

January 16, 2009

INFORMATION PAPER

Re: The Federal Criminal Plea Process

Before entering a plea to federal criminal charges, the Court must be satisfied that your plea is freely and voluntarily entered, and that there are sufficient facts to support the plea you enter. The Court will ask you questions about your background, education, employment, and whether you have ever been treated for mental illness. Further, the Court will inquire whether you are under the influence of any drugs or alcohol, or anything else that would impair your ability to understand what is happening in Court.

The Court will also advise you of certain rights you have. You have the right to a trial by jury and the right to have that jury determine your guilt or innocence. You have the right to have assistance of counsel at that trial. You cannot be compelled to testify against yourself. You have an absolute right to remain silent. You have the right to cross-examine the witnesses that the Government might call against you, so that you could see, hear, and cross-examine those witnesses. You have the right to require the attendance of witnesses on your behalf at that trial, if you choose to do that.

Of course, you can continue with your plea of not guilty, which means the Government would then have the burden of proving your guilt to the jury, by the evidence, by a standard of proof known as “beyond a reasonable doubt.” By entering your plea you will waive, or give up, those rights. There will not be a trial of your case and you will give up all defenses that you might otherwise have to the charge. You must understand that you will give up the right to appeal the question of your guilt or innocence because you will be admitting your guilt, and you can only appeal the sentence that might be imposed.

A plea of guilty admits the truth of the charge against you, and a plea of not guilty would deny the truth of the charge. Should the Court accept your plea, you will not be able to withdraw it at a later date. The decision to plead guilty is binding upon you. You will be required to stipulate to relevant facts the Government is prepared to prove at trial, and consent to judicial fact finding.

The Court will advise you of the possible penalties in this case. It will also advise you that supervised release (like probation) is a possible penalty as well. Should you violate any of the terms of the supervised release, you could be placed in prison to serve a sentence in addition to any sentence you may have already served at the time.

We have discussed the Sentencing Guidelines, how they work, and how they may affect your case. I have also told you that your actual sentence can only be determined after the probation office completes a presentence report, and you will have the opportunity to challenge anything in that report. Only then can a range of sentencing be determined from the guidelines. By entering this plea, you are consenting and agreeing that the Court (not a jury) will decide, by a preponderance of the evidence, all factual and legal issues that may impact upon the determination of the range of imprisonment under these guidelines.

The Court will also advise you that the Government, just as you, will have the right to appeal any sentence it imposes.

Be advised that parole has been abolished in the federal system. Should you be sentenced to prison, you should expect to serve that sentence all but day for day. Presently, you may expect to receive 54 days a year for good time on your sentence.

The Court will want to ensure that any agreement you may have with the Government is disclosed. It will satisfy itself that there are no secret or undisclosed promises. The Court will also confirm that no one has threatened, pressured, or intimidated you in any way to cause you to enter your plea.

Finally, the Court will ask you to certify that you have had enough time to discuss your case with me, and that you have told me everything about this case prior to your plea.

I trust this information will make your plea process easier and understandable.