

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 10-cr-00595-CMA-01

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RONALD ROY HOODENPYLE,

Defendant.

**PLEA AGREEMENT AND STATEMENT OF FACTS
RELEVANT TO SENTENCING**

The United States, by and through Matthew T. Kirsch, Assistant United States Attorney for the District of Colorado, and the defendant, Ronald Roy Hoodenpyle, personally and by counsel Leslee Barnicle, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to D.C.COLO.LCrR 11.1.

I. PLEA AGREEMENT

1. The defendant will plead guilty to Count 1 of the Indictment, charging him with failing to surrender for service of a sentence, in violation of Title 18, United States Code, Sections 3146(a)(2) and (b)(1)(A)(ii).

2. The defendant agrees to pay the \$100 special monetary assessment applicable to Count 1 at or before the time of sentencing.

3. Based on factors identified in Title 18, United States Code, Section 3553, the parties agree that a variant sentence of three months' imprisonment in the custody of the Bureau of Prisons (to run consecutive to the term of imprisonment imposed in

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case number 09-cr-00013-MSK-01), followed by three years of supervised release, constitutes a reasonable sentence sufficient, but not greater than necessary, to address the factors in Section 3553. Both parties agree to request and recommend such a sentence and to further recommend that the defendant receive credit for time served in pre-trial detention in this case.

4. This plea agreement is made pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure.

II. ELEMENTS OF THE OFFENSE

5. The defendant understands that in order to prove his guilt as to Count 1, the government must prove, beyond a reasonable doubt, that:

- A. Defendant Hoodenpyle was released on bail pursuant to the Bail Reform Act, Title 18, United States Code, Section 3142;
- B. Defendant Hoodenpyle was ordered to surrender for service of a sentence;
- C. Defendant Hoodenpyle was aware of that order;
- D. Defendant Hoodenpyle failed to surrender as ordered; and
- E. Defendant Hoodenpyle's failure to surrender was willful, meaning that it was done with knowledge that it was unlawful.¹

III. MAXIMUM STATUTORY PENALTIES

6. The maximum statutory penalty for the offense in Count 1 is: not more

¹18 U.S.C. §§ 3146(a)(2) and (b)(1)(A)(ii); *United States v. Bourassa*, 411 F.2d 69,74 (10th Cir. 1969); *United States v. Revis*, 2000 WL 1174563, *2-*3 (10th Cir. Aug. 17, 2000); *United States v. McGill*, 604 F.2d 1252, 1254 (9th Cir. 1979)

than five years of imprisonment, a fine of not more than \$250,000, or both; not more than 3 years of supervised release, and; a \$100 special assessment fee.

7. The conviction may also cause the loss of certain civil rights, such as the right to possess firearms, to vote, to hold elective office, and to sit on a jury.

8. A violation of the conditions of probation or supervision may result in a separate prison sentence.

IV. STIPULATION OF FACTUAL BASIS AND FACTS

RELEVANT TO SENTENCING

9. The parties agree that there is no dispute as to the material elements which establish a factual basis for the offense of conviction.

10. Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties stipulate are relevant, pursuant to §1.B1.3, for computing the appropriate guideline range.

11. The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the guideline computation (§1B1.3) or to sentencing in general (§1B1.4). Nor is the Court or Probation precluded from the consideration of such facts. In "determining the factual basis for the sentence, the Court will consider the stipulation [of the parties], together with the results of the presentence investigation, and any other relevant information." (§6B1.4 Comm.)

12. The parties agree that the government's evidence would show that the date on which conduct relevant to the offense (§1B1.3) began is approximately October

29, 2010.

13. The parties agree that the government's evidence would be:

Defendant Hoodenpyle was originally charged with and convicted of filing a false lien against an IRS Revenue Officer's house in case number 09-cr-00013-MSK-01.

TIGTA Special Agent William Frankel was the case agent for that case.

The order entered by Magistrate Judge Boyd Boland setting initial conditions for Defendant Hoodenpyle's release after his initial arrest in the first case describes Defendant Hoodenpyle's duty to surrender for service of any sentence imposed and the penalties for failure to surrender. Defendant Hoodenpyle's signature is on that order. On January 29, 2009, Defendant Hoodenpyle's probation officer, Robert Ford, met with Defendant Hoodenpyle and read and discussed Judge Boland's order. Defendant Hoodenpyle told Mr. Ford that he understood the order's conditions.

