



GOVERNMENT'S EXHIBIT NO. 1 - Poindexter

CASE NO. WDQ-03-0213

IDENTIFICATION: DEC 4 2003

ADMITTED: DEC 4 2003

United States Attorney
District of Maryland
Northern Division

6625 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201-2692

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December 3, 2003

Arcangelo Tuminelli, Esquire
1005 North Calvert Street
Baltimore, Maryland 21202

Re: United States of America v. Walter Poindexter
Criminal No. WDQ-03-0213

FILED
LODGED
DEC 4 - 2003
AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

Dear Mr. Tuminelli:

This letter confirms the plea agreement which has been offered to your client by the United States Attorney's Office for the District of Maryland ("this Office"). If your client accepts this offer, please have him execute it in the spaces provided below. The terms of the agreement are as follows:

Offense Conviction

AMT
W.P. [Signature]
subscribing

Mr. Poindexter, your client, agrees to plead guilty to Counts Two, Three, and Four of the indictment now pending against him in which he is charged in each count with distribution of heroin, in violation of 21 U.S.C. Section 841(a)(1). Your client admits that he is, in fact, guilty of those offenses and will so advise the Court.

Elements of the Offenses

2. The elements of each of the offenses to which your client has agreed to plead guilty in Counts Two, Three, and Four and which the government would prove if the case went to trial are as follows: the defendant unlawfully distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, and he did so knowingly and intentionally.

Penalties

3. The maximum sentence provided by statute for each of the offenses in Counts Two, Three, and Four to which your client is pleading guilty are as follows: 20 years imprisonment, followed by a term of supervised release of not more than 3 years and a fine of \$250,000. In addition, your client must pay \$100 as a special assessment under 18 U.S.C. Section 3013 for each count, which will be due and should be paid at or before time of sentencing. Pursuant to Title 18 U.S.C. § 3612, if the court imposes a fine in excess of \$2500.00 that remains unpaid 15 days after

it is imposed, the defendant shall be charged interest on that fine, unless the court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3). If a fine is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the defendant could be returned to custody to serve another period of incarceration and a new term of supervised release.

Waiver of Rights

4. Your client understands that by entering into this agreement, he surrenders certain rights as outlined below:

(a) If your client had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if your client, this Office, and the court all agreed.

(b) If your client elected a jury trial, the jury would be composed of twelve individuals selected from the community. You and your client would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and you would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before your client could be found guilty of any count. The jury would be instructed that your client was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

(c) If your client went to trial, the government would have the burden of proving your client guilty beyond a reasonable doubt. Your client would have the right to confront and cross-examine the government's witnesses. Your client would not have to present any defense witnesses or evidence whatsoever. If your client wanted to call witnesses in his defense, however, he would have the subpoena power of the court to compel the witnesses to attend.

(d) Your client would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

(e) If your client were found guilty after a trial, he would have the right to appeal the verdict to see if any errors were committed which would require a new trial or dismissal of the charges against him.

(f) By pleading guilty, your client will be giving up all of these rights, except the right, under the limited circumstances set forth in ¶ 9 below, to appeal the sentence. By pleading

guilty, your client understands that he may have to answer the court's questions both about the rights he is giving up and about the facts of his case. Any statements your client makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

Sentencing Guidelines Apply

5. Your client understands that a sentencing guideline range for this case will be determined by the Court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. Section 3551-3742 and 28 U.S.C. Sections 991 through 998. Your client further understands that the Court will impose a sentence within that guideline range unless the Court finds there is a basis for departure because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines, which should result in a sentence different from the guideline range.

Factual and Guidelines Stipulation

6. (a) This Office and your client understand, agree and stipulate to the following statement of facts and applicable sentencing guideline factors:

A. Factual Stipulation

In September 2002, Walter Poindexter was involved in the trafficking of heroin. On September 10, 2001, Walter Poindexter met with Warren Grace, an FBI cooperating witness. During the meeting at Stash House Records located at 991 West 36th Street. During the meeting at Stash House Records, Warren Grace provided Mr. Poindexter \$1100 which had been provided to Warren Grace from the FBI. On the following day, September 11, 2002, Warren Grace met with Walter Poindexter who provided a quantity of heroin to Warren Grace.

On September 23, 2002, Warren Grace and Walter Poindexter met at Stash House Records. During this meeting Warren Grace provided Walter Poindexter \$1780 which had been provided to him by the FBI. On the following day, September 24, 2002, Walter Poindexter and Warren Grace met at a parking lot near Stash House Records. During this meeting, Walter Poindexter gave a quantity of heroin to Warren Grace.

On September 27, 2002, Warren Grace and Walter Poindexter met at Stash House Records. During this meeting, Warren Grace provided \$3,000 which had been provided to him by the FBI. During this meeting, Walter Poindexter provided a quantity of heroin to Warren Grace.

B. Guidelines Stipulation

(b) The conduct charged in Counts Two, Three, and Four is governed by U.S.S.G. § 2D1.1 and carries a base offense level of 20 because the defendant possessed more than 40 grams but less than 60 grams of heroin. However, if the defendant is a career offender, the base offense level is adjusted to 32 pursuant to U.S.S.G. §4B1.1(C). Because the defendant accepts full responsibility for all his conduct in the charged offense in a timely manner, the parties stipulate to a downward adjustment of 2 levels, pursuant to U.S.S.G. § 3E1.1(b). Therefore, the total applicable base offense level would be adjusted downward by two levels.

