

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

No: 23-2823

Keith Hager

Appellant

v.

United States of America

Appellee

---

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids (1:17-cv-00060-LRR)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 14, 2023

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

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/s/ Michael E. Gans

Appellate Case: 23-2823 Page: 1 Date Filed: 12/14/2023 Entry ID: 5344567

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

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Keith Hager

Petitioner - Appellant

v.

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Respondent - Appellee

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Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids  
(1:17-cv-00060-LRR)

---

**JUDGMENT**

Before COLLOTON, GRUENDER, and BENTON, Circuit Judges.

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

The motion for appointment of special master is denied as moot.

The request for judicial notice is denied.

October 12, 2023

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

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/s/ Michael E. Gans

**United States Court of Appeals**

***For The Eighth Circuit***

Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329

**St. Louis, Missouri 63102**

**Michael E. Gans**

***Clerk of Court***

**VOICE (314) 244-2400**

**FAX (314) 244-2780**

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**October 12, 2023**

**Keith Hager  
U.S. PENITENTIARY  
45486-424  
P.O. Box 33  
Terre Haute, IN 47808-0033**

**RE: 23-2823 Keith Hager v. United States**

**Dear Keith Hager:**

**Enclosed is a copy of the dispositive order entered today in the referenced case.**

**Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing must be received by the clerk's office within the time set by FRAP 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, pro se petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.**

**Michael E. Gans**

**Clerk of Court**

**RMD**

**Enclosure(s)**

**cc: Mr. Dan Chatham  
Mr. Clerk, U.S. District Court, Northern Iowa**

**District Court/Agency Case Number(s): 1:17-cv-00060-LRR**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

KEITH HAGER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 17-CV-60-LRR

No. 11-CR-143-LRR

**ORDER**

This matter is before the court on limited remand from the Eighth Circuit Court of Appeals for a determination of whether to issue a certificate of appealability (docket no. 25). Petitioner Keith Hager (“the movant”) filed a “Motion for Relief From Final Judgment in § 2255 Proceeding Pursuant to Fed. R. Civ. P., Rule 60(b)(6)” (“the Motion”), which the Clerk of Court received on June 5, 2023 (civil docket no. 19). On July 6, 2023, the court denied the motion (docket no. 20).

In a 28 U.S.C. § 2255 proceeding before a district judge, the final order is subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held. *See* 28 U.S.C. § 2253(a). “Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals.” 28 U.S.C. § 2253(c)(1). A district court possesses the authority to issue certificates of appealability under 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b). *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue only if a movant has made a substantial showing of the denial of a constitutional right. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *Garrett v. United States*, 211 F.3d 1075, 1076-77 (8th Cir. 2000); *Carter v. Hopkins*, 151 F.3d 872, 873-74 (8th

Cir. 1998); *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997); *Tiedman*, 122 F.3d at 523. To make such a showing, the issues must be debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. *Cox*, 133 F.3d at 569 (citing *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994)); *see also Miller-El*, 537 U.S. at 335-36 (reiterating standard).

Courts reject constitutional claims either on the merits or on procedural grounds. “[W]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy [28 U.S.C.] § 2253(c) is straightforward: the [movant] must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El*, 537 U.S. at 338 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). When a federal habeas petition is dismissed on procedural grounds without reaching the underlying constitutional claim, “the [movant must show], at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *See Slack*, 529 U.S. at 484.

Having thoroughly reviewed the record in this case, the court finds that the movant failed to make the requisite “substantial showing” with respect to the claims that he raised in the Motion. *See* 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b). Because he does not present a question of substance for appellate review, there is no reason to grant a certificate of appealability. Accordingly, a certificate of appealability shall be denied. If he desires further review of his 28 U.S.C. § 2255 motion, the movant may request issuance of the certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with *Tiedman*, 122 F.3d at 520-22.

**IT IS THEREFORE ORDERED:**

- 1) A certificate of appealability is **DENIED**.

**DATED** this 11th day of August, 2023.

A handwritten signature in black ink, appearing to read "Linda R. Reade", written over a horizontal line.

LINDA R. READE, JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

KEITH HAGER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 17-CV-60-LRR


**ORDER**

The matter before the court is Petitioner Keith Hager's pro se motion for leave to appeal in forma pauperis ("Motion") (docket no. 28), which was received on August 24, 2023.

Federal Rule of Appellate Procedure 24(a)(1) requires that a party filing a motion to proceed in forma pauperis must attach an affidavit to the motion. *See* Fed. R. App. P. 24(a)(1). Petitioner's affidavit is unsigned (docket no. 28). Accordingly, the Motion is denied. Even if the affidavit was signed, the court would still deny the Motion. Given the court's resolution of Petitioner's motion pursuant to 28 U.S.C. § 2255 and its conclusion that a certificate of appealability will not issue, the court concludes that in forma pauperis status for appellate purposes is not warranted. Accordingly, the Motion is **DENIED**.

**IT IS SO ORDERED.**

**DATED** this 30th day of August, 2023.

  
\_\_\_\_\_  
LINDA R. READE, JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

KEITH HAGER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 17-CV-60-LRR  
No. 11-CR-143-LRR

**ORDER**

The matter before the court is Petitioner Keith Hager's ("the movant") "Motion for Relief From Final Judgment in § 2255 Proceeding Pursuant to Fed. R. Civ. P., Rule 60(b)(6)" ("the Motion"), which the Clerk of Court received on June 5, 2023 (civil docket no. 19).

On July 7, 2017, the court denied the movant's pro se § 2255 motion and denied the issuance of a certificate of appealability (civil docket no. 3). The movant filed a motion to amend (civil docket no. 4) which the court also denied (civil docket no. 6). The movant then filed a motion for a certificate of appealability (civil docket no. 7) which the court denied (civil docket no. 10). The movant applied to the Eighth Circuit for a certificate of appealability (civil docket no. 11) and was denied in October 2020. *Hager v. United States*, No. 20-2587 (8th Cir. 2020).

In the Motion, the movant asserts the court denied his § 2255 motion without an opinion. Motion at 2. He also asserts the court's opinion failed to reach the merits of his § 2255 motion and address any grounds for relief. *Id.* at 2-3. He asserts that the court failed to address all grounds of relief as required by law. *Id.* at 3. He states the undersigned denied the movant's "right to redress the government to redress grievances."



*Id.* at 3. Additionally, the movant asserts the undersigned “has been removed from the bench” for misconduct and should be removed from the case. *Id.* at 3-4.

Rule 60(b) of the Federal Rules of Civil Procedure provides that:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1)-(6). Rule 60(b)(6) is “available only when Rules 60(b)(1) through (b)(5) are inapplicable” and “[e]ven then, extraordinary circumstances must justify reopening.” *Kemp v. United States*, 142 S. Ct. 1856, 1861 (2022). Additionally, motions made pursuant to Rules 60(b)(1)-(3) must be made no more than a year after the entry of the judgment. Fed. R. Civ. P. 60(c)(1).

The movant’s first assertion is false; the court’s order denying his § 2255 motion is filed at civil docket no. 3. Next, the Motion is improperly made under Rule 60(b)(6) because it alleges the court made mistakes by not addressing the movant’s claims, failing to reach the merits, and denying his rights. A court’s errors of law are mistakes under Rule 60(b)(1) and thus subject to a 1-year limitations period. *Kemp*, 142 S. Ct. at 1862, 65 (“Rule 60(b)(1) covers all mistakes of law made by a judge”). Because the movant

only alleges mistake, the Motion is cognizable under Rule 60(b)(1) and subject to the 1-year limitations period. *Id.* The movant seeks relief from a judgment made in 2017; it is now 2023. Accordingly, those claims must be denied as untimely.<sup>1</sup> *Kemp*, 142 S. Ct. at 1865.

Lastly, the undersigned has not been removed from the bench for misconduct and declines to remove herself from the case. The movant's assertions are baseless. Regardless, the movant has failed to carry his burden of proof on the issue of recusal. He has presented no affidavit. *See Holloway v. United States*, 960 F.2d 1348, 1354-55 (8th Cir. 1992) ("Relief under [§] 144 is expressly conditioned on the timely filing of a legally sufficient affidavit.") In short, he has failed to provide any evidence rebutting the presumption of impartiality.

**IT IS THEREFORE ORDERED:**

- 1) The movant's "Motion for Relief From Final Judgment in § 2255 Proceeding Pursuant to Fed. R. Civ. P., Rule 60(b)(6)" (civil docket no. 19) is **DENIED**.

**DATED** this 6th day of July, 2023.



LINDA R. READE, JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

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<sup>1</sup> Moreover, the court briefly notes that the movant's claims are false. The court addressed the movant's ineffective assistance of counsel claims and also found that an evidentiary hearing was unnecessary (civil docket no. 2 at 1-4). Thus, even if it were timely, the court would deny the motion.

RECEIVED  
JUN 05 2023  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

KEITH HAGER ) Case No. 1:17-CV-00060-LRR-MAR  
 )  
 v. ) [1:11-CR-143-CJW-MAR-11]  
 )  
 UNITED STATES OF AMERICA )

Mr. Hager moves this court to relieve him from the final judgment denying his §2255, because the court, failed to address all his grounds for relief as required by *Clisby v. Jones*, 960 F.2d 925 (11th Cir. 1992)(en banc).

