

FILED: October 2, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4144
(5:15-cr-00086-FL-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMY RANDOLPH MARTIN,

Defendant - Appellant.

O R D E R

Jeremy Randolph Martin seeks to appeal the 120-month sentence imposed upon his guilty plea. The Government has moved to dismiss the appeal as barred by Martin's waiver of the right to appeal included in the plea agreement. Upon review of the plea agreement and the transcript of the Fed. R. Crim. P. 11 hearing, we conclude that Martin knowingly and voluntarily waived his right to appeal, and that the issue Martin seeks to raise on appeal falls squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Pet. App. 2a

Entered at the direction of the panel: Judge Wilkinson, Judge Niemeyer, and Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

Pet. App. 3a

FILED: November 6, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4144
(5:15-cr-0086-FL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JEREMY RANDOLPH MARTIN

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Niemeyer and Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: November 14, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4144
(5:15-cr-0086-FL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JEREMY RANDOLPH MARTIN

Defendant - Appellant

M A N D A T E

The judgment of this court, entered 10/02/2017, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

FILED IN OPEN COURT
ON 8/16/16 SLT
Julie Richards Johnston, Clerk
US District Court
Eastern District of NC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:15-cr-86-FL

UNITED STATES OF AMERICA)

v.)

JEREMY RANDOLPH MARTIN)

MEMORANDUM OF PLEA AGREEMENT

The United States of America ("United States"), by and through the United States Attorney for the Eastern District of North Carolina ("USA-EDNC"), and the Defendant, with the concurrence of the Defendant's Attorney, Joseph H. Craven, have agreed that the above-captioned case should be concluded in accordance with this Memorandum of Plea Agreement as follows:

1. This Memorandum constitutes the full and complete record of the Plea Agreement. There are no other agreements between the parties in addition to or different from the terms herein.

2. The Defendant agrees:

- a. To plead guilty to Count Two of the Indictment herein.
- b. To make restitution to any victim, including any victim with respect to a Count dismissed as a part of the agreement, pursuant to 18 U.S.C. § 2259, in whatever amount the Court may order, pursuant to 18 U.S.C. §§ 3663, 3663A and/or 2259. Said restitution shall be due and payable immediately.
- c. To waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal the conviction and whatever sentence is imposed on any ground, including any issues that relate to the establishment of the advisory Guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory Guideline range that is established at sentencing, and further to waive all rights to contest the conviction or sentence in any post-conviction

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proceeding, including one pursuant to 28 U.S.C. § 2255, excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant at the time of the Defendant's guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the United States of any of its rights to appeal provided by law.

- d. To waive all rights, whether asserted directly or through a representative, to request or receive from the United States any records pertaining to the investigation or prosecution of this matter, except as provided in the Federal Rules of Criminal Procedure. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.
- e. To assist the United States in the recovery and forfeiture of any assets which facilitated and/or were acquired through unlawful activities, including all such assets in which the defendant has any interest or control. Specifically, the Defendant agrees to voluntarily forfeit and relinquish to the United States the property specified in the Indictment. The Defendant further agrees to sign any documents necessary to effectuate the forfeiture and waives any further notice. In addition, the Defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the Indictment. The Court has jurisdiction over the disposition of such items and may order the investigative agency to dispose of the items in such manner as provided by the agency's regulations.
- f. To pay a special assessment of \$100.00, pursuant to the provisions of 18 U.S.C. § 3013. If the assessment is not paid at sentencing, the Defendant agrees (1) that the assessment is payable in full immediately, and (2) to participate in the Inmates Financial Responsibility Program while incarcerated.

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- g. To complete and submit a financial statement under oath to the Office of the USA-EDNC no later than two weeks after the entry of the guilty plea.
 - h. If applicable, to abide by any conditions of release pending sentencing and report timely for service of sentence.
 - i. To knowingly and expressly waive any and all rights, under the Fifth and Sixth Amendments to the United States Constitution and any cases interpreting them, to have the existence and applicability of any prior convictions (1) charged in the indictment, (2) submitted to a jury, and (3) proved beyond a reasonable doubt. The defendant hereby consents to having the existence and applicability of any such convictions decided by the sentencing judge based on a preponderance of the evidence. The defendant reserves the right to contest at sentencing the existence of any such prior conviction and whether such conviction qualifies to increase the statutory minimum and maximum sentence, but consents to the resolution of any such objection by the sentencing judge using a preponderance-of-the-evidence standard.
3. The Defendant understands, agrees, and admits:
- a. That as to Count Two of the Indictment to which the Defendant is pleading guilty, the charge, code section, elements, and applicable penalties are as follows:

Count Two:

- (1) Charge: Possession of Child Pornography
- (2) Code: 18 U.S.C. § 2252(a)(4)(B)
- (3) Elements: On or about July 25, 2014;

First: The Defendant knowingly possessed visual depictions;

Second: using means and facilities of

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interstate and foreign commerce;

Third: the production of such visual depictions involved the use of minors engaged in sexually explicit conduct; and

Fourth: such visual depictions were of such conduct.

