Bryan, Texas 77805.

s/Randall H. Nunn

Randall H. Nunn

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This document complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because: this Response and Opposition to the Motion to Dismiss the Appeal contains 1,059 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32 (a)(5) and the type style requirements of Fed. R. App. P. 32 (a)(6) because: this document has been prepared in a proportionally spaced typeface using Microsoft Word for Windows, Version 5.1, with 14-pt Times New Roman font face.
3. All required privacy redactions have been made; the electronic submission is an exact copy of the paper document; and the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

s/Randall H. Nunn

Randall H. Nunn

Attorney for Defendant-Appellant

Dated: November 17, 2022

16a

**United States Court of Appeals
for the Fifth Circuit**

No. 22-10757

United States Court of Appeals
Fifth Circuit

FILED

December 28, 2022

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

ANGEL MARIE JORDAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:22-CR-10-1

UNPUBLISHED ORDER

Before STEWART, DENNIS, and WILLETT, *Circuit Judges*.

PER CURIAM:

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

IT IS FURTHER ORDERED that the Appellee's alternative unopposed motion for an extension of time of 30 days to file brief from denial of motion is DENIED as MOOT.

27a-28a

**United States Court of Appeals
for the Fifth Circuit**

No. 22-10757

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANGEL MARIE JORDAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:22-CR-10-1

UNPUBLISHED ORDER

Before STEWART, DENNIS, and WILLETT, *Circuit Judges*.
PER CURIAM:

IT IS ORDERED that Appellant's unopposed motion for leave to file motion for reconsideration under seal is GRANTED.

IT IS FURTHER ORDERED that Appellant's unopposed motion for leave to place motion under seal is GRANTED.

No. 22-10757

IT IS FURTHER ORDERED that Appellant's opposed motion for reconsideration of the Court's order dismissing the appeal of December 28, 2022 is **DENIED**.