The District Court has exclusive authority, under Fed.R.Civ.P., Rule 60(b)(6), to relieve Mr. Hager from its final judgment because it failed to reach the merit of the claims raised in all grounds of his first in time §2255 motion. Pursuant to Rule 60(b), a District Court may relieve a party from final judgment, order, or proceeding on certain grounds, including any reason that justifies relief. See Fed.R.Civ.P., Rule 60(b). A Rule 60(b) motion should be treated as a successive habeas petition if it "seeks to add a new ground for relief" or "attacks the federal Courts previous resolution of a claim on the merits." *Gonzales v. Crosby*, 545 U.S. 525, 532, 125 S.Ct. 2641, 2648, 162 L.Ed.2d 480 (2005). But when the Rule 60(b)

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motion attacks "some defect in the integrity of the federal habeas proceeding," and not the merit issue, it is not an impermissible successive motion.

#### STATEMENT OF THE CASE

On May 23, 2017, Mr. Hager submitted a Post-Conviction Relief pursuant to 28 U.S.C. §2255. His primary claims were based on four basic events: 1) ineffective assistance of counsel who caused Hager to plead guilty to a non-existent offense, (namely, violation Title 21 U.S.C. 860 by conspiring to violate section 841(a)(1) within 1000 feet of a protected location); 2) whether, due to ineffective assistance of counsel, Applicant Hager entered a guilty plea which was not knowing, intelligent, and voluntary; 3) whether, due to ineffective assistance of counsel, Applicant Hager entered a guilty plea which lacked a sufficient factual basis; 4) whether the lower court erred by denying Applicant Hager's section 2255 without conducting an evidentiary hearing.

On July 7, 2017, Judge Linda Reade denied Hager's §2255 without an opinion.

#### ARGUMENT

Mr. Hager was deprived of his rights to due process in his §2255 proceeding because the court failed to reach the merits of any grounds raised in his first in-time §2255 motion. The 11th Circuit Court of Appeals has routinely held that "when a district court fails to address the claims presented in a §2255 habeas petition we vacate without prejudice and remand the case for consideration of all remaining claims." *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 2011)(en banc). In *Clisby*, the District Court dismissed thirteen of the petitioner's claims, granted habeas relief on one claim, and

reserved judgment on the remaining five claims. Id. at 935. "In response, we expressed concern over the 'growing number of cases in which [we were] forced to remand for consideration of issues, the district court choose not to resolve.'" Id. at 935-36. "We acknowledge the disruptive effect that such 'piecemeal' litigation' had on a state's criminal justice system. Id. at 935. Accordingly, in an effort to streamline habeas procedure, we exercise our supervisory authority and instructed district courts to resolve all claims for relief raised in a petition for writ of habeas corpus pursuant to §2254, 'regardless of whether habeas relief is granted or denied.' Id. at 936. We have defined a 'claim for relief' as any allegation of a Constitutional violation." Id.

Mr. Hager's §2255 proceedings the District Court failed to address any grounds for relief. It should be noted that U.S. District Judge Linda R. Reade had been charged with misconduct, thus, has been removed from the bench for this misconduct. Therefore, this implicates whether or not her decision was made in the interest of justice. In any event, she denied Mr. Hager his right to redress of the government to redress grievances via §2255 habeas corpus proceeding. There exists no other form of relief available to Mr. Hager, leaving him without remedy to rectify his unlawful imprisonment, which is resulting in the incarceration of an innocent American citizen.

#### CONCLUSION

WHEREFORE, Mr. Hager moves this Court to grant him relief from his final judgment in his §2255 proceeding, so it may determine the merits on all grounds he presented in his first in time §2255 motion. Furthermore, Mr. Hager requests that Judge Linda Reade be removed

from his case to preserve the judicial integrity and to ensure the ends of justice are met.

Submitted on May 29, 2023, by:

Keith Hager

Keith Hager, PRO SE  
AO# 45486-424  
U.S.P. Terre Haute  
P.O. Box 33  
Terre Haute, IN 47808

CERTIFICATE OF SERVICE

I certify that I have served a copy of this notice on the clerk of this court, properly addressed using first-class prepaid postage at:

U.S. District Court  
Northern District of Iowa  
111 Seventh Ave. SE, Box 12  
Cedar Rapids, IA 52401-2101

Submitted on May 29, 2023, by:

Keith Hager

Keith Hager, PRO SE  
AO# 45486-424  
U.S.P. Terre Haute  
P.O. Box 33  
Terre Haute, IN 47808

Keith Hager 45486424  
U.S.P. Terrz Haute  
P.O. Box 33  
Terrz Haute, IN 47808

Legal



United States District Court  
Northern District of Iowa  
111 Seventh Ave, SE P.O. Box 12  
Cedar Rapids IA, 52401-2101

RECEIVED U.S. DISTRICT COURT  
SEP 10 2013



RECEIVED MAY 22 2017

FEDERAL DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

KEITH HAGER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant

Case No.: 1:11-CR-00143-LRR-11

17-cv-60-LRR

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

Due to ineffective assistance of counsel, Hager stands convicted and serving an eighty year sentence for conduct Congress has not made criminal.

A. Supporting facts:

1. By way of guilty plea, Hager incurred conviction for conspiracy to distribute 100 grams or more of heroin within 1,000 feet of a protected location. See Title 21 U.S.C. 846, 841(a)(1), (b)(1)(B), 860, 2011 Ed.

2. Title 21 U.S.C. 846 provides 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." See Title 21 U.S.C. 846, 2011 Ed.

3. Title 21 U.S.C. 841(a)(1) provides that, "except as authorized by this title, it shall be unlawful for any person knowingly or intentionally



1 to manufacture, distribute, or dispense, or possess with intent to  
2 manufacture, distribute, or dispense a controlled substance." See Title 21  
3 U.S.C. 841(a)(1), 2011 Ed.

4  
5 4. Title 21 U.S.C. 860 provides that "any person who violates  
6 section 401(a)(1) or 416 [21 U.S.C.S. 841(a)(1) or 856] by distributing,  
7 possessing with intent to distribute, or manufacturing a controlled  
8 substance in or on, or within 1,000 feet of, the real property comprising a  
9 public or private elementary, vocational, or secondary school or private  
10 college, junior college, or university, or a playground or a housing facility  
11 owned by a public housing authority, or within 100 feet of a public or  
12 private youth center, public swimming pool, or video arcade facility, is  
13 subject to twice the maximum punishment authorized by section 401(b)  
14 [Section 841(b)] and twice the term of supervised release authorized by  
15 section 401(b) [Section 841(b)] for a first offense." See Title U.S.C. 860,  
16 2011 Ed.

17  
18  
19 5. Defense counsel, (Mr. Michael K. Lahammer), lodged no  
20 objection.

21  
22  
23  
24  
25 B. Summary argument:

26 Under plain and unambiguous text, Section 860 is limited in  
27 application to "any person who violates Sections 841(a)(1) or 856." Id.  
28

1 Under this "listing approach," as known in this Circuit, offenses not  
2 listed are not subject to treatment under Section 860. Compare e.g., *United*  
3  
4 *States v. Koons*, 300 F.3d 985, 993 (8th Cir. 2002); *United States v.*  
5 *Stuckey*, 220 F.3d 976, 985 (8th Cir. 2000); *United States v. Darden*, 70  
6 F.3d 1507, 1524-25 (8th Cir. 1995).  
7

8 Accordingly, because Section 846 is not listed in Section 860  
9 (whereas Section 841(a)(1) and 856 are), violations of Section 846 are not  
10 subject to treatment under Section 860. Under this fact, it also follows that  
11 an indictment alleging a violation of Section 846, 841(a)(1), 860 fails to  
12 charge a Congressionally authorized offense; and a guilty plea to Section  
13 846, 841(a)(1), 860 is void-ab-initio. Compare e.g., *United States v.*  
14 *Meacham*, 626 F.2d 503 (5th Cir. 1980).  
15  
16

17 To be sure, Hager's indictment charged a cognizable offense - to the  
18 extent it is read to charge a violation of Section 846, 841(a)(1). However, to  
19 the extent it purports to charge a violation of Section 846, 841(a)(1), 860, it  
20 is invalid. See e.g., *United States v. Euans*, 285 F.3d 656, 663 (8th Cir.  
21 2001)(Beam, Circuit Judge)(dissenting)("Under the plain language of  
22 Section 860, a Section 860 violation may not be the object of a Section 846  
23 conspiracy." ).  
24  
25  
26  
27  
28

1 The existence and effect of "listing approach" under this Court's  
2 precedent would have been known to reasonably competent counsel, and  
3 employed as a valid basis for objection.  
4

5 Upon proper objection, Hager would not have pled guilty or incurred  
6 conviction for conduct not criminal, (i.e., a violation of 846, 860).  
7

8 Accordingly, counsel's failure to detect and object to this error  
9 prejudicially affected Hager's guilty plea proceeding. Compare e.g., *Glover*  
10 *v. United States*, 531 U.S. 198 (2001). Compare also, *United States v.*  
11 *Davis*, 417 U.S. 333 (1974).  
12

13 II. Due to ineffective assistance of counsel, Hager was deprived of his  
14 fundamental right to enter the knowing and voluntary plea he would have  
15 otherwise entered.  
16

17 A. Supporting facts:  
18

19 1. By way of guilty plea, Hager stands convicted under Title 21 U.S.C. 846,  
20 841(a)(1), 860.  
21

22 2. Hager entered his plea of guilty before Magistrate Judge Jon. Stuart  
23 Scoles. See Change of Plea Hearing, (7/1/2013).  
24

25 3. Magistrate Scoles informed Hager that the plea offered, (i.e., a violation  
26 of Section 846, 841(a)(1), 860), carried a mandatory minimum of five years  
27  
28

1 imprisonment, a statutory maximum of eighty years, and an eight year term  
2 of supervised release. Id.

