No. 26-_____

IN THE

Supreme Court of the United States

SEAN JARRED DAVIS

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

On Petition for Writ of Certiorari from the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4652

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SEAN JARRED DAVIS, a/k/a Mike, a/k/a White Mike,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, District Judge. (3:23-cr-00003-GMG-RWT-1)

Submitted: February 27, 2026 Decided: March 27, 2026

Before AGEE, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

Dismissed in part, affirmed in part by unpublished per curiam opinion.

ON BRIEF: Dallas F. Kratzer III, Alexys M. Bardonaro, Margaret A. Lohmann, STEPTOE & JOHNSON PLLC, Columbus, Ohio, for Appellant. Randolph J. Bernard, Acting United States Attorney, Lara K. Omps-Botteicher, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sean Jarred Davis pleaded guilty pursuant to a written plea agreement to conspiracy to possess with intent to distribute and to distribute heroin and fentanyl, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), 846. On appeal, Davis challenges his 240-month sentence, arguing that the district court erred in applying a four-level leadership enhancement under U.S. Sentencing Guidelines Manual § 3B1.1(a) (2023) and a two-level livelihood enhancement under USSG § 2D1.1(b)(16). The Government moves to dismiss the appeal in part based on the appeal waiver included in Davis's plea agreement. The Government argues that the only issue not encompassed by the appeal waiver is whether the district court erred in applying the four-level leadership enhancement under USSG § 3B1.1(a). In response to the Government's motion, Davis argues that the appeal waiver is not enforceable because the Government breached the plea agreement and the appeal waiver was not knowing and voluntary. He further argues that enforcement of the appeal waiver would constitute a miscarriage of justice.

Initially, "[p]lea agreements are grounded in contract law, and as with any contract, each party is entitled to receive the benefit of his bargain." *United States v. Edgell*, 914 F.3d 281, 287 (4th Cir. 2019) (internal quotation marks omitted). "The government breaches a plea agreement when a promise it made to induce the plea goes unfulfilled." *United States v. Tate*, 845 F.3d 571, 575 (4th Cir. 2017). Where, as here, the defendant did not challenge the Government's purported breach of the plea agreement below, we review his claim for plain error. *Edgell*, 914 F.3d at 286.

In Davis's plea agreement, the Government indicated that it would seek a four-level sentencing enhancement based on Davis's leadership role pursuant to USSG § 3B1.1(a) and a two-level enhancement for Davis's use of a firearm pursuant to USSG § 2D1.1(b)(1). The parties agreed that they would not argue for any additional enhancements or adjustments at sentencing. The plea agreement also provided that the district court would not be bound by the parties' sentencing stipulations, and Davis would not have the right to withdraw his plea agreement if the court did not accept the stipulations. The plea agreement further provided that the Government reserved the right to provide relevant information for the presentence report (PSR), which could inform the court's sentencing decision. In the PSR, the probation officer recommended applying an additional enhancement under USSG § 2D1.1(b)(16) because Davis committed the offense as part of a pattern of criminal conduct engaged in as a livelihood. At sentencing, the Government argued for the application of the leadership and firearm enhancements under USSG § 3B1.1(a) and USSG § 2D1.1(b)(1), respectively. Contrary to Davis's contention on appeal, the Government, however, did not similarly actively argue for the court to impose the livelihood enhancement under USSG § 2D1.1(b)(16). The court adopted the PSR and imposed the two-level enhancement under USSG § 2D1.1(b)(16). Our review of the record reveals that the Government did not breach the plea agreement.

Next, we conclude that Davis's appeal waiver was knowing and voluntary. "Whether a defendant knowingly and intelligently agreed to waive his right of appeal must be evaluated by reference to the totality of the circumstances." *United States v. Manigan*, 592 F.3d 621, 627 (4th Cir. 2010) (internal quotation marks omitted). A waiver is generally valid "if a district court questions a defendant regarding the waiver of appellate rights during the [Fed. R. Crim. P.] 11 colloquy and the record indicates that the defendant understood the full significance of the waiver." *United States v. Thornsbury*, 670 F.3d 532, 537 (4th Cir. 2012).

