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WESTERN DISTRICT OF WASHINGTON DEPUTY



09-CR-00257-PLAGR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUKE ELLIOTT SOMMER,

Defendant.

NO. CR09-257JLR
NO. CR09-436JLR

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Gregory A. Gruber, Assistant United States Attorney for said District, and the defendant, Luke Elliott Sommer, and his attorney, Steven J. Krupa, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right as to the unindicted count to which he is pleading guilty pursuant to this agreement. Defendant agrees to plead guilty to Count Two of the Indictment in CR09-257JLR, and to enter a plea of guilty to the charge brought by the United States Attorney in an Information in CR09-436JLR.

2. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to the following charges contained in the Indictment and an Information. By entering these

1 | pleas of guilty, Defendant hereby waives all objections to the form of the charging
2 | documents.

3 | a. Assault with a Deadly Weapon, as charged in Count Two of the Indictment
4 | (CR09-0257JLR), in violation of Title 18, United States Code, Sections 113(a)(3) and
5 | 7(3).

6 | b. Solicitation to Commit a Crime of Violence, as charged in Count One of the
7 | Information (CR09-436JLR), in violation of Title 18, United States Code, Sections 373(a)
8 | and 7(3).

9 | Defendant further understands that before entering his pleas of guilty, Defendant
10 | will be placed under oath. Any statement given by Defendant under oath may be used by
11 | the government in a prosecution for perjury or false statement.

12 | 3. Elements of the Offenses. The elements of the offense of Assault with a
13 | Deadly Weapon, in violation of Title 18, United States Code, Sections 113(a)(3) and 7(3),
14 | are as follows:

15 | *First*, the defendant assaulted "N.D." by intentionally wounding him;

16 | *Second*, the defendant acted with the specific intent to do bodily harm to
17 | "N.D.";

18 | *Third*, the defendant used a dangerous weapon (prison-made knife or
19 | 'shank'); *and*

20 | *Fourth*, the assault took place at Federal Detention Center SeaTac, in the
21 | Western District of Washington, within the special territorial jurisdiction of the United
22 | States.

23 | The elements of Solicitation to Commit a Crime of Violence, in violation of Title
24 | 18, United States Code, Sections 373(a) and 7(3), are as follows:

25 | *First*, the defendant intentionally solicited, commanded, induced, or
26 | otherwise endeavored to persuade another person to commit a felony crime that has as an
27 |
28 |

1 element the use, attempted use, or threatened use of physical force against property or
2 against the person of another; and

3 *Second*, he so acted under circumstances strongly corroborative of that
4 intent.

5 4. The Penalties. Defendant understands that the statutory penalties for the
6 offense of Assault with a Deadly Weapon, in violation of Title 18, United States Code,
7 Sections 113(a)(3) and 7(3), are as follows:

8 Imprisonment for up to ten (10) years, a fine of up to two hundred fifty
9 thousand dollars (\$250,000.00), a period of supervision following release from prison of
10 three (3) years, and a one hundred dollar (\$100.00) penalty assessment. Defendant agrees
11 that the penalty assessment shall be paid at or before the time of sentencing.

12 Defendant further understands that the statutory penalties for the offense of
13 Solicitation to Commit a Crime of Violence, in violation of Title 18, United States Code,
14 Sections 373(a) and 7(3), are as follows:

15 Imprisonment for up to twenty (20) years, a fine of up to two hundred fifty
16 thousand dollars (\$250,000.00), a period of supervision following release from prison of
17 three (3) years, and a one hundred dollar (\$100.00) penalty assessment. Defendant agrees
18 that the penalty assessment shall be paid at or before the time of sentencing.

19 Defendant understands that in addition to any term of imprisonment and/or fine
20 that is imposed, the Court may order Defendant to pay restitution to any victim of the
21 offense, as required by law.

22 Defendant agrees that any monetary penalty the Court imposes, including the
23 special assessment, fine, costs or restitution, is due and payable immediately, and further
24 agrees to submit a completed Financial Statement of Debtor form as requested by the
25 United States Attorney's Office.

26 Defendant understands that supervised release is a period of time following
27 imprisonment during which he will be subject to certain restrictions and requirements.
28

1 Defendant further understands that if supervised release is imposed and he violates one or
2 more of its conditions, he could be returned to prison for all or part of the term of
3 supervised release that was originally imposed. This could result in Defendant serving a
4 total term of imprisonment greater than the statutory maximum stated above.