3  
4 4. Magistrate Scoles further informed Hager that to obtain conviction  
5 under Section 846, 841(a)(1), 860, the government had to prove five things:

6  
7 a. that between about 2009 and continuing through 2011, in the Northern  
8 District of Iowa, two or more persons did reach an agreement to distribute  
9 heroin;

10  
11 b. that Hager voluntarily and intentionally joined the agreement;

12  
13 c. that Hager knew that the objective of the agreement was to distribute  
14 heroin;

15  
16 d. that, as part of the conspiracy, Hager was involved in the distribution of  
17 100 grams or more of heroin; and

18  
19 e. that at least some of Hager's actions occurred within 1,000 feet of a  
20 protected location.

21  
22 See Change of Plea Hearing, pgs. 9-11.

23  
24 5. In response to Magistrate Scoles' questioning, Hager admitted that  
25 these five facts existed. Id.

26  
27 6. Defense counsel lodged no objection to Magistrate Scoles' recitation of  
28 these elements. Id.

1 7. Establishing a factual basis, Magistrate Scoles adopted, without  
2 recitation, paragraphs 8A & B of the Second Amended Proposed Plea  
3 Agreement. Id.

4  
5 8. Paragraph 8A states: "Between about 2009 and at least October 2012,  
6 defendant and others reached an agreement or came to an understanding  
7 to distribute 100 grams or more of a mixture or substance containing a  
8 detectable amount of heroin. Defendant and his co-conspirators distributed  
9 heroin within 1,000 feet of real property comprising a school, specifically  
10 Polk Elementary School, located at 1500 B Avenue, and Coe College,  
11 located at 1220 First Avenue NE, both in Cedar Rapids, Iowa. Defendant  
12 voluntarily and intentionally joined in the understanding or agreement to  
13 distribute heroin either at the time it was first entered or at some later time  
14 while it was still in effect. At the time the defendant joined in the  
15 agreement, he knew the purpose of the agreement was to distribute  
16 heroin." Id. at paragraph 8A.

17  
18  
19  
20  
21  
22 9. Paragraph 8B states: On or about June 1, 2011, a confidential source  
23 working with the Cedar Rapids Drug Administration (DEA) Task Force  
24 made a call to defendant to arrange a meeting to purchase \$600 worth of  
25 heroin from defendant at Lindale Mall in Cedar Rapids. The CS met with  
26 defendant in defendant's vehicle in the parking lot of Lindale Mall, where  
27  
28

1 defendant knowingly and intentionally distributed approximately 5.2 grams  
2 of a mixture or substance containing a detectable amount of heroin to the  
3  
4 CS." Id. at paragraph 8B.

5 10. Defense counsel lodged no objection and agreed, upon inquiry by  
6  
7 Magistrate Scoles, that paragraphs 8A & B established an adequate factual  
8 basis for a violation of Section 846, 841(a)(1), 860. Id. at 12-13.

9 11. Magistrate Scoles entered an order recommending acceptance of  
10  
11 Hager's plea of guilty. See Change of Plea Hearing.

12 12. Adopting the proceeding of Magistrate Scoles, this Court complied.  
13  
14 See Order Accepting Guilty Plea, (7/1/2013).

15 B. Summary argument(s);

16 1. Magistrate Scoles' failure to inform Hager that a conviction under  
17  
18 Section 846, 841(a)(1), 860 required proof of an agreement having as an  
19 objective a violation of Section 860 undermined the knowing and voluntary  
20 nature of Hager's guilty plea.

21  
22 The gist of the crime of conspiracy is an agreement to do something that  
23 the law forbids. See *Ingram v. United States*, 360 U.S. 672, 678 (1959).  
24  
25 Accordingly, Section 846 makes it a crime for anyone to conspire to violate  
26 the terms of Section 841(a)(1) et seq. See Title 21 U.S.C. 846, 2011 Ed.

1 Under this text, (and assuming that such a crime exists), Section 846  
2 makes it a crime for two or more persons to conspire to violate, *inter alia*,  
3  
4 Section 860.

5 Under Section 860, Congress made it a crime to violate Sections 841(a)(1)  
6 or 856 within 1,000 feet of a protected location. See Title 21 U.S.C. 860,  
7  
8 2011 Ed.

9 Accordingly, to violate Section 846, 860, two or more persons must  
10  
11 conspire to distribute a controlled substance within 1,000 feet of a  
12  
13 protected location. Compare e.g., Eighth Circuit Manual of Model Criminal  
14 Jury Instructions Section 6.21.846(A) (requiring the government to prove,  
15 amongst other things, that two or more persons "knowingly" entered into  
16  
17 an agreement to violate Section 841(a)(1) et seq., that the defendant  
18  
19 "intentionally" joined that agreement, and that the defendant had  
20  
21 "knowledge" of its purpose and objective). Compare also, Title 21 U.S.C.  
22  
23 846, 2011 Ed, ("Any person who attempts or conspires to commit any  
24  
25 offense defined in this subchapter shall be subject to the same penalties as  
26  
27 those prescribed for the offense, the commission of which was the objective  
28  
of the attempt or conspiracy."). (Emphasis added). The Eighth circuit has  
been quite clear to identify the object of the conspiracy as distributing or  
possessing with the intent to distribute a controlled substance *within 1000*

1 feet of a protected area where the alleged conspiracy is for violating 21  
2 U.S.C. 846, 860. See *Euan supra* at 662 (“The evidence was sufficient to  
3 support the district court’s conclusion that the object of the conspiracy was  
4 the distribution of methamphetamine within 1,000 feet of a protected  
5 location...”) and *Id.* (Here, the object of the criminal conspiracy was the  
6 distribution of methamphetamine within 1,000 feet of a protected  
7 location...”).

8  
9  
10  
11 In this case, the Court identified the objective of the charged  
12 conspiracy merely as distributing heroin generally, rather than as  
13 distributing heroin within 1,000 feet of a protected location. While the  
14 elements as stated and admitted to, were sufficient to convict Hager for a  
15 violation of 21 U.S.C. 846, 841(a)(1), they were not sufficient to convict him  
16 of 846, 860, because it failed to identify the objective as distributing heroin  
17 within 1,000 feet of a protected area. Accordingly, while such an admission  
18 would allow for a slight increase in his base offense level under 2D1.2, it  
19 would not allow for imposing the statutory penalty which doubled Hager’s  
20 statutory maximum and allowed for the imposition of an 80 year sentence  
21 rather than a 40-year sentence. In fact, the elements as stated, perfectly  
22 comport with USSG 1B1.2(a) which states in relevant part: “[h]owever, in  
23 the case of a plea agreement (written or made orally on the record)  
24  
25  
26  
27  
28



1 containing a stipulation that specifically establishes a more serious offense  
2 than the offense of conviction, determine the offense guideline section in  
3 Chapter Two applicable to the stipulated offense." Here, the court  
4 presented the elements of a violation of 21 U.S.C. 846, 841 to Hager as it  
5 stated the object of the conspiracy Hager intentionally and voluntarily  
6 joined was to distribute heroin.  
7

8  
9 Hager lacked knowledge of, and an intent to join, an agreement having as  
10 an objective a violation of Section 860. See Exhibit A. Neither Magistrate  
11 Scoles nor defense counsel informed Hager that Section 846, 860 required  
12 such knowledge and intent, and Hager did not know of such from any other  
13 source. Id. See also, Change of Plea Hearing.  
14

15  
16 Informed that a violation of Section 846, 860 required knowledge and  
17 intent to violate the proscription of Section 860, Hager would not have pled  
18 guilty and would have insisted upon proceeding to trial to prove his  
19 innocence. Exhibit A. Additionally, at his trial, Hager would have taken the  
20 stand and testified in his own defense to this matter which, if believed by  
21 the jury, would have required acquittal under a Section 846, 860 charge. Id.  
22

23  
24 2. Magistrate Scoles' failure to inform Hager that a conviction under  
25 Section 846, 841(a)(1), (b)(1)(B), 860 required, as an element, knowledge of  
26 and intent to join a conspiracy having as an objective the distribution of, at  
27  
28

1 a minimum, 100 grams or more of heroin within 1,000 feet of a school,  
2 further undermined the knowing and voluntary nature of Hager's plea of  
3 guilty.  
4

5 Adopting the argument above, Hager lacked knowledge of, and intent to  
6 join, an agreement having as an objective the distribution of, at a  
7  
8 minimum, 100 grams or more of heroin within 1,000 feet of a protected  
9 location. See Exhibit A.  
10

11 As evidenced by Hager's plea agreement and Magistrate Scoles' colloquy,  
12 Hager pled guilty to joining a conspiracy that had a single objective, (i.e.,  
13 the distribution of heroin). No amount (minimal or otherwise) established  
14 as an objective; and no locale (protected or otherwise) established as the  
15 same.  
16

17 Butressing the point, Section 846 does not require any overt act.  
18

19 Accordingly, the substantial Section 841(a)(1) violations committed by  
20 Hager during the course of the conspiracy did not transform the nature of  
21 the "generic" conspiracy entered. Compare e.g., *United States v. Al-Kassar*,  
22 660 F.3d 108 (2nd Cir. 2011) ("A conspiracy under Title 18 U.S.C. 2332g  
23 requires two distinct findings as to scienter. First, the defendant must  
24 intend to agree to participate in the conspiracy. Second, the aim of the  
25 conspiracy must be to knowingly produce, acquire, transfer, receive,  
26  
27  
28

1 possess, import, export, or possess and threaten to use anti-aircraft missiles  
2 (i.e., the conspirators cannot just happen to acquire anti-aircraft missiles  
3 while intending to acquire some other weapon or object.").