At the Rule 11 hearing, Davis affirmed that he had read and understood the plea agreement, including the appeal waiver, that he had discussed the agreement with his counsel, and that he had not been pressured or threatened to sign the waiver. Following the Government's summary of the plea agreement, the district court asked if Davis understood the plea agreement. Davis confirmed that he understood that the plea agreement contained recommendations and that the court would decide whether to accept those recommendations after the PSR was prepared. The court questioned Davis about the waiver of appellate rights during the Rule 11 hearing, and the record indicates that Davis understood the full significance of the waiver. Our review of the record reveals that Davis knowingly and intelligently agreed to waive his right to appeal his sentence, preserving the right to appeal only the application of sentencing enhancements under USSG §§ 3B1.1(a), 2D1.1(b)(1). The waiver's language is clear and unambiguous, and the district court reviewed the terms of the waiver with Davis at the Rule 11 hearing to ensure that he understood it. Therefore, we find that Davis's appeal waiver is valid and enforceable. Because Davis's challenge to the application of the two-level livelihood enhancement under USSG § 2D1.1(b)(16) falls within the scope of the waiver, we grant the Government's motion to dismiss Davis's appeal as to court's application of that enhancement.

The only claim on appeal not encompassed by Davis's appeal waiver is the application of the leadership enhancement pursuant to USSG § 3B1.1(a). Generally, in reviewing a challenge to the district court's Sentencing Guidelines calculation, we review the district court's legal conclusions *de novo* and its factual findings for clear error. *United States v. Allen*, 909 F.3d 671, 677 (4th Cir. 2018).

Under USSG § 3B1.1(a), a probation officer is directed to increase a base offense level by four levels if the officer determines that "the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." To apply a leadership enhancement under USSG § 3B1.1, courts should consider, among other factors, the exercise of decision-making authority, recruitment of accomplices, the right to a larger share of the proceeds, participation in planning and organizing, and the degree of control over others in the conspiracy. *See* USSG § 3B1.1, n.4.

Here, the district court found that Davis operated a large-scale drug conspiracy and exercised control and decision-making authority over younger members of the operation. The evidence supports that finding. Thus, we conclude that the district court did not err in applying the four-level leadership enhancement under USSG § 3B1.1(a).

Accordingly, we grant the Government's motion to dismiss in part and affirm the remainder of the judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED IN PART,
AFFIRMED IN PART

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA
v.
SEAN JARRED DAVIS
aka Mike, aka White Mike

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:23CR3-1

USM Number: 40446-510

John R. Funkhouser
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) Two (2) of the Superseding Indictment

☐ 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:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846	Conspiracy to Possess with Intent to Distribute and to Distribute and Heroin and Fentanyl	01/04/2023	Two

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 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) ______

☑ Counts One (1), Three (3), and Four (4) of the Superseding Indictment and all counts of the Original Indictment are 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 assessment imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 2, 2024
Date of Imposition of Judgment

Gina M. Groh
Signature of Judge

Honorable Gina M. Groh, United States District Judge
Name and Title of Judge

December 5, 2024
Date

DEFENDANT: SEAN JARRED DAVIS
CASE NUMBER: 3:23CR3-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: Two Hundred and Forty (240) months

☑ The court makes the following recommendations to the Bureau of Prisons:

☑ That the defendant be incarcerated at an FCI or a facility as close to Baltimore, Maryland, as possible;

☑ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;

☑ including the 500-Hour Residential Drug Abuse Treatment Program.

☐ That the defendant be incarcerated at __________ or a facility as close to his/her home in __________ as possible;

☐ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;

☐ including the 500-Hour Residential Drug Abuse Treatment Program.

☑ That the defendant be given credit for time served from January 9, 2023, to the present.

☐

☑ That the defendant be allowed to participate in any educational or vocational opportunities while incarcerated, as determined by the Bureau of Prisons.

