

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 98-721-Cr-LENARD(s)(s)

UNITED STATES OF AMERICA

vs.

Antonio Guerrero, Defendant.

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SENTENCING AGREEMENT

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

1. The defendant agrees that he faces resentencing as to Count 2 of the indictment, which count charges the defendant with conspiracy to commit espionage, in violation of Title 18, United States Code, Section 794(c).

2. The defendant is aware that the sentence for this Count 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 sentencing guidelines range 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, including all Addenda to the Pre-Sentence Report, up to and including the Third Addendum to the Pre-Sentence Report. 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 range 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 identified in paragraph 1.

3. The defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of up to life in prison, followed by a term of supervised release of up to five years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant for count 2. The parties agree that the defendant shall receive credit for any special assessment previously paid by him pursuant to his original sentencing as to Count 2.

5. 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.

6. The defendant is aware that the sentence for Count 2 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 that he may not withdraw from this sentencing agreement 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.

7. The United States and the defendant agree that, although not binding on the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

a. Guideline components: That the components of the applicable guideline range for Count 2 are accurately and completely set forth in the Third Addendum to the Presentence Report, including the Base Offense Level of 37; Specific Offense Characteristics of zero; Victim-Related Adjustments of zero; Adjustment for Role in the Offense of +2 (use of special skill); Adjustment for Obstruction of Justice of zero; Chapter Four Enhancements of zero; Adjustment for Acceptance of Responsibility of zero, for a Total Offense Level of 39.

b. Overall guideline range: That the applicable guideline range for Count 2 under all of the circumstances of the offense(s) committed by the defendant is Level 39, as stated in the Third

Addendum to the Presentence Report, and that the defendant's criminal history category is I, resulting in a guideline imprisonment range of 262 to 327 months.

8. The United States and the defendant agree that, although not binding on the court, they will jointly recommend that the court impose a sentence on Count 2 as follows:

a. 240 months incarceration, to run concurrently with the court's previously imposed sentences on Counts 1 and 16 of the second superseding indictment, for a total incarceration sentence of 240 months;

b. a term of supervised release of five years, with conditions of supervision, as set forth in the court's original sentence of the defendant;

c. a \$100 special assessment, with credit for special assessment amounts previously paid by the defendant pursuant to his original sentence; and

d. no fine or restitution.

9. The United States and the defendant agree that neither party shall seek any departure, either upward or downward, from the agreed overall guideline range of Level 39, and that neither party shall seek any variance, upward or downward, from the agreed joint sentence recommendation of 240 months incarceration, five years supervised release, and \$100 special assessment.

10. 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 sentencing agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, 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 from the advisory sentencing 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.

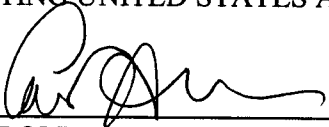
11. The defendant is aware that Title 28, United States Code, Section 2255 affords convicted persons the ability to attack their sentences collaterally under certain circumstances. Acknowledging this, in exchange for the undertakings made by the United States in this sentencing agreement, the defendant hereby waives all rights conferred by Title 28, United States Code, Section 2255, to attack collaterally his sentence based on a claim of ineffective assistance of counsel at sentencing. By signing this agreement, the defendant acknowledges that he has discussed the collateral-attack waiver set forth in this agreement with his attorney.

12. The defendant understands and agrees that this sentencing agreement will be filed with the court, and will become part of the public record in this case, and that he is subject to the court making inquiry as to his agreement to the terms of this sentencing agreement being knowing and voluntary.

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

JEFFREY H. SLOMAN
ACTING UNITED STATES ATTORNEY


Date: 10/13/2009

By: 
CAROLINE HECK MILLER
ASSISTANT UNITED STATES ATTORNEY

Date: 10/13/2009

By: 
MICHAEL R. SHERWIN
ASSISTANT UNITED STATES ATTORNEY

Date: 10.12.09

By: 
LEONARD I. WEINGLASS, Esq.
ATTORNEY FOR DEFENDANT

Date: 10-9-2009

By: 
ANTONIO GUERRERO
DEFENDANT