4 This principle applies here. To be guilty of violating Section 846,  
5 841(a)(1), (b)(1)(B), 860, a defendant must intend to join a conspiracy, with  
6 knowledge that the objective of the agreement is to violate Section 860,  
7 841(a)(1), (b)(1)(B), (i.e., distribute, at a minimum, 100 grams or more of  
8 heroin within 1,000 feet of a protected area).

9 Hager did not possess this knowledge or intentionally agree to join such a  
10 conspiracy.

11 Accordingly, this lack of knowledge and intent renders Hager's plea  
12 unknowing and involuntary. Compare e.g., *Shafer v. Bowersox*, 329 F.3d  
13 637, 649 (8th Cir. 1992) ("A defendant must understand the law in relation  
14 to the facts in order for a plea to be valid.")(citing *McCarthy v. United*  
15 States, 394 U.S. 459, 466 (1969)).

16 3. Due to ineffective assistance of counsel, Hager pled guilty under an  
17 inadequate factual basis.

18 A. Supporting facts:

1 1. Establishing the factual basis for Hager's guilty plea are paragraphs 8A  
2 & B of the Second Amended Proposed Plea Agreement. See Change of Plea  
3 Hearing.  
4

5 2. Paragraphs 8A & B establish the following facts:

6 a. Between about 2009 and at least October 2012, Hager and others  
7  
8 reached an agreement to distribute 100 grams or more of heroin;

9 b. Hager voluntarily and intentionally joined this agreement to distribute  
10  
11 heroin either at the time it was first reached or at some later time while it  
12 was still in effect;

13 c. At the time Hager joined the agreement, he knew the purpose of the  
14  
15 agreement was to distribute heroin;

16 d. Hager and his co-conspirators distributed heroin within 1,000 feet of a  
17  
18 protected location, (namely, Polk Elementary School and Coe College); and

19 e. On June 1, 2011, Hager sold an informant \$600 worth of heroin in the  
20  
21 parking lot of Lindale Mall. See Paragraphs 8A & B of the Second Amended  
22 Proposed Plea Agreement.

23 3. Defense counsel agreed that these facts established a factual basis for a  
24  
25 violation of Title 21 U.S.C. 846, 841(a)(1), (b)(1)(B), 860, 2011 Ed. See  
26 Change of Plea Hearing, pgs. 12-13.

27 B. Summary argument:  
28

1 Magistrate Scoles purported to establish a factual basis for a violation of,  
2 Section 846, 841(a)(1), (b)(1)(B), 860.

3  
4 The facts in paragraphs 8A & B do not establish a violation of this section.

5 Under the facts in paragraphs 8A & B, Hager simply joined a conspiracy  
6 which had as an objective the distribution of heroin. No locale (protected or  
7 otherwise) identified as an objective of the conspiracy. Under this fact, the  
8 factual basis adopted by Magistrate Scoles establishing, at most, a violation  
9 of Section 846, 841(a)(1).  
10  
11

12 Had the factual basis stated that the aim or objective or purpose of the  
13 conspiracy was to distribute heroin within 1,000 feet of a school zone,  
14 Hager would have objected and refused to plead guilty. See Exhibit A.  
15

16 Accordingly, the failure of the factual basis to establish an agreement to  
17 violate the terms of Section 860 was not harmless.  
18

19 4. Due to ineffective Assistance of Counsel in failing to interview several  
20 witnesses, and failing to call the same witnesses to testify at the sentencing  
21 hearing, where such witnesses would have testified in such a manner so as  
22 to defeat Hager's leadership enhancement, obstruction of justice  
23 enhancement, and drug quantity determination, Hager's guideline range  
24 calculation was substantially higher than it otherwise would have been. See  
25 Exhibits B-J If the Court had the benefit of these witnesses, it would have  
26  
27  
28

1 calculated a significantly lower guideline range, and a sentence of 960  
2 months would be substantively unreasonable.  
3

4  
5 I declare under penalty of perjury that the foregoing is true and correct and  
6 that this Motion under 28 U.S.C. 2255 was placed in the prison mailing  
7 system on May 14, 2017.  
8

9 Executed (signed) on May 14<sup>th</sup>, 2017.  
10

11  
12  
13  
14 Keith Flayrs # 45486-424  
15 Signature of Movant  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I, Keith Hager do hereby certify – under penalty of perjury under 28 U.S.C. 1746, that I have served a true and correct copy of the foregoing document(s):

28 U.S.C. 2255.

which, pursuant to *Houston v. Lack*, 487 U.S. 266, 101 L. Ed. 2d 108 S. Ct. 2379 (1988), is deemed filed at the time it was delivered to prison authorities for forwarding to the court, and service upon parties to litigation and/or their attorney(s) of record.

I have placed the material referenced above in a properly sealed envelope with first-class postage (stamps) affixed, and I addressed it to:

Clerk of the Court  
United States District Court  
Northern District of Iowa (Cedar Rapids)  
111 Seventh Ave SE Box 12,  
Cedar Rapids, IA 52401-2101.

And deposited said envelope *via* hand delivered to the Mail Room Staff at the United States Penitentiary Lee, Virginia, on this 14<sup>th</sup> day of May, 2017.

Respectfully submitted,

Keith Hager # 45486  
US Penitentiary Lee 454

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. ) No. CR 11-0143  
)  
KEITH HAGER, )  
)  
Defendant. )

APPEARANCES:

DANIEL AARON CHATHAM, ESQ., Assistant United States Attorney, United States Attorney's Office, 111 Seventh Avenue SE, Cedar Rapids, Iowa 52401, on behalf of the Plaintiff.

MICHAEL K. LAHAMMER, ESQ., Lahammer Law Firm PC, 425 Second Street SE, Suite 1010, Cedar Rapids, Iowa 52401, on behalf of the Defendant.

CHANGE OF PLEA HEARING HELD BEFORE  
THE HONORABLE JON STUART SCOLES,

taken at the Federal Courthouse, 111 Seventh Avenue SE, Cedar Rapids, Iowa, on the 1st day of July, 2013, commencing at 11:27 a.m., reported by Kay C. Carr, Certified Shorthand Reporter in and for the State of Iowa.

Kay C. Carr  
Certified Shorthand Reporter  
Registered Professional Reporter  
Cedar Rapids, Iowa  
(319) 362-1543



I N D E XE X H I B I T SEXHIBITSOFFERED    RECEIVEDGOVERNMENT'S:1 - Plea agreement

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3

1 THE COURT: The matter now before the Court  
2 is the case entitled United States of America versus  
3 Keith Hager, No. CR 11-0143. This matter comes on for a  
4 plea change hearing at this time. The Government is  
5 represented by Assistant United States Attorney Dan  
6 Chatham. The defendant appears in court and is  
7 represented by Attorney Michael Lahammer.

8 Mr. Hager, my name is Jon Scoles. I'm a  
9 United States magistrate judge. This case has been  
10 assigned to a district court judge, Chief Judge Linda  
11 Reade. You have the right to have a district court  
12 judge preside over any guilty plea proceeding. As a  
13 magistrate judge, I can preside over this hearing, but  
14 only with your consent. Do you agree that this guilty  
15 plea proceeding may be conducted by me?

16 DEFENDANT HAGER: Yes, sir.

17 THE COURT: And Mr. Lahammer, is that your  
18 signature and the defendant's signature on the written  
19 consent form?

20 MR. LAHAMMER: It is, Your Honor.

21 THE COURT: Mr. Hager, at this time I'm  
22 going to place you under oath, if you'll please raise  
23 your right hand.

24 (Defendant Hager was sworn in at this  
25 time.)

4

1 THE COURT: You can put your hand down. You  
2 are now under oath. If you make any false statements,  
3 then you may be prosecuted for the crime of perjury or  
4 making a false statement and the Government could use  
5 against you any statement that you make here today. Do  
6 you understand that you're now under oath and are  
7 required to tell the truth?

8 DEFENDANT HAGER: Yes, sir.

9 THE COURT: Please state your full name.

10 DEFENDANT HAGER: Keith Hager. Keith  
11 Charles Hager.

12 THE COURT: How old are you, sir?

13 DEFENDANT HAGER: Thirty-four.

14 THE COURT: How far did you go in school?

15 DEFENDANT HAGER: Tenth grade.

16 THE COURT: Do you have any difficulty  
17 reading or understanding the English language?

18 DEFENDANT HAGER: No.

19 THE COURT: It is important that you're able  
20 to understand the proceedings here today, so if you have  
21 any difficulty hearing me or if you don't understand  
22 something that comes up, will you let me know?

23 DEFENDANT HAGER: Yes.

24 THE COURT: First, I have to ask you some  
25 preliminary questions in order to make sure that you're

5

1 able to understand your rights. Have you ever suffered  
2 from depression, anxiety or any other mental illness?

3 DEFENDANT HAGER: No.

4 THE COURT: Have you ever abused drugs or  
5 alcohol?

6 DEFENDANT HAGER: No.

7 THE COURT: Do you take any prescription  
8 medicine?

9 DEFENDANT HAGER: No.

10 THE COURT: Do you know of any reason why  
11 you might have difficulty understanding these  
12 proceedings?

13 DEFENDANT HAGER: No.

14 THE COURT: Mr. Lahammer, do you have any  
15 reason to believe the defendant may not be competent to  
16 enter a guilty plea?

