

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

KENNETH CONLEY

No. 12 CR 986

Judge Gary Feinerman

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant KENNETH CONLEY, and his attorney, GARY RAVITZ, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2. The indictment in this case charges defendant with escape from federal custody, in violation of Title 18, United States Code, Section 751(a).

3. Defendant has read the charge against him contained in the indictment, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the indictment, which charges defendant with escape from federal custody, in violation of Title 18, United States Code, Section 751(a).

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

On or about December 18, 2012, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant KENNETH CONLEY, while in custody by virtue of an arrest and conviction on a felony charge of bank robbery, knowingly escaped from the custody of an authorized representative of the Attorney General, and from custody under and by virtue of process issued under the laws of the United States by a magistrate judge and a district court judge, namely, a detention order from the United States District Court for the Northern District of Illinois, in violation of Title 18, United States Code, Section 751(a).

On July 5, 2011, CONLEY was charged in Case No. 11 CR 459 in the Northern District of Illinois with bank robbery, in violation of Title 18, United States Code, Section 2113(a), and a warrant was issued for his arrest. On or about September 24, 2011, CONLEY was arrested in the Southern District of California. On September 26, 2011, CONLEY made an initial appearance before Magistrate

Judge Barbara Lynn Major in the Southern District of California, and was ordered detained in the custody of the United States Marshals Service, which is an authorized representative of the Attorney General of the United States.

On or about October 11, 2011, Magistrate Judge Barbara Lynn Major issued a warrant of removal and ordered CONLEY to be removed from the Southern District of California to the Northern District of Illinois. On October 26, 2011, District Court Judge Samuel Der-Yeghiayan ordered CONLEY to remain in United States Marshal Service custody pending trial or until further order of the court. On or about October 29, 2012, CONLEY entered a guilty plea to bank robbery, in violation of Title 18, United States Code, Section 2113(a). Judge Der-Yeghiayan ordered CONLEY to remain in custody until further order of the Court.

CONLEY was housed at the Metropolitan Correctional Center (hereinafter "MCC") in Chicago, Illinois, while he awaited trial and then sentencing for the bank robbery charged in Case No. 11 CR 459. During 2012, CONLEY and his cell mate Joseph Banks ("Banks") devised a plan to escape from the MCC. To facilitate the escape, the two men sawed through metal bars in their cell, removed a section of concrete around a cell window, and created a makeshift rope from bed sheets. During the early morning hours of December 18, 2012, CONLEY and Banks executed their plan by escaping from the MCC. Specifically, the two men crawled through the hole they created in the window of their cell and used the makeshift rope to scale down the side of the building to the ground. CONLEY and Banks then

fled on foot from the MCC. Following his escape from the MCC, CONLEY was not in the custody of the United States Marshals Service even though he remained subject to the detention orders previously issued by District Judge Der-Yeghiayan. On January 4, 2013, CONLEY was arrested in Palos Hills, Illinois, by the Palos Hills Police Department. As a result of his escape from the MCC, the cell that CONLEY escaped from incurred damages in the amount of \$1,324.50.

### **Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

### **Sentencing Guidelines Calculations**

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that

the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2012 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 13, pursuant to Guideline § 2P1.1(a)(1). However, as set forth in Paragraph 9(d) below, defendant is a career offender under Guideline § 4B1.1(a).

ii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

iii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government and stipulated below, defendant's criminal history points equal 27 and defendant's criminal history category is VI:

i. On or about September 20, 1996, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 96 CR 0498301, to eight years' imprisonment for the offense of armed robbery. Defendant receives three criminal history points for this prior sentence pursuant to Guideline § 4A1.1(a).

ii. On or about September 20, 1996, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 96 CR 0498901, to eight years' imprisonment for the offense of armed robbery. Defendant receives one criminal history point for this this prior sentence pursuant to Guideline §§ 4A1.1(e) and 4A1.2(a)(2) .

iii. On or about September 30, 1996, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 96 C 55009701, to eight years' imprisonment for the offense of armed robbery. Defendant receives three criminal history points for this this prior sentence pursuant to Guideline § 4A1.1(a).

iv. On or about September 30, 1996, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 96 C 55009801, to eight years' imprisonment for the offense of unlawful use of a weapon. Defendant receives one criminal history point for this this prior sentence pursuant to Guideline §§ 4A1.1(e) and 4A1.2(a)(2).