Court Not Bound

(c) Your client understands that neither the U.S. Probation Office nor the Court is bound by the stipulation, and that the Court will, with the aid of the pre-sentence report, determine the facts relevant to sentencing. Your client understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the pre-sentence investigation, and any other relevant information. Your client understands that if the Court ascertains factors different from those contained in the stipulation, your client cannot, for that reason alone, withdraw his guilty plea.

Agreement with State's Attorney's Office

(d) The Baltimore City State's Attorney's Office has authorized this Office to be bound by this agreement in the following manner: the Baltimore City State's Attorney's Office will not charge Walter Poindexter for any conduct that formed the basis of this federal prosecution, including a shooting incident that occurred on or about January 22, 2001 in Baltimore City, Maryland.

Criminal History

(e) Your client understands that if he is a career offender, his criminal history category is VI. There is no agreement between the parties as to your client's criminal history.

Obstruction or Other Violations of Law

(f) In the event that your client engages in conduct after the date of this agreement which (i) would justify a finding of obstruction of justice under §3C1.1 of the Federal Sentencing Guidelines, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the pre-sentence report, or (iii) commits any offense in violation of federal, state or local law, then this office will be relieved of its obligations to your

client as reflected in this agreement. Specifically, this office will be free to argue sentencing guideline factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, the government will bear the burden of convincing the court of your client's obstructive behavior and/or failure to acknowledge personal responsibility by preponderance of the evidence. Your client acknowledges that he may not withdraw his guilty plea because this office is relieved of its obligations under the plea agreement pursuant to this paragraph.

Obligations of the United States Attorney's Office

7. In return for the complete fulfillment by your client of all of his obligations under this agreement, this Office agrees as follows:

(a) When your client appears before the Court for sentencing for the offenses to which he has agreed to plead guilty, this Office will bring to the Court's attention and the Court will be entitled to consider all other relevant information with respect to his background, character and conduct. The United States will move to dismiss the remaining counts of the Indictment to which the defendant has entered pleas of not guilty.

(b) At his sentencing, this Office reserves the right to make any recommendation it deems appropriate within the guideline range determined to be applicable to the defendant.

Court Not a Party

8. Your client expressly understands that the Court *is not* a party to this agreement. In the federal system, sentence is imposed by the Court, the Court is under no obligation to accept this Office's recommendations and the Court has the power to impose a sentence up to and including the statutory maximum stated above. If the Court should impose any sentence up to the maximum established by statute, your client cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. Your client understands that neither the prosecutor, you, nor the Court can make a binding prediction of, or promise him, the guideline range or sentence that ultimately will apply to his case. Your client agrees that no one has made such a binding prediction or promise.

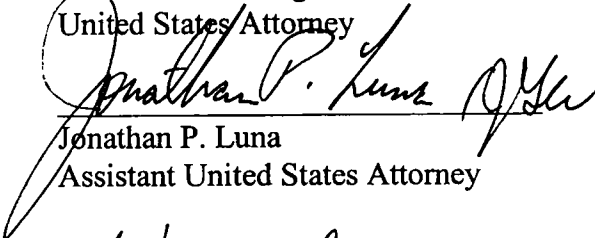
9. This letter states the complete plea agreement in this case and pertains solely to federal criminal charges in the District of Maryland. There are no other agreements, promises, undertakings or understandings between your client and this Office.

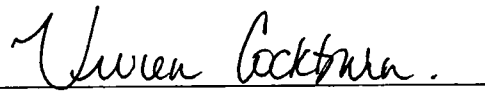
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If your client fully accepts each and every term and condition of this letter, please sign and have your client sign, the original and return it to me promptly. The enclosed copy is for your file.

Very truly yours,

Thomas M. DiBiagio
United States Attorney


Jonathan P. Luna
Assistant United States Attorney


Vivien Cockburn
Assistant States Attorney Baltimore City

I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it.

12/4/03
Date

Walter Poindexter
Walter Poindexter, Defendant

I am Mr. Poindexter's attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

12/4/03
Date


Arcangelo Tuminelli, Esq.

*Amendment to Plea Letter of
12/3/03 to Walter Poindexter*

personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the presentence report, or (iii) commits any offense in violation of federal, state or local law, then this office will be relieved of its obligations to your client as reflected in this agreement. Specifically, this office will be free to argue sentencing guideline factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, the government will bear the burden of convincing the court of your client's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. Your client acknowledges that he may not withdraw his guilty plea because this office is relieved of its obligations under the plea agreement pursuant to this paragraph.

Obligations of the United States Attorney's Office

7. (a) At the time of sentencing this Office will recommend a sentence within the applicable guideline range, as determined by the Court.

(b) At the time of sentencing, this Office will move to dismiss any remaining counts of the Indictment pending against your client, other than the counts to which he has agreed to plead guilty.

(c) This Office reserves the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning your client's background, character and conduct, including the conduct that is the subject of any count of the Indictment that this Office has agreed to dismiss at sentencing. The United States will withdraw the sentencing enhancement previously filed under 21 U.S.C. Section 851.

12/4/03 W.P.

Waiver of Appeal

— agreed J. P. [Signature]

8. Your client and the United States knowingly and expressly waive all rights conferred by 18 U.S.C. Section 3742 to appeal whatever sentence is imposed, including any issues that relate to the establishment of the guideline range, reserving only the right to appeal from an upward or downward departure from the guideline range that is established at sentencing. Nothing in this agreement shall be construed to prevent either your client or the United States from invoking the provisions of Federal Rule of Criminal Procedure 35, and appealing from any decision thereunder, should a sentence be imposed that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory minimum mandatory provision.

Court Not a Party

9. Your client expressly understands that the Court is not a party to this agreement. In *A must be able to appeal if he is determined to be a career offender*