- (4) Maximum term of imprisonment: 20 years.
- (5) Minimum term of imprisonment: N/A
- (6) Term of supervised release: Minimum 5 years up to life. 18 U.S.C. § 3583(k).
- (7) Maximum term of imprisonment upon revocation of supervised release: life.
- (8) Maximum fine: \$250,000.00.
- (9) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in paragraph 2.b. above.
- (10) Special assessment: \$100.00.
- (11) Other penalties: Forfeiture.

HOWEVER, If the defendant has a prior conviction under chapter 110, section 1591, chapter 71, chapter 109A, or chapter 117 under Title 18, United States Code, or under section 920 of Title 10, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, then the applicable penalties in lieu of (4) through (5) above are as follows:

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- (4) Minimum term of imprisonment: 10 years
- (5) Maximum term of imprisonment: 20 years
- (6) Term of supervised release: life
- b. That any sentence imposed will be without parole.
- c. That the Court will take into account, but is not bound by, the applicable United States Sentencing Guidelines, that the sentence has not yet been determined by the Court, that any estimate of the sentence received from any source is not a promise, and that even if a sentence up to the statutory maximum is imposed, the Defendant may not withdraw the plea of guilty.
- d. That, unless Defendant is found unable to pay, the Court will impose a fine, and failure to pay it will subject Defendant to additional criminal and civil penalties pursuant to 18 U.S.C. §§ 3611-14.
- e. The defendant has been advised and understands, that under the Sex Offender Registration and Notification Act, the defendant must register and keep the registration current in each of the following jurisdictions: the location of the defendant's residence, the location of the defendant's employment; and, if the defendant is a student, the location of the defendant's school. Registration will require that the defendant provide information that includes name, residence address, and the names and addresses of any places at which the defendant is or will be an employee or a student. The defendant understands that he must update his registrations not later than three business days after any change of name, residence, employment, or student status. The defendant understands that failure to comply with these obligations subjects the defendant to prosecution for failure to register under federal law, 18

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U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

- f. That pleading guilty may have consequences with respect to the Defendant's immigration status if the Defendant is not a natural born citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which the Defendant is pleading guilty, and some offenses create a presumption of mandatory removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including the Defendant's attorney and the Court, can predict with certainty the effect of the Defendant's conviction on the Defendant's immigration status. The Defendant nevertheless affirms that Defendant wants to plead guilty, regardless of any immigration consequences that may result from this conviction, including the Defendant's automatic removal from the United States, denial of citizenship, and denial of admission to the United States in the future.

4. The United States agrees:

- a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), at sentencing it will dismiss Count One of the Indictment.
- b. That, pursuant to Fed. R. Crim. P. 11(c)(1)(B), it will recommend a term of imprisonment of 120 months.
- c. That it reserves the right at sentencing to present any evidence and information pursuant to 18 U.S.C. § 3661, to offer argument or rebuttal, to recommend imposition of restitution, and to respond to any motions or objections filed by the Defendant.
- d. That, pursuant to Fed. R. Crim. P. 11(c)(1)(A), the USA-EDNC will not further prosecute the

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Defendant for conduct constituting the basis for the Indictment, however, this obligation is limited solely to the USA-EDNC and does not bind any other state or federal prosecuting entities.

5. The parties agree, pursuant to Fed. R. Crim. P. 11(c)(1)(B), to the following positions as to the below-listed sentencing factors only, which are not binding on the Court in its application of the advisory Guideline range; provided that if Defendant's conduct prior to sentencing changes the circumstances with respect to any such factors, the United States is no longer bound to its positions as to those factors:

- a. A downward adjustment of 2 levels for acceptance of responsibility is warranted under USSG §3E1.1, unless the offense level determined prior to the operation of USSG 3E1.1(a) is level 16 or greater, in which event a downward adjustment of 3 levels is warranted.

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This the 1st day of August, 2016.

JOHN STUART BRUCE
ACTING UNITED STATES ATTORNEY


JEREMY RANDOLPH MARTIN
Defendant

By: 
ETHAN A. ONTJES
Assistant United States Attorney
Criminal Division


JOSEPH CRAVEN
Attorney for the Defendant

Conditionally approved, this 16 day of August, 2016.
Final acceptance is deferred pending the Court's review of the
Presentence Report.


THE HONORABLE ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

Approved this the _____ day of _____, 2016

THE HONORABLE LOUISE W. FLANAGAN
UNITED STATES DISTRICT JUDGE