

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 07 CR 686
) Judge David H. Coar
)
)
MICHAEL MURPHY)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, the Department of Justice Civil Rights Division Acting Assistant Attorney General GRACE CHUNG BECKER, and defendant MICHAEL MURPHY, and his attorneys, RICK HALPRIN and DINAMARIE CALE, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The superseding information in this case charges defendant with violating Sidney Hooks’ civil rights, in violation of Title 18, United States Code, Section 242 (Count One).
3. Defendant has read the charge against him contained in the superseding information, and that charge has been fully explained to him by his attorney.
4. Defendant fully understands the nature and elements of the crime with which he has been charged.

Charge to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count One of the superseding information.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the superseding information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct within the meaning of Guideline 1B1.3:

On August 6, 2003, defendant MURPHY, while acting under color of law, did willfully subject Sidney Hooks to the deprivation of a right secured and protected to him by the Constitution and the laws of the United States, namely, the right to be free from unreasonable seizures by one acting under color of law, by unlawfully striking Sidney Hooks, without justification.

Specifically in the early morning hours of August 6, 2003, MURPHY was working for the Forest Park Police Department (“FPPD”) as a supervising Sergeant. At approximately 1:30 a.m., FPPD Officers Harold Grimes and David Hohl responded to a call about a panhandler at a retail establishment in the vicinity of Madison Street and Harlem Avenue in Forest Park. Officers Grimes and Hohl observed Sidney Hooks walking westbound on Madison and determined that he matched the description given of the person

who was allegedly panhandling. As a result, they detained Hooks. Hooks was carrying a closed container of beer in a paper bag. MURPHY arrived at the scene shortly thereafter.

Eventually, Officer Grimes instructed Hooks to turn around and walk eastbound back to Oak Park, which was approximately two blocks to the east. Hooks did as he was instructed and began walking eastbound on Madison Street. Officers Grimes and Hohl prepared to leave the scene of the stop and resume their patrol duties.

As Hooks walked away, MURPHY pulled up alongside of him and kept pace with Hooks. MURPHY and Hooks exchanged words. Specifically, Hooks stated that he believed MURPHY was harassing him. MURPHY then stopped his vehicle. He got out and walked directly towards Hooks, who remained on the sidewalk and did not approach the street. As he approached Hooks, MURPHY took out a canister of pepper spray and, without justification, sprayed Hooks in the face. After he was struck in the face with the pepper spray, Hooks turned his back to MURPHY and began to rub his eyes. While Hooks had his back turned to him, MURPHY deployed his asp, which is an extendable baton, and, again without justification, struck Hooks more than once. At no time during this encounter with MURPHY did Hooks verbally or physically assault or threaten MURPHY. As a result of the unlawful force used by MURPHY, Hooks suffered minor chemical burns to his eyes, a broken left wrist, and a bruise to his right thigh. Hooks was subsequently handcuffed and transported to the FPPD station.

MURPHY later filled out an Offense/Incident Report and swore out two Complaints against Hooks. In those forms, MURPHY falsely asserted, among other things, that: (a)

Hooks shouted threats to injure the officers as he walked away from the scene; (b) Hooks made threats to harm MURPHY; (c) Hooks advanced towards MURPHY despite MURPHY's direction to Hooks to back away; (d) MURPHY warned Hooks before spraying him with the pepper spray; (e) at one point Hooks took a boxing stance as if preparing to strike MURPHY with the beer bottle; (f) after he sprayed Hooks with the pepper spray, Hooks "attempted to turn toward (MURPHY) as he (Hooks) stepped backward toward (MURPHY) while armed with the bottle"; and (g) back at the police station, Hooks stated that "if you all left the (hand) cuffs on, I would have busted out off them and fucked you up." Each of these claims was false. MURPHY also attempted to get Officer Grimes to sign a false Complaint stating that Hooks had assaulted Grimes. Officer Grimes refused to sign the false Complaint. MURPHY made these false representations in an effort to conceal his excessive use of force on Hooks.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 12 months' imprisonment. This offense also carries a maximum fine of \$100,000. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$25 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be applied in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2007 Guideline Manual.

b. **Offense Level Calculations.**

i. Pursuant to Guideline Section 2H1.1(a), the base offense level is the offense level from the offense guideline applicable to any underlying offense or 10, whichever is greater. Defendant's offense level should be determined based on the underlying offense of Aggravated Assault. Under Guideline 2A2.2(a), the base offense level is 14.

ii. Pursuant to Guideline 2A2.2(b)(2)(B), the offense level is increased by four levels because MURPHY used a dangerous weapon.

iii. Another five levels are warranted under Guideline 2A2.2(b)(3)(B) because the victim suffered serious bodily injury.

iv. Pursuant to Guideline 2H1.1(b)(1) the offense level is increased by six levels

because the defendant was a public official at the time of the offense and the offense was committed under color of law;

v. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 29, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 87 to 108 months' imprisonment. Because the statutory maximum term of imprisonment for the count conviction is 12 months, the effective guideline range is 12 months. Defendant understands that this is in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The parties agree to jointly recommend at the time of sentencing that the Court impose the statutory maximum term of 12 months imprisonment..

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Defendant agrees to pay the special assessment of \$25 at the time of sentencing with a check or money order payable to the Clerk of the U.S. District Court.

Presentence Investigation Report/Post-Sentence Supervision

13. Defendant understands that the United States Attorney's Office in its submission to the Probation Department as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

14. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence

for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

15. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

16. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 06 CR 728.

17. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations

of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

18. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after

hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction and any

part of the sentence, including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Restitution

19. The defendant agrees, pursuant to Title 18, United States Code, Section 3663(a)(3) to the entry of an order requiring him to make restitution to Sidney Hooks in an amount still to be determined. The defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which restitution is to be paid in this case. The defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances in order to determine the proper restitution schedule according to

which the defendant may be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

Other Terms

20. Defendant agrees to resign from the Forest Park Police Department and to resign any Illinois law enforcement certification(s) within 7 days of the entry of this plea of guilty. Defendant further agrees to provide proof of his resignations to the Probation Officer within 14 days of this date. Finally, defendant agrees to never apply for or accept employment as a law enforcement officer with any other law enforcement agency.

21. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

22. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

23. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require

defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

25. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

26. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

MICHAEL MURPHY
Defendant

SERGIO E. ACOSTA
Assistant U.S. Attorney

RICK HALPRIN
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