On June 17, 2010, Defendant Hoodenpyle was convicted by a jury in the underlying case. On September 23, 2010, Defendant Hoodenpyle was sentenced to a term of imprisonment of twelve months. In connection with that sentence, Judge Krieger orally ordered Defendant Hoodenpyle to surrender to the institution to which he was designated by the United States Bureau of Prisons by 12:00 p.m. on Friday, October 29, 2010. On October 6, 2010, Judge Krieger issued an Order to Surrender in Lieu of Transportation by the United States Marshal. Judge Krieger's Order directed Defendant Hoodenpyle to surrender for service of his sentence at Big Spring FCI SCP, Big Spring, Texas, by 12:00 p.m. on Friday, October 29, 2010. A copy of this order was mailed to Defendant Hoodenpyle at the address associated with his electronic monitoring by the United States Probation Office in Colorado Springs.

On October 12, 2010, Probation Officer Ford discussed with Defendant Hoodenpyle, where, when, and what time he was to surrender on Friday, October 29, 2010. Defendant Hoodenpyle was aware that he had been designated to Big Spring FCI SCP. Officer Ford told Defendant Hoodenpyle that it would take a day and a half to drive from Colorado Springs, Colorado to Big Spring, Texas. Officer Ford also advised Defendant Hoodenpyle that failure to surrender would result in additional criminal charges being brought against him.

Defendant Hoodenpyle did not report to Big Spring FCI SCP as ordered. Instead, he took his partially disabled wife to a friend's house in Arizona and then made preparations to go into hiding. On November 8th, Defendant Hoodenpyle was arrested outside of a cabin in Grand Lake, Colorado. He consented, both verbally and in writing, to a search of his vehicle and his personal property located within that cabin. At the time of his arrest, Defendant Hoodenpyle had almost \$1,300 in U.S. currency on his person, along with a false photo identification in the name of one of his associates. (A few days earlier, that same associate had sold Defendant Hoodenpyle the car he identified as his when he was arrested.) Officers found within Defendant Hoodenpyle's car, among other items: (1) a book titled, "How to Create a New Identity," (2) a pre-paid cell phone, as well as a receipt indicating that the phone had been purchased in Arizona on November 2nd, (3) two boxes of handgun ammunition containing forty-two and forty-nine bullets, respectively, (4) a to-do list that included selling a truck and furniture, (5) a bill of sale for the truck Hoodenpyle had previously owned, and (6) a letter addressed to "Honey" that said, among other things, "Frankel is calling around to some of my friends trying to fine[sic] me."

IV. SENTENCING COMPUTATION

14. The parties understand that the Court may impose any sentence, up to the statutory maximum, regardless of any guideline range computed, and that the Court is not bound by any position of the parties. (§6B1.4(d)) The Court is free, pursuant to §§6A1.3 and 6B1.4, to reach its own findings of facts and sentencing factors considering the parties' stipulations, the presentence investigation, and any other relevant information. (§6B1.4 Comm.; §1B1.4)

15. To the extent the parties disagree about the sentencing factors, the computations below identify the factors which are in dispute. (§6B1.4(b)) New facts which arise or are discovered may cause a party to change its position with regard to guideline computations or sentencing. The parties' estimated guideline application is:


- A. The base guideline is U.S.S.G. §2J1.6, with a base offense level of 11.
- B. There are no specific offense characteristic enhancements.
- C. There are no victim-related, role-in-the-offense, or obstruction of justice adjustments.
- D. The adjusted offense level for Count 1 would therefore be 11.
- E. The defendant should receive a 2-level reduction for acceptance of responsibility. §3E1.1(a). The resulting offense level would therefore be 9.
- F. The parties understand that the defendant's criminal history computation is tentative and that the criminal history category is determined by the Court. The defendant appears to have 4 criminal history points, which would place him in Criminal History Category III.


- G. The career offender/criminal livelihood adjustments do not apply.
- H. The guideline range resulting from the estimated offense level of (E) above, and the tentative criminal history category of (F) above, is 8-14 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the estimated offense level of (E) above could conceivably result in a range from 4 months (bottom of Category I) to 27 months (top of Category VI).
- I. Assuming the estimated offense level of (E) above, the fine range for this offense is \$1,000 to \$10,000, plus applicable interest and penalties.
§5E1.2(c)(3).
- J. Pursuant to guideline §5D1.2, if the Court imposes a term of supervised release, that term shall be at least 2 years but not more than 3 years.

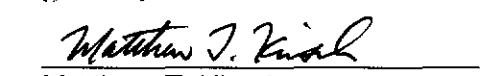
V. WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE

16. The parties believe the sentencing range resulting from the proposed plea agreement is appropriate because all relevant conduct is disclosed, the sentencing guidelines take into account all pertinent sentencing factors with respect to this defendant, and the charge to which the defendant has agreed to plead guilty adequately reflects the seriousness of the actual offense behavior.

17. This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the United States nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

4-7-2011 
Date Ronald Roy Hödenpyle

4/7/11 
Date Leslie Barnicle
Attorney for Defendant

4/8/2011 
Date Matthew T. Kirsch
Assistant U.S. Attorney