17 MR. LAHAMMER: I do not, Your Honor.

18 THE COURT: All right. Mr. Hager, you've  
19 been charged in a third superseding indictment with two  
20 drug-related offenses. Have you had a chance to discuss  
21 those charges in detail with Mr. Lahammer?

22 DEFENDANT HAGER: Yes.

23 THE COURT: I've been told that it's your  
24 intention to enter a plea of guilty to a lesser included  
25 offense of Count 1 and Count 2 would then be dismissed

6

1 at the time of sentencing. Is that your understanding?

2 DEFENDANT HAGER: Yes.

3 THE COURT: Before I can recommend that  
4 Judge Reade accept your guilty plea, I have to ask you a  
5 number of questions in order to make sure that you  
6 understand your rights. First, you have the right to be  
7 represented by an attorney. In this case, you've hired  
8 Mr. Lahammer to represent you. However, if you could  
9 not afford an attorney, then I would appoint one to  
10 represent you at public expense. Do you understand  
11 that?

12 DEFENDANT HAGER: Yes.

13 THE COURT: Are you generally satisfied with  
14 the representation that you've received from your  
15 attorney?

16 DEFENDANT HAGER: Yes.

17 THE COURT: I also want to talk to you about  
18 your trial rights. You have the right to a speedy and  
19 public trial before a jury of 12 people selected from  
20 northeast Iowa. You and Mr. Lahammer would help choose  
21 the people who would serve on the jury. Any verdict by  
22 the jury would have to be unanimous, which means that  
23 all 12 jurors would have to agree to the verdict. Your  
24 jurors would promise under oath to try your case fairly  
25 based only on the evidence submitted at trial and the

<p>7</p> <p>1 instructions given to them by Judge Reade. Do you</p> <p>2 understand your right to a jury trial?</p> <p>3 DEFENDANT HAGER: Yes.</p> <p>4 THE COURT: Also, there's a presumption of</p> <p>5 innocence. Judge Reade would tell the jury that you are</p> <p>6 presumed innocent and that the presumption of innocence</p> <p>7 remains with you unless at the end of the trial, the</p> <p>8 Government has convinced the jury of your guilt beyond a</p> <p>9 reasonable doubt. Judge Reade would also tell the jury</p> <p>10 that the presumption of innocence alone is enough for</p> <p>11 you to be found not guilty of this charge. Do you</p> <p>12 understand that?</p> <p>13 DEFENDANT HAGER: Yes.</p> <p>14 THE COURT: Also, you have the right to</p> <p>15 confrontation. This means that the Government would</p> <p>16 have to call its witnesses to testify under oath here in</p> <p>17 court. You would be able to see the witnesses as they</p> <p>18 testify and they would be able to see you. Mr. Lahammer</p> <p>19 would not have to question the Government's witnesses,</p> <p>20 but if he wanted to, he could confront them by</p> <p>21 cross-examining them. Do you understand that by</p> <p>22 pleading guilty, you're giving up your right to confront</p> <p>23 witnesses?</p> <p>24 DEFENDANT HAGER: Yes.</p> <p>25 THE COURT: You also have the right to</p>	<p>9</p> <p>1 upon your plea, just as if a jury had returned a guilty</p> <p>2 verdict against you. Do you understand that by pleading</p> <p>3 guilty, you're giving up your right to a jury trial?</p> <p>4 DEFENDANT HAGER: Yes.</p> <p>5 THE COURT: Before I can recommend that</p> <p>6 Judge Reade accept your guilty plea, I also have to</p> <p>7 establish that there are facts which would support a</p> <p>8 conviction in this case. The indictment charges you</p> <p>9 with conspiracy to distribute one kilogram or more of</p> <p>10 heroin within 1,000 feet of a school. It's my</p> <p>11 understanding that you're going to plead guilty to the</p> <p>12 lesser included offense of conspiracy to distribute</p> <p>13 100 grams or more of heroin within 1,000 feet of a</p> <p>14 school. In order to convict you of that offense, the</p> <p>15 Government would have to prove five things.</p> <p>16 First, that between about 2009 and</p> <p>17 continuing through September 2011, here in the Northern</p> <p>18 District of Iowa and elsewhere, two or more persons</p> <p>19 reached an agreement to distribute heroin, a Schedule I</p> <p>20 controlled substance. Do you understand the first thing</p> <p>21 the Government would have to prove?</p> <p>22 DEFENDANT HAGER: Yes.</p> <p>23 THE COURT: Did two or more persons reach an</p> <p>24 agreement in this district to distribute heroin during</p> <p>25 that time frame?</p>
<p>8</p> <p>1 present a defense. The burden of proof would remain on</p> <p>2 the Government throughout the trial and you would not</p> <p>3 have to put on a defense or produce any evidence;</p> <p>4 however, if you wanted to, you could present any</p> <p>5 relevant evidence to the jury. You could make witnesses</p> <p>6 come to court by having subpoenas served on them. If</p> <p>7 you could not afford to pay the costs necessary to serve</p> <p>8 the subpoenas or get your witnesses to court, I would</p> <p>9 make the Government pay those costs. Do you understand</p> <p>10 that by pleading guilty, you're giving up your right to</p> <p>11 present any defense?</p> <p>12 DEFENDANT HAGER: Yes.</p> <p>13 THE COURT: Finally, you have the right to</p> <p>14 remain silent. You could testify at the trial if you</p> <p>15 wanted to, but you would not have to. If you decided</p> <p>16 not to testify, the prosecutor would not say anything</p> <p>17 about it to the jury. In fact, Judge Reade would tell</p> <p>18 the jurors that you have a constitutional right not to</p> <p>19 testify and she would also tell them that they must not</p> <p>20 hold it against you if you do not testify. Do you</p> <p>21 understand that?</p> <p>22 DEFENDANT HAGER: Yes.</p> <p>23 THE COURT: In summary, if you plead guilty</p> <p>24 here today, Mr. Hager, you will have no trial. You will</p> <p>25 be judged guilty on the lesser included offense based</p>	<p>10</p> <p>1 DEFENDANT HAGER: Yes.</p> <p>2 THE COURT: The second thing the Government</p> <p>3 would have to prove is that you voluntarily and</p> <p>4 intentionally joined in that agreement, either at the</p> <p>5 time that it was first reached or at some later time</p> <p>6 while it was still in effect. Do you understand the</p> <p>7 second thing the Government would have to prove?</p> <p>8 DEFENDANT HAGER: Yes.</p> <p>9 THE COURT: Did you voluntarily and</p> <p>10 intentionally join in that agreement to distribute</p> <p>11 heroin?</p> <p>12 DEFENDANT HAGER: Yes.</p> <p>13 THE COURT: The third thing the Government</p> <p>14 would have to prove is that at the time you joined in</p> <p>15 the agreement, you knew the purpose of the agreement.</p> <p>16 In other words, you knew that its purpose was to</p> <p>17 distribute heroin. Do you understand the third thing</p> <p>18 the Government would have to prove?</p> <p>19 DEFENDANT HAGER: Yes.</p> <p>20 THE COURT: Did you know when you joined in</p> <p>21 this agreement that its purpose was to distribute</p> <p>22 heroin?</p> <p>23 DEFENDANT HAGER: Yes.</p> <p>24 THE COURT: The fourth thing the Government</p> <p>25 would have to prove is that as part of this conspiracy,</p>

11

1 you were responsible or involved in the distribution of  
 2 100 grams or more of a mixture containing heroin. Do  
 3 you understand the fourth thing the Government would  
 4 have to prove?  
 5 DEFENDANT HAGER: Yes.  
 6 THE COURT: Were you involved as part of  
 7 this conspiracy in the distribution of 100 grams or more  
 8 of a mixture containing heroin?  
 9 DEFENDANT HAGER: Yes.  
 10 THE COURT: And finally, the Government  
 11 would have to prove that at least some of your actions  
 12 occurred within 1,000 feet of a protected location. In  
 13 this case, it is alleged that it occurred within  
 14 1,000 feet of a school; Polk Elementary School and  
 15 Coe College here in Cedar Rapids. Do you understand the  
 16 fifth thing the Government would have to prove?  
 17 DEFENDANT HAGER: Yes.  
 18 THE COURT: Did some of your activities  
 19 which were involved in this conspiracy occur within  
 20 1,000 feet of a school?  
 21 DEFENDANT HAGER: Yes.  
 22 THE COURT: The parties have entered into a  
 23 plea agreement in this case, which is in the form of a  
 24 letter from Mr. Chatham to Mr. Lahammer. It's dated  
 25 June 20 and is marked Government's Exhibit 1. Is that

12

1 being offered?  
 2 MR. CHATHAM: Yes, Your Honor.  
 3 THE COURT: Any objection?  
 4 MR. LAHAMMER: None, Your Honor.  
 5 THE COURT: Exhibit 1 is received.  
 6 (Government's Exhibit 1 was offered and  
 7 received in evidence.)  
 8 THE COURT: Mr. Hager, I would like you to  
 9 take a look at the last page of Exhibit 1. It's page 9.  
 10 Is that your signature that appears on page 9?  
 11 DEFENDANT HAGER: Yes.  
 12 THE COURT: Did Mr. Lahammer review this  
 13 document with you in detail before you signed it?  
 14 DEFENDANT HAGER: Yes.  
 15 THE COURT: Do you believe you understand  
 16 all of the information on Exhibit 1?  
 17 DEFENDANT HAGER: Yes.  
 18 THE COURT: Do you have any questions about  
 19 the plea agreement that was reached between yourself and  
 20 the Government in this case?  
 21 DEFENDANT HAGER: No.  
 22 THE COURT: I would like you to take a look  
 23 at page 3, paragraph 8, which is entitled Stipulation of  
 24 Facts and includes subparagraphs A and B. Are those  
 25 your initials that appear by paragraph 8 and