5 5. Rights Waived by Pleading Guilty. Defendant understands that, by
6 pleading guilty, he knowingly and voluntarily waives the following rights:

7 a. The right to plead not guilty, and to persist in a plea of not guilty;

8 b. The right to a speedy and public trial before a jury of Defendant's
9 peers;

10 c. The right to the effective assistance of counsel at trial, including, if
11 Defendant could not afford an attorney, the right to have the Court appoint one for
12 Defendant;

13 d. The right to be presumed innocent until guilt has been established at
14 trial, beyond a reasonable doubt;

15 e. The right to confront and cross-examine witnesses against Defendant
16 at trial;

17 f. The right to compel or subpoena witnesses to appear on Defendant's
18 behalf at trial;

19 g. The right to testify or to remain silent at trial, at which trial such
20 silence could not be used against Defendant; and

21 h. The right to appeal a finding of guilt or any pretrial rulings.

22 6. United States Sentencing Guidelines. Defendant understands and
23 acknowledges that, absent applicable intervening law:

24 a. The United States Sentencing Guidelines, promulgated by the
25 United States Sentencing Commission, are applicable to this case;

26 b. The Court will determine Defendant's applicable Sentencing
27 Guidelines range at the time of sentencing; and
28

1 c. Except as provided in paragraph 8 below, Sentencing, Defendant
2 may not withdraw his guilty pleas solely because of the sentence imposed by the Court.

3 7. Statement of Facts. The parties agree on the following facts in support of
4 Defendant's guilty pleas and sentencing. Defendant admits he is guilty of the charged
5 offenses and expressly waives any right to have these facts determined by a jury beyond a
6 reasonable doubt.

7 a. Assault with a Deadly Weapon.

8 On January 23, 2009, at the Federal Detention Center in SeaTac, a place within the
9 special territorial jurisdiction of the United States and located within the Western District
10 of Washington, Bureau of Prisons inmate Luke Elliott Sommer assaulted fellow inmate
11 "N.D." by assaulting him with a deadly and dangerous weapon (a prison-made knife, or
12 "shank"). "N.D." was one of Defendant Sommer's "Ranger Robbery" co-defendants.
13 The "Ranger Robbery" was a takeover-style robbery of a bank by several heavily armed
14 men, some of whom, including group leader Sommer, were United States Army Rangers.
15 For that armed bank robbery, during which he was armed with a loaded machinegun,
16 Sommer was sentenced on December 12, 2008 to 24 years of imprisonment (case CR06-
17 5528FDB).

18 At approximately 3:07 pm on January 23, 2009, an FDC SeaTac Corrections
19 Officer assigned to unit EB (located on the fourth floor) heard a loud noise and observed
20 two inmates fighting in the door of Cell #40. The officer approached and saw inmates
21 "N.D." and Sommer wrestling with each other and coming out of the cell. Other officers
22 also responded to the alarm and "N.D." and Sommer were placed in restraints. The
23 hallway mop closet next to where Sommer was lying was then unlocked, and on the floor
24 was found a grey homemade knife with a handle wrapped in fabric. The knife was
25 recovered and kept as evidence. Sommer was asked where he had gotten the knife, and
26 he explained how he had made it. FDC personnel heard Sommer say that he tried to "rip
27 out" the victim's Adam's apple during the fight, and how he had sharpened the plastic
28

1 with a razor to form a shank and how he "dulled" it on "N.D."s head. "N.D." told
2 officers that he was working out in his cell when Sommer suddenly appeared in the
3 doorway, they made eye contact, Sommer attacked him, and "N.D." defended himself
4 until staff arrived.

5 A BOP counselor who also responded to the scene in unit EB overheard Sommer
6 yell at "N.D.", "You won't even be safe at the ADX, you can't hide anywhere." Both
7 inmates were separately taken from unit EB to the medical unit. During that walk,
8 Sommer bragged to the counselor about how he had hidden the shank to avoid detection
9 during his travels through the FDC, and said that he had been planning the attack for sixty
10 days. The counselor knew Sommer and had seen and spoken to him in another part of the
11 FDC earlier that afternoon. Sommer explained to the counselor how he had planned to
12 get from there to "N.D."s assigned unit despite the separation orders keeping them apart.
13 His plan had worked, and Sommer was escorted to "N.D."s unit by another guard who
14 did not know Sommer and was unaware that Sommer did not belong in that part of the
15 facility. Investigators later went to unit FC and located a particular item with a piece
16 missing from the bottom that was similar in shape and size to the seized shank.