☑ Pursuant to 42 U.S.C. § 14135A, the defendant shall submit to DNA collection while incarcerated in the Bureau of Prisons, or at the direction of the Probation Officer.

☑ 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 __________ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

☐ on __________, as directed by the United States Marshals Service.

☐

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: SEAN JARRED DAVIS
CASE NUMBER: 3:23CR3-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : Three (3) years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court in its November 29, 2016, Standing Order, as well as with any other conditions on the attached page (if applicable).

DEFENDANT: SEAN JARRED DAVIS
CASE NUMBER: 3:23CR3-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You shall not commit another federal, state or local crime.
4. You shall not unlawfully possess a controlled substance. You shall refrain from any unlawful use of a controlled substance. You 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 probation officer.
5. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
6. You must answer truthfully the questions asked by your probation officer.
7. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
9. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
10. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
11. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
12. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
13. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
14. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
15. You shall not purchase, possess or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids or other designer stimulants.
16. You shall not frequent places that sell or distribute synthetic cannabinoids or other designer stimulants.
17. Upon reasonable suspicion by the probation officer, you shall submit your person, property, house, residence, vehicle, papers, computers, or other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
18. You are prohibited from possessing a potentially vicious or dangerous animal or residing with anyone who possesses a potentially vicious or dangerous animal. The probation officer has sole authority to determine what animals are considered to be potentially vicious or dangerous.
19. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature ______________________ Date ____________

DEFENDANT: SEAN JARRED DAVIS
CASE NUMBER: 3:23CR3-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a substance abuse treatment program.

2. You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.

3. You must not go to, or remain at, any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.

4. You must not use or possess any controlled substances without a valid prescription. If you do have a valid prescription, you must disclose the prescription information to the probation officer and follow the instructions on the prescription.

5. Unless excused for legitimate reasons, if not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, you may be required to perform up to 20 hours of community service per week until employed, as approved by the probation officer.

DEFENDANT: SEAN JARRED DAVIS
CASE NUMBER: 3:23CR3-1

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

☐ 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(i), all nonfederal victims must be paid before the United States is paid.

The victim's recovery is limited to the amount of their loss and the defendant's liability for restitution ceases if and when the victim receives full restitution.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$ ________	$ ________	

☐ See Statement of Reasons for Victim Information

☐ 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:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SEAN JARRED DAVIS
CASE NUMBER: 3:23CR3-1

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than ______________, or
☑ in accordance with ☐ C ☐ D, ☐ E, ☑ F, or ☐ G below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F, or ☐ G 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: The Special Assessment Fee has not been paid. Financial obligations ordered are to be paid while the defendant is incarcerated, and if payment is not completed during incarceration, it is to be completed by the end of the term of supervised release; or

G ☐ Special instructions regarding the payment of criminal monetary penalties:

The defendant shall immediately begin making restitution and/or fine payments of $________ per month, due on the first of each month. These payments shall be made during incarceration, and if necessary, during supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to Clerk, U. S. District Court, Northern District of West Virginia, P.O. Box 1518, Elkins, WV 26241.

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	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:
All property encompassed in the Superseding Indictment's Forfeiture Allegation.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

v.

SEAN JARRED DAVIS, aka Mike, aka White Mike,

Defendant.

Criminal No. 3:23-CR-3

Violations:
21 U.S.C. § 841(b)(1)(B)
21 U.S.C. § 841(b)(1)(C)
21 U.S.C. § 843(b)
21 U.S.C. § 843(d)
21 U.S.C. § 846

SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNT ONE

(Conspiracy to Possess with Intent to Distribute and to Distribute Forty Grams or More of Fentanyl)

From on or about February 1, 2021, to January 4, 2023, in Hampshire County, in the Northern District of West Virginia, and elsewhere, defendant **SEAN JARRED DAVIS, aka Mike, aka White Mike,** and others, including Warren Thomas Gray, aka Stix, Michael Eugene Lucas, Jr., aka Kevin, Erik Lee Kurz, aka Edub, Paul Edward Pownall, II, and Sherri Rene Wagoner, did unlawfully, knowingly, intentionally, and without authority combine, conspire, confederate, agree and have a tacit understanding together with each other and other persons to violate Title 21, United States Code, Section 841(a)(1). It was a purpose and object of the conspiracy to possess with intent to distribute and to distribute forty grams or more of a mixture and substance containing a detectable amount of fentanyl, a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(B).