13

1 subparagraphs A and B?  
 2 DEFENDANT HAGER: Yes.  
 3 THE COURT: Do you admit that the  
 4 information set forth in the stipulation of facts is  
 5 true and correct?  
 6 DEFENDANT HAGER: Yes.  
 7 THE COURT: Mr. Chatham, do you believe I've  
 8 accurately described the elements of the lesser included  
 9 offense on Count 1?  
 10 MR. CHATHAM: Yes, Your Honor.  
 11 THE COURT: Have I established a factual  
 12 basis for defendant's guilty plea?  
 13 MR. CHATHAM: Yes, Your Honor.  
 14 THE COURT: Mr. Lahammer, do you believe  
 15 your client understands the elements of the lesser  
 16 included offense?  
 17 MR. LAHAMMER: I do, Your Honor.  
 18 THE COURT: Do you believe I've established  
 19 an adequate factual basis for his guilty plea?  
 20 MR. LAHAMMER: Yes, Your Honor.  
 21 THE COURT: Have you had access to the  
 22 Government's discovery materials?  
 23 MR. LAHAMMER: I have.  
 24 THE COURT: Do they support a factual basis  
 25 for his guilty plea?

14

1 MR. LAHAMMER: They do.  
 2 THE COURT: Do you know of any possible  
 3 defense to this charge which you have not considered and  
 4 discussed with your client?  
 5 MR. LAHAMMER: I know of none, Your Honor.  
 6 THE COURT: Mr. Hager, at this time I want  
 7 to talk to you about the penalties that apply in this  
 8 case. Upon your plea of guilty to this charge, you will  
 9 be sent to prison for at least five years. In other  
 10 words, there's a mandatory minimum five year prison term  
 11 and you could be sent to prison for up to 80 years.  
 12 Also, you can be fined up to \$10,000,000 and there's a  
 13 mandatory special assessment of \$100. Following your  
 14 release from prison, you'll be placed on supervised  
 15 release for at least eight years and you could be on  
 16 supervised release for the balance of your life. Those  
 17 penalties are set forth in paragraph 2 of your plea  
 18 agreement, which is Exhibit 1. Do you understand the  
 19 minimum and maximum penalties which are applicable in  
 20 this case?  
 21 DEFENDANT HAGER: Yes.  
 22 THE COURT: At the time of sentencing,  
 23 Judge Reade will perform a calculation under the federal  
 24 sentencing guidelines, which are guidelines issued by  
 25 the United States Sentencing Commission. This

15

1 calculation will result in what's called an advisory  
2 guideline range, which is a range of months within which  
3 the sentencing commission suggests that you be sent to  
4 prison. Judge Reade must consider this range in  
5 determining your sentence, but she is not required to  
6 sentence you within that range. So long as the sentence  
7 she gives you is reasonable, she can depart from the  
8 advisory guideline range based on the factors listed in  
9 the sentencing guidelines or she can vary from the range  
10 based on the factors listed in the sentencing statutes.  
11 Do you understand all of that?

12 DEFENDANT HAGER: Yes.

13 THE COURT: Mr. Chatham, have you calculated  
14 the advisory guideline range which you believe is  
15 applicable?

16 MR. CHATHAM: Tentatively, Your Honor. The  
17 parties have agreed to a base offense level of at least  
18 26, plus likely one for the protected location. At this  
19 point, we don't believe that the two level enhancement  
20 would apply for the protected location. The Government,  
21 however, based on the information in our discovery file,  
22 believes that the base offense level will actually be a  
23 32 based on drug quantity, plus the one level for the  
24 school and then we also believe that there will be a  
25 three level enhancement for leadership role, which would

16

1 end up in a total offense level of 36. Believing the  
2 defendant is probably either a Criminal History Category  
3 II or III; if he were a Category II, it would be 262  
4 or 210 to 262 months. If he's a Category III, it would  
5 be 235 to 293 months.

6 And that leaves out any possibility of  
7 acceptance, which if the defendant were to get  
8 acceptance, then the range would obviously be lower. At  
9 this point, there's no agreement as to any guideline  
10 matters, however, but for the base offense level and the  
11 protected location.

12 THE COURT: Is there any reason you know of  
13 defendant would not get acceptance of responsibility at  
14 this point?

15 MR. CHATHAM: Well, at this point, because  
16 there's -- it seems that there's a dispute over drug  
17 quantity, there's a possibility of a contested  
18 sentencing hearing where acceptance might be an issue.

19 THE COURT: And if he received, for example,  
20 the full three levels for acceptance, instead of a 36 it  
21 would be a 33, and at a Criminal History Category II for  
22 example, instead of 210 to 262 months, it would be  
23 151 months to 188 months?

24 MR. CHATHAM: Correct.

25 THE COURT: Mr. Lahammer, have you

17

1 calculated the advisory guideline range which you  
2 believe is applicable?

3 MR. LAHAMMER: I have, Your Honor.

4 THE COURT: What did you come up with?

5 MR. LAHAMMER: Well, Your Honor, at its most  
6 basic element, the plea agreement calls for a base 26;  
7 one for a protected location, which we believe would  
8 apply as well; gives a 27. Three off for acceptance  
9 leaves a 24, 2 or a 3; puts him at 78 to 97 months or  
10 87 to 108 months.

11 I believe Mr. Chatham nailed the issue on  
12 the head, Your Honor. This is why we were going to go  
13 to trial because we believe that there was a more finite  
14 or more restrictive conspiracy here than what the  
15 Government is alleging. And even if we challenge the  
16 quantities based on our theory that there wasn't this  
17 broad conspiracy involving a dozen or more players but a  
18 more finite conspiracy, we believe even challenging the  
19 quantity determinations he's going to be eligible for  
20 acceptance in any case. But I do understand and I have  
21 talked with my client about that potential depending on  
22 challenged quantities and acceptance or obstruction.

23 THE COURT: All right. Mr. Hager, it sounds  
24 like there's quite a wide range of potential sentencing  
25 guideline ranges here. The prosecutor believes it may

18

1 be as high as 293 months. Your attorney is hopeful that  
2 it could be down around the mandatory minimum five  
3 years. It sounds like the principal arguments --  
4 although maybe not the only arguments -- have to do with  
5 the amount of weight or the amount of drugs that are  
6 attributable to you and whether or not you receive  
7 credit for acceptance of responsibility.

8 I've asked for these estimates just to give  
9 you some idea as to what could happen at the time of  
10 sentencing. Obviously, there's a wide range. You  
11 should understand, however, that neither the attorneys  
12 nor I will be sentencing you. Judge Reade is  
13 responsible for determining your sentence and she is not  
14 bound by the terms of any agreement entered into between  
15 the parties or any recommendation of the attorneys. She  
16 may calculate a higher or lower guideline range than  
17 what's been predicted by the lawyers.

18 Also, as I indicated earlier, the sentencing  
19 guidelines are advisory only. Judge Reade could depart  
20 or vary from the guidelines and impose any reasonable  
21 sentence permitted by law, which means you could receive  
22 a sentence below or above the advisory guideline range  
23 and, in fact, you could receive a sentence all the way  
24 up to the maximum statutory sentence, which in this case  
25 is 80 years.

19

1 You should also understand that however the  
2 guideline range is calculated and regardless of whether  
3 Judge Reade departs or varies from the guidelines, she  
4 cannot sentence you below five years, which is the  
5 statutory mandatory minimum, even if she wanted to. Do  
6 you understand all of that?

7 DEFENDANT HAGER: Yes.

8 THE COURT: You should also understand that  
9 you will be in custody for all of any prison sentence  
10 you receive, reduced only by any credit for goodtime you  
11 may earn. You can earn a reduction in your prison  
12 sentence for goodtime of up to 15 percent of your  
13 sentence. Whatever sentence you receive, however,  
14 you'll never see a parole board or be paroled out of  
15 prison because there is no parole in the federal court  
16 system. Do you have any questions about that?

17 DEFENDANT HAGER: No.

18 THE COURT: After you've served your prison  
19 sentence, you'll be placed on supervised release, during  
20 which time your conduct will be monitored by a probation  
21 officer. There are a number of standard conditions of  
22 supervised release. You cannot commit any federal,  
23 state or local crimes; nor can you possess firearms,  
24 ammunition or illegal controlled substances.  
25 Judge Reade could also impose additional special

20

1 conditions. If you violate any of the conditions of  
2 your supervised release, the judge could revoke your  
3 supervised release and require you to serve in prison  
4 all or part of the time you otherwise would have been on  
5 supervised release. Do you understand the requirements  
6 of supervised release?

7 DEFENDANT HAGER: Yes.

8 THE COURT: As a result of this conviction,  
9 you will also be deprived of your right to vote, to  
10 serve on a jury, to hold public office and to possess  
11 firearms and ammunition. Do you understand the loss of  
12 rights associated with a felony conviction?

13 DEFENDANT HAGER: Yes.

14 THE COURT: Now Mr. Hager, after your guilty  
15 plea is accepted by Judge Reade, you will have no right  
16 to withdraw your guilty plea. Do you understand that?