17 Both "N.D." and Sommer were examined by FDC medical personnel; neither man
18 required hospitalization. The BOP medical form lists the victim's trauma as
19 "lacerations," "abrasions," and "puncture wound." Photos of "N.D." showed an inch-plus
20 long laceration or shallow stab wound on his upper left chest/left shoulder area, and at
21 least three lacerations on his upper back and back of his neck.

22 b. Solicitation to Commit a Crime of Violence.

23 An undercover FBI investigation was launched after the United States Attorney's
24 Office and the Federal Bureau of Investigation were advised in January 2009 by a
25 cooperating inmate at FDC SeaTac, located in SeaTac, Washington, that inmate Luke
26 Elliott Sommer wanted to kill Assistant United States Attorney "M.D."

1 On March 16 and March 27, 2009, at FDC SeaTac, Defendant Luke Elliot Sommer
2 solicited an undercover FBI task force officer (UCO) to kill AUSA "M.D." During the
3 two meetings in the FDC's Special Housing Unit visitor room between Sommer and the
4 FBI UCO, Sommer promised to pay the FBI UCO approximately \$15,000-20,000 for the
5 hit. Sommer told the FBI UCO that he did not care how the killing was done so long as
6 news reports would indicate it was a murder rather than a possible accident.

7 8. Sentencing. Defendant is entering this plea pursuant to Federal Rule of
8 Criminal Procedure 11(c)(1)(C). Pursuant to that rule, Defendant and the United States
9 agree in light of the facts of these cases, that the appropriate sentence would be twenty
10 (20) years (i.e., 240 months) imprisonment. Specifically, the agreed sentence will be
11 terms of ten (10) years on the Assault with a Deadly Weapon, and ten (10) years on the
12 Solicitation to Commit a Crime of Violence, to be served consecutively to each other, and
13 consecutively to the 24-year sentence he is currently serving in CR06-5528FDB. The 20
14 years term of incarceration is to be followed by five (5) years of supervised release.
15 Pursuant Rule 11(c)(1)(C), Defendant and the United States further agree that this agreed-
16 upon sentence shall be binding upon the Court in the event that the Court accepts this Plea
17 Agreement. In the event the Court rejects this Plea Agreement and the agreed-upon
18 sentence, either party shall be free to withdraw from this Plea Agreement and, if it does,
19 shall not be bound by the terms of this Plea Agreement. Besides that agreement, no other
20 agreements have been made with regard to sentencing recommendations or the imposition
21 of the sentence in this matter, and the parties understand that the Court retains full
22 discretion with regard to the imposition of the conditions of supervised release and any
23 fine, forfeiture or restitution as may be applicable.

24 9. Appeal Waiver. As part of this Plea Agreement, Defendant waives to the
25 full extent of the law:

- 26 a) any right conferred by Title 18 United States Code, Section 3742 to appeal
27 the sentence, including any restitution order imposed; and
28

1 b) any right to bring a collateral attack against the conviction and sentence,
2 including any restitution order imposed, except as it may relate to the
3 effectiveness of legal representation

4 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
5 attacking (except as to effectiveness of legal representation) the conviction or sentence in
6 any way, the United States may prosecute Defendant for any counts, including those with
7 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
8 Agreement. Additionally, the United States may use any factual admissions made by
9 Defendant pursuant to this Plea Agreement in any such prosecution.

10 10. Acceptance of Responsibility. The United States acknowledges that
11 Defendant has assisted the United States by timely notifying the authorities of his
12 intention to plead guilty, thereby permitting the United States to avoid preparing for the
13 retrial and permitting the Court to allocate its resources efficiently. Because the
14 prosecution of this case has already included a full-blown suppression hearing and trial,
15 the government will only agree to a reduction of two levels for acceptance of
16 responsibility under Section 3E1.1 of the United States Sentencing Guidelines, assuming
17 that the United States remains satisfied at the time of sentencing that Defendant has
18 accepted responsibility.