COUNT TWO

(Conspiracy to Possess with Intent to Distribute and to Distribute Heroin and Fentanyl)

From on or about February 1, 2021, to January 4, 2023, in Hampshire and Mineral Counties, in the Northern District of West Virginia, and elsewhere, defendant **SEAN JARRED DAVIS, aka Mike, aka White Mike,** and others, including Warren Thomas Gray, aka Stix, Michael Eugene Lucas, Jr., aka Kevin, Dylan Carl Keckler, Erik Lee Kurz, aka Edub, Nicholas Vasilios Hainis, Jeanette L. Henkel, Lisa Gail Crouse, Melissa Sue Cole, Damarkco Tyree Canty, Rachael Elaine Biggs, Paul Edward Pownall, II, Heather Marie Alexander, Sherri Rene Wagoner, Robert Bruce Stachow, Andrew Lee Jones, aka Jonezy, Glenn Alen Robey, Kody Michael Shriver, Noah Izreel Neverdon, aka Melly, Dexter Horn, Michael Wade McIntire, and Kaitlyn Marie Shanklin, did unlawfully, knowingly, intentionally, and without authority combine, conspire, confederate, agree and have a tacit understanding together with each other and other persons to violate Title 21, United States Code, Section 841(a)(1). It was a purpose and object of the conspiracy to possess with intent to distribute and to distribute a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance; and a mixture and substance containing a detectable amount of fentanyl, a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(C).

COUNT THREE

(Aiding and Abetting Unlawful Use of Communication Device)

On or about March 29, 2022, in Hampshire County, in the Northern District of West Virginia and elsewhere, defendants **SEAN JARRED DAVIS, aka Mike, aka White Mike,** aided and abetted by Jeanette L. Henkel, did knowingly and intentionally use a communication device in committing, causing, and facilitating the commission of a felony under Title 21, United States Code, Sections 846, 841(a)(1), and 841(b)(1)(C), as alleged in Count One of this Indictment, that is, the defendants used a telephone to arrange a distribution of a mixture and substance containing heroin, a Schedule I controlled substance, and fentanyl, a Schedule II controlled substance; in violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Sections 843(b) and 843(d).

COUNT FOUR

(Aiding and Abetting Unlawful Use of Communication Device)

On or about April 18, 2022, in Hampshire County, in the Northern District of West Virginia and elsewhere, defendant **SEAN JARRED DAVIS, aka Mike, aka White Mike,** aided and abetted by Jeanette L. Henkel, did knowingly and intentionally use a communication device in committing, causing, and facilitating the commission of a felony under Title 21, United States Code, Sections 846, 841(a)(1), and 841(b)(1)(C), as alleged in Count One of this Indictment, that is, the defendants used a telephone to arrange a distribution of a mixture and substance containing heroin, a Schedule I controlled substance, and fentanyl, a Schedule II controlled substance; in violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Sections 843(b) and 843(d).

FORFEITURE ALLEGATION

Controlled Substance Act

Pursuant to Title 21, United States Code, Section 853 and Title 21, United States Code, Sections 841 and 846, the government will seek the forfeiture of property as part of the sentence imposed in this case; that is, the forfeiture of any property used, or intended to be used, to commit or to facilitate the commission of the above referenced offense, and any property constituting, or derived from, proceeds obtained directly or indirectly, as a result of such offense.