17 DEFENDANT HAGER: Yes.

18 THE COURT: If you plead guilty here today,  
19 I will order a presentence investigation. A probation  
20 officer will conduct a thorough investigation of this  
21 case and will prepare a draft presentence report. A  
22 copy of the draft report will be sent to the attorneys.  
23 You should go over the report carefully with  
24 Mr. Lahammer and be sure to point out any errors or  
25 omissions in the report so that he can tell the

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1 probation officer. The probation officer will then  
2 change the report to make sure that it is complete and  
3 accurate. After the report has been finalized, it will  
4 be sent to Judge Reade. You will then have a sentencing  
5 hearing.

6 At the sentencing hearing, the parties can  
7 present witnesses and exhibits on any sentencing issue  
8 and you'll be given a chance to talk to Judge Reade  
9 directly to tell her anything that you want. Do you  
10 have any questions about the sentencing procedure?

11 DEFENDANT HAGER: No, sir.

12 THE COURT: Both you and the Government will  
13 have the right to appeal the sentence to the  
14 Eighth Circuit Court of Appeals. Do you have any  
15 questions regarding your right to appeal?

16 DEFENDANT HAGER: No.

17 THE COURT: Has anyone forced or pressured  
18 you to plead guilty or made any promises to you to get  
19 you to plead guilty other than what's in the plea  
20 agreement?

21 DEFENDANT HAGER: No.

22 THE COURT: Mr. Lahammer, do you believe a  
23 guilty plea in this case would be voluntary?

24 MR. LAHAMMER: I do, Your Honor.

25 THE COURT: Do you know of any legal reason

22

1 why the plea should not be accepted?

2 MR. LAHAMMER: No, Your Honor.

3 THE COURT: Do you know of anything I have  
4 omitted which could affect the validity of the plea?

5 MR. LAHAMMER: No, Your Honor.

6 THE COURT: Mr. Chatham, do you know of  
7 anything I have omitted which could affect the validity  
8 of the plea?

9 MR. CHATHAM: Your Honor, I don't believe it  
10 necessarily impacts the validity of the plea, but I will  
11 note that -- I wanted to state for the record that prior  
12 written plea offers were extended to the defendant on  
13 April 19, 2013, and another one on June 19, 2013. The  
14 initial one on April 19th expired and then on -- the one  
15 from June 19th was rejected, which is why we're on the  
16 second amended plea agreement, which is Government's  
17 Exhibit 1.

18 THE COURT: Apparently, Mr. Hager, there  
19 were a couple of earlier plea agreements extended. Were  
20 those brought to your attention by Mr. Lahammer?

21 Mr. Lahammer, maybe -- and I obviously don't  
22 want to get into discussions you had with your client,  
23 but can you describe briefly the first two plea  
24 agreements and indicate whether or not those were  
25 brought to your client's attention?

<p style="text-align: right;">23</p> <p>1 MR. LAHAMMER: I can, Your Honor, and the</p> <p>2 main confusion lies in that I was second counsel in this</p> <p>3 case and the prior plea agreement was extended to prior</p> <p>4 counsel and it expired on or about the time that I</p> <p>5 entered my appearance. In fact, I entered my appearance</p> <p>6 after the expiration date. I believe the subsequent</p> <p>7 offer we rejected but revised and it led to the current</p> <p>8 one that we did accept, so I'm not sure it was an</p> <p>9 outright rejection, but a process as part of the</p> <p>10 negotiations.</p> <p>11 So there was two parts to the confusion.</p> <p>12 One is that prior counsel made him aware of the prior</p> <p>13 plea but it expired before current counsel represented</p> <p>14 Mr. Hager, and No. 2, we didn't really -- well, we</p> <p>15 rejected the subsequent plea agreement. It was revised</p> <p>16 and that led to the current plea.</p> <p>17 THE COURT: And I assume the reason</p> <p>18 Mr. Chatham brought this up is because there is a</p> <p>19 relatively recent United States Supreme Court case that</p> <p>20 makes it clear that defense counsel has an obligation to</p> <p>21 bring to their client's attention any offers that are</p> <p>22 made so that the defendant can make a judgment as to</p> <p>23 whether to accept an offer or reject it or proceed to</p> <p>24 trial or not, and, frankly, I think we're all sort of</p> <p>25 struggling with the best record to make to avoid any</p>	<p style="text-align: right;">25</p> <p>1 extended and then the difference between the second and</p> <p>2 the third was mostly on factual stipulations, so -- and</p> <p>3 then guideline issues as well, but essentially it was</p> <p>4 taken from a stipulation of certain facts to leaving it</p> <p>5 open beyond that so -- but my understanding is that</p> <p>6 Mr. Lahammer has communicated all of that to his client</p> <p>7 and I believe that satisfies for the Supreme Court case</p> <p>8 law.</p> <p>9 THE COURT: And Mr. Lahammer, again without</p> <p>10 getting into details of attorney/client privilege, have</p> <p>11 you fully discussed with your client the various plea</p> <p>12 negotiations and offers being made by the Government?</p> <p>13 MR. LAHAMMER: I have, Your Honor.</p> <p>14 THE COURT: Okay. All right. Mr. Hager,</p> <p>15 we've covered a lot of information here today and I want</p> <p>16 to make sure that you understood it so that you don't</p> <p>17 come back next week or next month or next year and tell</p> <p>18 me that you were confused or that someone forced you to</p> <p>19 plead guilty. Have you been able to understand</p> <p>20 everything we've talked about today?</p> <p>21 DEFENDANT HAGER: Yes.</p> <p>22 THE COURT: Do you have any questions about</p> <p>23 it?</p> <p>24 DEFENDANT HAGER: No.</p> <p>25 THE COURT: Has anyone forced or pressured</p>
<p style="text-align: right;">24</p> <p>1 claims later on by a defendant that he wasn't fully</p> <p>2 advised of any particular offer and accepting or</p> <p>3 rejecting it.</p> <p>4 You know, with -- and I don't -- you know,</p> <p>5 most offers have multiple parts to it, so it's difficult</p> <p>6 sometimes to tell whether or not a subsequent offer is</p> <p>7 more favorable to a defendant or less favorable. I mean</p> <p>8 there can be a variety of reasons why it's difficult to</p> <p>9 make that judgment, but basically, Mr. Hager, we just</p> <p>10 want to make sure that any plea agreements which the</p> <p>11 Government has tendered have been communicated to you</p> <p>12 and you had an ability to either accept them or reject</p> <p>13 them. Obviously, you've accepted the last one. Is it</p> <p>14 your understanding that there were other plea</p> <p>15 negotiations prior to this last one?</p> <p>16 DEFENDANT HAGER: Yes.</p> <p>17 THE COURT: Okay. Now Mr. Chatham, do you</p> <p>18 think any additional record is required in that regard?</p> <p>19 MR. CHATHAM: I would just note the</p> <p>20 difference between the first amended and the seconded</p> <p>21 amended was negligible. The only change, the first --</p> <p>22 well, the first plea agreement that was offered was a</p> <p>23 plea to the second superseding indictment. After the</p> <p>24 third superseding indictment was returned, that's why</p> <p>25 the second superseding -- or the second plea offer was</p>	<p style="text-align: right;">26</p> <p>1 you to plead guilty?</p> <p>2 DEFENDANT HAGER: No.</p> <p>3 THE COURT: Is your guilty plea voluntary?</p> <p>4 DEFENDANT HAGER: Yes.</p> <p>5 THE COURT: Then for the record, how do you</p> <p>6 plead to the lesser included offense in Count 1 of</p> <p>7 conspiracy to distribute 100 grams or more of heroin</p> <p>8 within 1,000 feet of a protected location; guilty or not</p> <p>9 guilty?</p> <p>10 DEFENDANT HAGER: Guilty.</p> <p>11 THE COURT: The record should reflect that</p> <p>12 the defendant has pleaded guilty to a lesser included</p> <p>13 offense of Count 1 on the third superseding indictment.</p> <p>14 I find the defendant is competent. He fully understands</p> <p>15 the charge against him. There's a factual basis for his</p> <p>16 plea. He knows the minimum and maximum punishments</p> <p>17 which may be imposed on the charge. He knows his jury</p> <p>18 rights and has voluntarily waived those rights. I</p> <p>19 further find that the defendant's decision to plead</p> <p>20 guilty was voluntary, knowing and not the result of any</p> <p>21 force, pressure, threats or promises, other than the</p> <p>22 promises made by the Government in the plea agreement.</p> <p>23 Therefore, I conclude that the defendant should be found</p> <p>24 guilty based on his plea of guilty.</p> <p>25 I have signed and will file my Report and</p>

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1. Recommendation recommending that Judge Reade accept the  
 2. defendant's guilty plea to the lesser included offense.  
 3. in Count 1. Copies of the report will be provided to  
 4. counsel. The parties have 14 days in which to file an  
 5. objection to the report. If no objection is made, then  
 6. Judge Reade may accept my recommendation and the  
 7. defendant's guilty plea by simply entering a written  
 8. order doing so.

9 I hereby order a Presentence Investigation.  
 10 The parties should pay careful attention to the  
 11 deadlines relating to the preparation of the report as  
 12 set out in Administrative Order 08-AO-13-P. Judge Reade  
 13 will then schedule a sentencing hearing on a later date.