19 11. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
20 the United States Attorney's Office for the Western District of Washington agrees not to
21 prosecute Defendant for any additional offenses, other than crimes of violence, known to
22 it as of the time of this Agreement that are based upon evidence in its possession at this
23 time, or that arise out of the conduct giving rise to this investigation. In this regard,
24 Defendant recognizes that the United States has agreed not to prosecute all of the criminal
25 charges that the evidence establishes were committed by Defendant solely because of the
26 promises made by Defendant in this Agreement. Defendant acknowledges and agrees,
27 however, that for purposes of preparing the Presentence Report, the United States
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1 Attorney's Office will provide the United States Probation Office with evidence of all
2 relevant conduct committed by Defendant.

3 Defendant agrees and acknowledges that any charges to be dismissed before or at
4 the time of sentencing were substantially justified in light of the evidence available to the
5 United States, were not vexatious, frivolous or taken in bad faith, and do not provide
6 Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No.
7 105-119 (1997).

8 12. Forfeiture of Contraband. Defendant also agrees that if any firearms,
9 ammunition, other weapons, drugs, drug paraphernalia, or any other illegal contraband
10 were seized by any law enforcement agency from the possession of Defendant, or that
11 were in the direct or indirect control of Defendant, then he consents to the administrative
12 forfeiture, official use and/or destruction of said items or contraband by any law
13 enforcement agency involved in the seizure of these items.

14 13. Voluntariness of Plea. Defendant acknowledges that he has entered into
15 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the
16 promises contained in this Plea Agreement, were made to induce Defendant to enter this
17 plea of guilty.

18 14. Statute of Limitations. In the event that this Agreement is not accepted by
19 the Court for any reason, or Defendant has breached any of the terms of this Plea
20 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
21 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
22 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
23 Agreement by Defendant is discovered by the United States Attorney's Office.

24 15. Post-Plea Conduct. Defendant understands that the terms of this Plea
25 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
26 If, after the date of this Agreement, Defendant should engage in illegal conduct, or
27 conduct that is in violation of his conditions of release (examples of which include, but
28

1 are not limited to: obstruction of justice, failure to appear for a court proceeding, criminal
2 conduct while pending sentencing, and false statements to law enforcement agents, the
3 Pretrial Services Officer, Probation Officer or Court), the United States is free under this
4 Agreement to seek a sentence that takes such conduct into consideration. Such a sentence
5 could include, to the extent the United States Sentencing Guidelines are applicable, a
6 sentencing enhancement or upward departure.

7 16. Completeness of Agreement. The United States and Defendant
8 acknowledge that these terms constitute the entire Plea Agreement between the parties.
9 This Agreement only binds the United States Attorney's Office for the Western District of
10 Washington. It does not bind any other United States Attorney's Office or any other
11 office or agency of the United States, or any state or local prosecutor.

12 Dated this 4th day of January, 2010.

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15 
16 _____
LUKE ELLIOTT SOMMER
Defendant

15 
16 _____
STEVEN J. KRUPA
Attorney for Defendant

17
18 
19 _____
TODD GREENBERG
Assistant United States Attorney

18 
19 _____
GREGORY A. GRUBER
Assistant United States Attorney

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2 INSTRUCTIONS FOR PAYING SPECIAL ASSESSMENTS
3 PRIOR TO SENTENCING

- 4 1. Special Assessments paid prior to sentencing must be paid to the
5 Clerk, United States District Court.
6 2. Special Assessments must be paid by a first party, certified, or
7 cashiers check, or a money order. No second party checks will be
8 accepted. No post-dated checks will be accepted.
9 3. All checks must be made out in U.S. dollars to "Clerk, U.S. District
10 Court."
11 4. All checks or money orders must be accompanied by the attached
12 form entitled, "Plea Agreement Special Assessment Payments." The
13 entire form must be filled out or the Clerk, United States District
14 Court, will not accept the payment.
15

16 PLEA AGREEMENT SPECIAL ASSESSMENT PAYMENT

17 DATE: _____

18 FROM: _____

19 TO: CLERK, U.S. DISTRICT COURT
20 ATTN: INTAKE TEAM

21 CASE NAME: UNITED STATES v. LUKE ELLIOTT SOMMER

22 CASE DOCKET NUMBER: CR09-257JLR, CR09-436JLR

23 DEFENDANT'S NAME: LUKE ELLIOTT SOMMER

24 SINGLE OR MULTIPLE DEFENDANTS: SINGLE

25 TOTAL SPECIAL ASSESSMENT PER DEFENDANT AS SET FORTH IN THE
26 PLEA AGREEMENT: \$200.00
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