v. On or about September 23, 2003, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 96 C 55009701, to probation for the offense of unlawful use of a weapon. On or about October 14, 2004, following a determination that defendant violated the terms of probation, defendant was sentenced to 61 days' imprisonment in Case No. 96 C 55009701. Defendant receives two criminal history points for this this prior sentence pursuant to Guideline §§ 4A1.1(b) and 4A1.2(k)(1).

vi. On or about September 29, 2004, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 03501293601, to 54 days' imprisonment for the offense of battery. Defendant receives one criminal history point for this this prior sentence pursuant to Guideline § 4A1.1(c).

vii. On or about September 29, 2004, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 04500575801, to 54 days' imprisonment for the offense of obstructing an officer. Defendant receives one criminal history point for this this prior sentence pursuant to Guideline §§ 4A1.1(c) and 4A1.2(c)(1).

viii. On or about September 30, 2004, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 04500906901, to 59 days' imprisonment for the offenses of resisting a peace officer and driving under the influence. Defendant receives one criminal history point for these this prior sentences pursuant to Guideline §§ 4A1.1(c) and 4A1.2(c)(1).

ix. On or about May 5, 2005, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 05 C 66053801, to one year of imprisonment for the offense of retail theft. Defendant receives two criminal history points for this this prior sentence pursuant to Guideline § 4A1.1(b).

x. On or about May 20, 2005, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 04501494501, to 60 days' imprisonment for the offenses of obstructing an officer, driving on a suspended license, and operating an uninsured motor vehicle. Defendant receives two criminal history points for these this prior sentences pursuant to Guideline § 4A1.1(b).

xi. On or about March 24, 2006, defendant was sentenced in the Superior Court of San Diego County, California, Case No. SCD196033, to six



years' imprisonment for the offense of petty theft with a prior. Defendant receives three criminal history points for this this prior sentence pursuant to Guideline § 4A1.1(a).

xii. On or about July 6, 2011, defendant was sentenced in the Circuit Court of Cook County, Illinois, Case No. 11600544401, to 100 days' imprisonment for the offense of aggravated assault and driving while suspended. Defendant receives two criminal history points for this this prior sentence pursuant to Guideline § 4A1.1(b).

xiii. On or about May 29, 2013, defendant was sentenced in the United States District Court for the Northern District of Illinois, Case No. 11 CR 459, to 20 years' imprisonment for the offense of bank robbery. Defendant receives three criminal history points for this this prior sentence pursuant to Guideline § 4A1.1(a).

xiv. Pursuant to Guideline § 4A1.1(d), defendant receives two criminal history points for committing the instant offense while under a criminal justice sentence, namely, a term of parole for the sentence described in paragraph 9(c)(xii) above

d. **Career Offender.** Pursuant to Guideline § 4B1.1(a), defendant is a Career Offender because (a) defendant was at least 18 years old at the time of the offense of conviction; (b) the offense of conviction is a felony that is a crime of violence; and (c) defendant has at least 2 prior convictions for a crime of violence, for

example, the convictions identified above in paragraph (c)(i), c(iii), and (c)(xiii). Pursuant to Guideline § 4B1.1(b)(6), because the offense of conviction carries a statutory maximum sentence of 5 years' imprisonment, and because this offense level is greater than the offense level that is otherwise applicable under Paragraph 9(b) above, defendant's offense level is 17 (prior to application of a three-level reduction for acceptance of responsibility under Guideline § 3E1.1). In addition, pursuant to Guideline § 4B1.1(b), defendant's criminal history category is VI.

**e. Anticipated Advisory Sentencing Guidelines Range.**

Therefore, based on the facts now known to the government, the anticipated offense level is 14, which, when combined with the anticipated criminal history category of VI, results in an anticipated advisory Sentencing Guidelines range of 37 to 46 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

f. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline

calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

#### **Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Regarding restitution, defendant acknowledges that the total amount of restitution owed to the Bureau of Prisons is \$1,324.50, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution in the amount outstanding at the time of sentencing.

14. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

15. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

### **Acknowledgments and Waivers Regarding Plea of Guilty**

#### **Nature of Agreement**

16. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 12 CR 986.

17. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or

release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

18. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be

drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

19. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights

**Presentence Investigation Report/Post-Sentence Supervision**

20. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

21. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's

Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

22. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

#### **Other Terms**

23. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including



providing financial statements and supporting records as requested by the United States Attorney's Office.

### **Conclusion**

24. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

25. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

26. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

27. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

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GARY S. SHAPIRO  
United States Attorney

\_\_\_\_\_  
KENNETH CONLEY  
Defendant

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DEREK OWENS  
Assistant U.S. Attorney

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GARY RAVITZ  
Attorney for Defendant