

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. ~~90-00260-CR-ZLOCH~~

90-0260-CR-ZLOCH

UNITED STATES OF AMERICA

vs.

JAMES MARTIN MALONE,

Defendant.

PLEA AGREEMENT

The United States of America and James Martin Malone (hereinafter referred to as the “defendant”) enter into the following agreement:

1. The defendant agrees to plead guilty to Count 2 of the indictment. Count 2 charges the defendant with knowingly failing to appear before the Court as required by conditions of release on bail, after being charged with a felony offense punishable by a term of imprisonment of fifteen or more years, in violation of Title 18, United States Code, Section 3146.

2. The United States agrees to dismiss the remaining count as to the defendant after sentencing.

3. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter “Sentencing Guidelines”). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court’s probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that

it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense(s) identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that, as to Count 2, the court may impose a statutory maximum term of imprisonment of up to ten years, followed by a term of supervised release of not more than three years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000.00.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

6. The Office of the United States Attorney for the Southern District of Florida (hereinafter "Office") reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement,

this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The United States agrees that it will recommend at sentencing that the court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. The United States further agrees to recommend that the defendant be sentenced at the low end of the guideline range, as that range is determined by the court. The United States, however, will not be required to make this motion and this recommendation if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the

defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

9. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or a variance from the guideline range that the court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together

W.E.W
4/4/12
T.M.T
4/4/12
M.J.M

W.F. Ferrer *JMD* *4/4/12* *W.F. Ferrer* *4/4/12*

~~with the United States, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.~~

10. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 4/4/12

By: *J.M. J.*
DUSTIN M. DAVIS, AUSA

Date: 4/4/12

By: *[Signature]*
ATTORNEY FOR DEFENDANT

Date: 4/4/12

By: *[Signature]*
DEFENDANT

UNITED STATES DISTRICT COURT
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vs.

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Defendant.

STIPULATED FACTUAL PROFFER

The United States of America, through undersigned counsel, and James Martin Malone (Defendant) stipulate and agree that had the above captioned matter proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt:

1. On September 10, 1989, Defendant was arrested for his participation in a narcotics trafficking conspiracy wherein 1,275 kilograms of cocaine were imported into Miami, Florida, but subsequently seized by the Drug Enforcement Administration.
2. A criminal complaint, bearing case number 89-MJ-3225-TURNOFF, was filed the following day charging Defendant with conspiracy to import five kilograms or more of cocaine into the United States. On September 20, 1989, Defendant was indicted with conspiracy to import five or more kilograms of cocaine into the United States, in violation of Title 21, United States Code, Section 963, among other charges, in case number 89-00602-CR-MARCUS.
3. After a bond hearing, Magistrate Judge Turnoff ordered bond be set at \$150,000 personal surety coupled with a \$75,000 corporate surety with *Nebbia*. Conditions


attached to these two bonds were to maintain his current residence and travel restricted to the Southern District of Florida. Defendant posted the aforementioned bonds on September 29, 1989 and October 6, 1989, respectively, and he was enlarged.

4. While on bond, Defendant proceeded to trial in January 1990. On January 28, 1990, at the conclusion of the workday, the District Court ordered Defendant to return to court the following day for the conclusion of closing arguments and the jury charge.
5. Although knowing he was to return the following day for the conclusion of trial, Defendant did not return as directed by the Court. Defendant was convicted in absentia.
6. Law enforcement learned that Defendant fled the United States.
7. Defendant, while released on bail by order of the Court, knowingly did not appear as directed by the District Court for trial on January 29, 1990, for a felony offense punishable by a term of imprisonment of fifteen or more years.

Date: 4/4/12


Assistant United States Attorney

Date: 4/4/12


Attorney for Defendant

Date: 4/4/12


Defendant