A true bill,

/s/______________________________
Grand Jury Foreperson

/s/__________________________
WILLIAM IHLENFELD
United States Attorney

Lara K. Omps-Botteicher
Assistant United States Attorney

FILED

AUG 08 2024

U.S. DISTRICT COURT- WVND
MARTINSBURG, WV 25401

United States Department of Justice

William Ihlenfeld
United States Attorney
United States Attorney's Office
Northern District of West Virginia

July 31, 2024

John R. Funkhouser
1708 Locust Avenue
Fairmont, WV 26554

In re: United States v. Sean Jarred Davis, aka Mike, aka White Mike,
Criminal Action No. 3:23-CR-03-01

Dear Mr. Funkhouser:

This will confirm conversations with you concerning your client, Sean Jarred Davis (hereinafter referred to as "Defendant"). All references to the "Guidelines" refer to the guidelines established by the United States Sentencing Commission, effective November 1, 1987, as amended.

It is agreed between the United States and your client as follows:

1. Defendant will plead guilty to Count Two of the Superseding Indictment, Conspiracy to Possess with Intent to Distribute and to Distribute Heroin and Fentanyl, in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(C).

2. The maximum penalty to which Defendant will be exposed by virtue of his plea of guilty, as stated in paragraph 1 above is: imprisonment for a period of not more than twenty years, a fine of $1,000,000, and a term of at least three years of supervised release.

It is further understood by Defendant that there is a special mandatory assessment of $100.00 (18 U.S.C. § 3013) per felony conviction **which must be paid within 40 days following entry of his plea** by money order or certified check to the United States District Court. It is also understood that Defendant may be required by the Court to pay the costs of his incarceration, supervision, and probation.

3. Defendant will be completely forthright and truthful with regard to all inquiries made of him and will give signed, sworn statements and testimony, **including but not limited to, appearances at**

Sean Davis SD — 8-1-24 SD 8/8/24
Sean Jarred Davis, Defendant — Date

JRF — 8-1-24 8/8/24
John R. Funkhouser, Esq., Counsel for Defendant — Date

grand jury, trial, sentencing and other proceedings. Defendant will agree to submit to a polygraph examination if requested to do so by the United States Attorney's Office for the Northern District of West Virginia.

4. A. Nothing contained in any statement or any testimony given by Defendant, pursuant to paragraph 3, will be used against him as the basis for any subsequent prosecution. **Defendant understands that the use immunity granted in this agreement does not cover any statements or admissions that you committed, or were directly involved in committing, a crime of violence. This means that such statements or admissions can be used against the Defendant in any state or federal prosecution. In this regard, Defendant admits that, prior to the proffer, pursuant to Miranda v. Arizona, 384 U.S. 436 (1996), you have been adequately advised and warned that any admission that you committed, or were directly involved in committing, a crime of violence is not covered by the use immunity under this agreement.** It is further understood that any information obtained from Defendant in compliance with this cooperation agreement will be made known to the sentencing court; however, pursuant to Guideline 1B1.8, such information may not be used by the Court in determining Defendant's applicable guideline range.

B. This agreement does not prevent Defendant from being prosecuted for any violations of other Federal and state laws he may have committed should evidence of any such violations be obtained from an independent legitimate source, separate and apart from that information and testimony being provided by him pursuant to this agreement.

C. In addition, nothing contained in this agreement shall prevent the United States from prosecuting Defendant for perjury or the giving of a false statement to a federal agent, if such a situation should occur by virtue of him fulfilling the conditions of paragraph 3 above.

5. At final disposition, the United States will advise the Court of Defendant's forthrightness and truthfulness, or failure to be forthright and truthful, and ask the Court to give the same such weight as the Court deems appropriate. The United States will also dismiss the Indictment and the remaining counts of the Superseding Indictment but expressly reserves the right to reinstate and prosecute any dismissed charge should the defendant's conviction later be vacated on appeal or collateral attack.

6. There have been no representations whatsoever by any agent or employee of the United States, or any other law enforcement agency, or Defendant's counsel as to what the final disposition in this matter should and will be. This agreement includes nonbinding recommendations by the United

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States, pursuant to Rule 11(c)(1)(B); however, Defendant understands that the Court is **not** bound by these sentence recommendations, and that Defendant has **no** right to withdraw a guilty plea if the Court does not follow the sentencing recommendations set forth in this plea agreement.