14 Is there anything else that needs to be  
 15 addressed, Mr. Chatham?

16 MR. CHATHAM: No, Your Honor.

17 THE COURT: Mr. Lahammer?

18 MR. LAHAMMER: No, Your Honor.

19 THE COURT: Mr. Hager, do you have any  
 20 questions about anything I've done today?

21 DEFENDANT HAGER: No, Your Honor.

22 THE COURT: That will conclude the hearing.

23 (Proceedings concluded at 11:57 a.m.)  
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#### CERTIFICATE

5

6 I, Kay C. Carr, a Certified Shorthand Reporter of  
 7 the State of Iowa, do hereby certify that I acted as the  
 8 official court reporter at the proceedings in the  
 9 above-entitled matter at the time and place indicated.

10 That I reported in shorthand all of the proceedings  
 11 had at the said time and place and that said shorthand  
 12 notes were reduced to print by means of a computer-aided  
 13 transcription device under my direction and supervision,  
 14 and that the foregoing typewritten pages are a full and  
 15 complete transcript of the shorthand notes so taken.

16 I further certify that I am not related to or  
 17 employed by any of the parties to this proceeding, and  
 18 further that I am not a relative or employee of any  
 19 attorney of counsel employed by the parties hereto or  
 20 financially interested in the action.

21 IN WITNESS WHEREOF, I have set my hand this 19th  
 22 day of May, 2014.  
 23  
 24  
 25

26 /s/ Kay C. Carr  
 27 Kay C. Carr  
 28 Certified Shorthand Reporter  
 29 Registered Professional Reporter  
 30 Cedar Rapids, Iowa  
 31 (319) 362-1543

32  
 33  
 34  
 35



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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CENTREL TRAVOY BREWER (a/k/a  
"SuWuu"); TERRANCE MARTICE  
MILLER (a/k/a "T Miller"); TERRANCE  
DYNELL ARMSTEAD (a/k/a "Bird");  
ANDRE DERAY GLADNEY (a/k/a "Red,"  
a/k/a "Little Red," a/k/a "Daryl Pike");  
RAYMOND EDWARD GLADNEY (a/k/a  
"Mellow"); LORZELLE DANIELLE  
TURNER (a/k/a "Tone"); ANTONIO  
MATTHEW GREEN (a/k/a "T.O."); LYNN  
WILLIAM JOHNSTONE; TERELL  
LAMONTE ARMSTEAD (a/k/a "Buddy,"  
a/k/a "Lamonte," a/k/a "Monte," a/k/a  
"Monster"); WALTER REDAWN DIXON,  
(a/k/a "Mac"); and KEITH HAGER (a/k/a  
"Avon"),

Defendants.

No. CR 11-143

**Count 1**

**Conspiracy to Distribute Heroin  
Within 1,000 Feet of a School and  
to Distribute Cocaine Base**  
21 U.S.C. §§ 841(a)(1), (b)(1)(A),  
846, and 860

**Count 2**

**Distribution of Heroin**  
21 U.S.C. §§ 841(a)(1), (b)(1)(C)

PRESENTED IN OPEN COURT  
BY THE  
FOREMAN OF THE GRAND JURY  
And filed 5/23/2013  
ROBERT L. PHELPS, CLERK

**THIRD SUPERSEDING INDICTMENT**

The Grand Jury Charges:

**COUNT 1**

Between about 2009 and November 2012, in the Northern District of Iowa and elsewhere, defendants CENTREL TRAVOY BREWER (a/k/a "SuWuu"), TERRANCE MARTICE MILLER (a/k/a "T Miller"), TERRANCE DYNELL ARMSTEAD (a/k/a "Bird"), ANDRE DERAY GLADNEY (a/k/a "Red," a/k/a "Little Red," a/k/a "Daryl Pike"), RAYMOND EDWARD GLADNEY (a/k/a "Mellow"), LORZELLE DANIELLE TURNER (a/k/a "Tone"), ANTONIO MATTHEW GREEN (a/k/a "T.O."), LYNN WILLIAM JOHNSTONE, TERELL LAMONT ARMSTEAD (a/k/a "Buddy," a/k/a "Lamonte," a/k/a

"Monte," a/k/a "Monster"), WALTER REDAWN DIXON (a/k/a "Mac"), and KEITH HAGER (a/k/a "Avon"), did knowingly and intentionally combine, conspire, confederate, and agree, with each other and with other persons known and unknown to the Grand Jury, to distribute 1 kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, within 1,000 feet of the real property comprising a school, specifically Polk Elementary School, located at 1500 B Avenue NE, and Coe College, located at 1220 First Avenue NE, both in Cedar Rapids, Iowa, and to distribute 280 grams or more of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance.

This in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B), 846, and 860.

COUNT 2.

On or about June 1, 2011, in the Northern District of Iowa, defendant KEITH HAGER (a/k/a "Avon"), did knowingly and intentionally distribute approximately 5.2 grams of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance.

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

A TRUE BILL

s/

FOREPERSON /

5-22-2013

DATE

SEAN R. BERRY  
United States Attorney

By:

*D. Chatham*

DAN CHATHAM  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,

No. CR 11-143

Plaintiff,

vs.

CENTREL TRAVOY BREWER (a/k/a  
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MILLER (a/k/a "T Miller"); TERRANCE  
DYNELL ARMSTEAD (a/k/a "Bird");  
ANDRE DERAY GLADNEY (a/k/a "Red,"  
a/k/a "Little Red," a/k/a "Daryl Pike");  
RAYMOND EDWARD GLADNEY (a/k/a  
"Mellow"); LORZELLE DANIELLE  
TURNER (a/k/a "Tone"); ANTONIO  
MATTHEW GREEN (a/k/a "T.O."); LYNN  
WILLIAM JOHNSTONE; TERELL  
LAMONTE ARMSTEAD (a/k/a "Buddy,"  
a/k/a "Lamonte," a/k/a "Monte," a/k/a  
"Monster"); WALTER REDAWN DIXON,  
(a/k/a "Mac"); and KEITH HAGER (a/k/a  
"Avon"),

Defendants.

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Within 1,000 Feet of a School and  
to Distribute Cocaine Base**  
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PRESENTED IN OPEN COURT  
BY THE  
FOREMAN OF THE GRAND JURY  
And filed 5/23/2013  
ROBERT L. PHELPS, CLERK

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

A TRUE BILL  
s/

FOREPERSON /

DATE

5-22-2013

SEAN R. BERRY  
United States Attorney

By:

D. Chatham  
DAN CHATHAM  
Assistant United States Attorney

# United States District Court

## NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

KEITH HAGER

Case Number: CR 11-143-11-LRR

USM Number: 45486-424

Michael K. Lahammer

Defendant's Attorney

### THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1 of the Third Superseding Indictment filed on May 23, 2013
- ☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- ☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(b)(1)(B), 846, and 860	Conspiracy to Distribute 100 Grams or More of Heroin Within 1,000 Feet of a School	Nov. 2012	1

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.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_
- ☒ Count 2 of the Third Superseding Indictment is dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in economic circumstances.

March 12, 2014

Date of Imposition of Judgment

Signature of Judicial Officer

Linda R. Reade

Chief U.S. District Court Judge

Name and Title of Judicial Officer

Date

March 13, 2014

DEFENDANT: **KEITH HAGER**  
CASE NUMBER: **CR 11-143-11-LRR**

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **960 months on Count 1 of the Third Superseding Indictment.**

- ☒ The court makes the following recommendations to the Bureau of Prisons:  
**That the defendant be designated to a Bureau of Prisons facility as close to the defendant's family as possible, commensurate with the defendant's security and custody classification needs.**  
**That the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.**  
**That the defendant participate in a Bureau of Prisons' Vocational Training Program specializing in the culinary arts, carpentry, horticulture, HVAC, plumbing, and/or welding.**
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
  - ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.
  - ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - ☐ before 2 p.m. on \_\_\_\_\_.
  - ☐ as notified by the United States Marshal.
  - ☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: **KEITH HAGER**  
CASE NUMBER: **CR 11-143-11-LRR**

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **8 years on Count 1 of the Third Superseding Indictment.**

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

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

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

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

### **STANDARD CONDITIONS OF SUPERVISION**

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

DEFENDANT: KEITH HAGER  
CASE NUMBER: CR 11-143-11-LRR

**SPECIAL CONDITIONS OF SUPERVISION**

*The defendant must comply with the following special conditions as ordered by the Court and implemented by the U.S. Probation Office:*

- 1) The defendant must participate in and successfully complete a program of testing and treatment for substance abuse.
- 2) The defendant must not use alcohol nor enter bars, taverns, or other establishments whose primary source of income is derived from the sale of alcohol.
- 3) The defendant must not knowingly associate with any member, prospect, or associate member of any gang without the prior approval of the United States Probation Office. If the defendant is found to be in the company of such individuals while wearing the clothing, colors, or insignia of a gang, the Court will presume that this association was for the purpose of participating in gang activities.
- 4) If not employed at a regular lawful occupation, as deemed appropriate by the probation officer, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.
- 5) The defendant must submit to a search of the defendant's person, residence, adjacent structures, office and vehicle, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant must warn any other residents that the residence or vehicle will be subject to searches pursuant to this condition. This condition may be invoked with or without the assistance of law enforcement, including the United States Marshals Service.

Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
U.S. Probation Officer/Designated Witness

\_\_\_\_\_  
Date

DEFENDANT: KEITH HAGER  
CASE NUMBER: CR 11-143-11-LRR

Judgment — Page 5 of 6

### CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(l), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$ _____
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- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **KEITH HAGER**  
CASE NUMBER: **CR 11-143-11-LRR**

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A** ☒ Lump sum payment of \$ 100 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

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

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.