7. The United States will make the following **nonbinding** recommendations:

A. If, in the opinion of the United States Attorney's Office, Defendant accepts responsibility and if the probation office recommends a two-level reduction for "acceptance of responsibility," as provided by Guideline 3E1.1, then the United States will concur in and make such recommendation; and

B. The United States will recommend that any sentence of incarceration imposed should be within the applicable guideline range.

8. If in the opinion of the United States, the Defendant either engages in conduct defined under the Applicable Notes of Guideline 3C1.1, fails to cooperate as promised, or violates any other provision of this plea agreement, then the United States will not be bound to make the foregoing recommendations, and the Defendant will not have the right to withdraw the plea.

9. Pursuant to Sections 6B1.4, 2D1.1, and 1B1.3 of the Guidelines, the parties hereby stipulate and agree that the **base offense level is twenty-eight** based on at least 280 grams but less than 400 grams of fentanyl.

Pursuant to Section 3B1.1(a) of the Guidelines, the United States will argue at sentencing that four levels should be added because defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.

Pursuant to Section 2D1.1(b)(1) of the Guidelines, the United States will argue at sentencing that two levels should be added because defendant possessed a dangerous weapon (including a firearm).

The parties will not argue for any additional enhancements or adjustments at sentencing other than those outlined above.

The parties understand that pursuant to Section 6B1.4(d), the Court is not bound by the above stipulation and is not required to accept the same. Defendant understands and agrees that should the Court not accept the above stipulation, Defendant will not have the right to withdraw his plea of guilty.

10. Defendant is aware that 18 U.S.C. § 3742 affords a Defendant the right to appeal the sentence imposed. Acknowledging this, and in exchange for the concessions made by the United States in this plea agreement, Defendant waives the following rights:

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Notwithstanding the appellate waiver in Paragraphs 10A-10C, the parties retain their appellate rights as to the applicability of enhancements under U.S.S.G. § 3B1.1(a) and 2D1.1(b)(1)

LD
JRF
SD

A. Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or any other statute or constitutional provision, to appeal the Defendant's conviction on any ground whatsoever. This includes a waiver of all rights to appeal the Defendant's conviction on the ground that the statute(s) to which the defendant is pleading guilty is unconstitutional, or on the ground that the admitted conduct does not fall within the scope of the statute(s).

B. The Defendant knowingly and expressly waives all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed (including any fine, term of supervised release, or order of restitution) for any reason (including the establishment of the advisory sentencing guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and any constitutional challenges to the calculation and imposition of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release).

C. To challenge the conviction or the sentence which is within the maximum provided in the statute of conviction or the manner in which it was determined in any post-conviction proceeding, including any proceeding under 28 U.S.C. § 2255.

Nothing in this paragraph, however, will act as a bar to Defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. Defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct.

This waiver of appellate rights is not intended to represent the Defendant's estimation of what an appropriate or reasonable sentence would or should be. Nor does this waiver of rights prevent Defendant from arguing for a sentence below the aforementioned adjusted advisory Guideline offense level at sentencing. The United States waives its right to appeal any sentence within the applicable advisory Guideline range. Both parties have the right during any appeal to argue in support of the sentence.

11. The United States reserves the right to provide to the Court and the United States Probation Office, in connection with any presentence investigation that may be ordered pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, or in connection with the imposition of sentence should the Court, pursuant to Rule 32(c)(1), not order a presentence investigation, relevant information, including information regarding Defendant's background, criminal record, the offenses charged in the Superseding Indictment and other pertinent data appearing at Rule 32(c)(2) of the Federal Rules of Criminal Procedure, as will enable the Court to exercise its sentencing discretion. The United States also retains the right to respond to any questions raised by the Court, to correct any inaccuracies or inadequacies in the anticipated

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presentence investigation report to be prepared by the Probation Office of the Court, and to respond to any written or oral statements made by the Court, by Defendant or his counsel.

12. Defendant understands that the forfeiture of property will be part of the sentence imposed in this case and agrees to the forfeiture of all property encompassed in the charging instrument's Forfeiture Allegation. Defendant stipulates to the existence of the requisite forfeiture nexus between the offense conduct underlying this agreement and the property specified in the charging instrument's Forfeiture Allegation, which are proceeds of the offenses of conviction, and property that facilitated the offenses of conviction.

Defendant hereby waives all interest in any property subject to this plea agreement in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. By signing this agreement Defendant hereby withdraws any claim the defendant may have filed in any administrative forfeiture action and agrees to the entry of a Declaration of Forfeiture. Defendant also agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, the announcement of the forfeiture at sentencing, and the incorporation of the forfeiture in the judgment. Defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding.

Defendant also waives all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. Defendant further waives any failure by the Court to advise Defendant of the applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J).

Defendant waives, abandons, and surrenders any right to any and all evidence and property seized during the course of this investigation and waives any right to seek the return of any property pursuant to Fed. R. Crim. P. 41 or otherwise. Defendant understands and agrees that items seized during the course of this investigation will be destroyed or otherwise disposed of by the seizing law enforcement agency pursuant to State law, including, but not limited to, West Virginia Code 36-8A-1, et. seq. The defendant further agrees that this abandonment and waiver of rights is final and unappealable.

13. The Defendant agrees that all monetary penalties imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided in 18 U.S.C. § 3613. Furthermore, the Defendant agrees to provide all requested financial information to the United States and the U.S. Probation Office, and agrees to participate in a pre-sentencing debtor examination if requested by the U.S. Attorney's Office. The Defendant also authorizes the Financial Litigation Unit in the U.S. Attorney's Office to access the Defendant's credit report from any major credit reporting agency prior to sentencing in order to assess his financial condition for sentencing purposes. The Defendant

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agrees to complete a financial statement, under penalty of perjury, and to submit the financial statement on the date specified and in accordance with instructions provided by the U.S. Attorney's Office. The Defendant further agrees that any schedule of payments imposed by the Court represents the Defendant's minimal financial obligation and shall not constitute the only method available to the United States to enforce or collect any criminal monetary penalty judgment. If the defendant is sentenced to a period of incarceration, the defendant agrees to participate in the Federal Bureau of Prisons' Inmate Financial Responsibility Program, even if the Court does not specifically direct participation. In addition, the defendant agrees that the United States, through the Financial Litigation Unit, may submit any unpaid criminal monetary penalty to the United States Treasury for offset in accordance with the Treasury Offset Program, regardless of the defendant's payment status or history at that time.

In order to pay any outstanding criminal monetary penalties, the defendant agrees to a voluntary garnishment of 25% of all nonexempt net disposable earnings from any job or employment, to be withheld from his wages, salary or commissions, without prior demand for payment under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3205. The defendant hereby also waives any exceptions that may be applicable under the Consumer Credit Protection Act, 15 U.S.C. § 1673.

14. Defendant understands that the United States Sentencing Guidelines are now advisory and no longer mandatory. It is therefore understood that the sentencing court may ascertain and impose a sentence below or above the applicable Guideline range, so long as that sentence is reasonable and within the statutory maximum specified in Title 18 of the United States Code for the offenses of conviction.

15. If Defendant's plea is not accepted by the Court or is later set aside or if he breaches any part of this Agreement, then the Office of the United States Attorney will have the right to withdraw any sentencing recommendations and/or to void this Agreement.

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16. The above fifteen (15) paragraphs constitute the entire agreement between Defendant and the United States of America in this matter. **There are no agreements, understandings, or promises between the parties other than those contained in this Agreement.**

Very truly yours,

WILLIAM IHLENFELD
United States Attorney

By: Lara K. Omps-Botteicher
Assistant United States Attorney

As evidenced by my signature at the bottom of the seven (7) pages of this letter agreement, I have read and understand the provisions of each paragraph herein and, hereby, fully approve of each provision.

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John R. Funkhouser, Esq., Counsel for Defendant — Date 8-1-24 8/8/24