EASTERN DISTRICT of KENTUCKY
TENDERED
DATE 4-14-15
ROBERT R. CARR
CLERK U S DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
LONDON

Eastern District of Kentucky
FILED
MAY 28 2015
AT COVINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

CRIMINAL ACTION NO. 6:13-CR-40-SSS-ART

UNITED STATES OF AMERICA PLAINTIFF

V. **BINDING PLEA AGREEMENT**

JOEL A. SHUMRAK DEFENDANT

* * * * *

1. Pursuant to Rule 11 (c) of the Federal Rules of Criminal Procedure, the Defendant, Joel A. Shumrak, will enter a guilty plea to Counts One and Three of the Indictment. Count One charges conspiracy to distribute a quantity of pills containing oxycodone, a Schedule II controlled substance, in violation of 21 U.S.C. § 846. Count Three charges conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). The Defendant will also plead to the criminal forfeiture allegation. Pursuant to Rule 11(c)(1)(C), the United States and the Defendant agree to a specific sentence. Pursuant to Rule 11(c)(4), if the Court accepts this plea agreement, the agreed-upon disposition will be included in the judgment. Pursuant to Rule 11(c)(1)(A), the United States will move to dismiss the remaining counts and any underlying indictments at the time of sentencing.

2. The essential elements of Count One are:

(a) That two or more persons conspired or agreed to distribute a quantity of pills containing oxycodone, a Schedule II controlled substance; and

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(b) That the Defendant knowingly and voluntarily joined in this conspiracy.

The essential elements of Count Three are:

(a) That two or more persons conspired or agreed to try to accomplish a common and unlawful plan to violate 18 U.S.C. Section 1956; and

(b) That the Defendant knew about the plan's unlawful purpose and willfully joined in it.

Specifically, the United States alleges that there was a conspiracy or agreement to conduct and/or attempt to conduct financial transactions affecting interstate and/or foreign commerce, which involved the proceeds of a specified unlawful activity (that is those criminal acts set forth in Count One of the Indictment).

In order to prove the substantive violation the United States must prove that:

(a) First, that someone involved in the conspiracy conducted and/or attempted to conduct a financial transaction;

(B) Second, that the financial transaction involved property that represented the proceeds of the unlawful distribution of controlled substances;

(C) Third, that the individual knew that the property involved in the financial transaction represented the proceeds from some form of unlawful activity; and

(D) Fourth, that the individual knew that the transaction was designed in whole or in part to conceal and/or disguise the nature, location, source, ownership, and/or control of the proceeds of said specified unlawful activity

The criminal forfeiture allegation requires proof that (1) the listed property was involved or used in, or comingled with property that was involved or used in, the alleged offense(s); and/or (2) the property was otherwise derived from the alleged offense(s).

3. As to Counts One and Three, the United States could prove the following facts, among others, that establish the essential elements of the offense beyond a reasonable doubt, and the Defendant admits these facts:

(a) Beginning in or about June of 2008, and continuing through in or about May of 2014, the Defendant, Joel A. Shumrak, conspired with others to (1) distribute oxycodone pills, and (2) to launder money associated with these unlawful activities.

(b) At all times relevant to the instant offense, the Defendant owned and operated two (2) pain clinics – Johnson S. Johnston, M.D., d/b/a Georgia Health Associates (GHA) in Tucker, GA, and UCPM, Inc., d/b/a Pain Center of Broward (PCB) in Ft. Lauderdale, FL.

(c) The Defendant employed several licensed medical practitioners at these clinics, including, but not limited to: Dr. Michael S. Johnston (GHA); Dr. George Pierce Jones, III (PCB); and Dr. Enrique Augustin Gonzalez-Pujol (PCB). Each of these physicians had a valid DEA number which allowed them to dispense and prescribe controlled substances.

(c) Despite the facade of operating as legitimate health care facilities, the true purpose of both GHA and PCB was to distribute oxycodone, alprazolam, and other types of prescription drugs outside the usual course of practice and not for a legitimate medical purpose. In this regard, GHA and PCB were knowingly prescribing large amounts of controlled substances to drug dealers and end drug users for profit. Along these same lines, both GHA and PCB catered to out-of-state "patients."

(d) The Defendant participated in, either directly or remotely, the day-to-day operations of GHA and PCB. The Defendant knew that a significant number of patients visiting both clinics were from Kentucky. The Defendant also knew that the overwhelming majority of these patients did not have a medical condition that warranted the types and volume of controlled substances that they were being prescribed.

(e) Specifically, the Defendant states that physicians and other staff members of both GHA and PCB were prescribing thousands of oxycodone 30 mg pills per month to out-of-state persons – many of whom were from the Commonwealth of Kentucky – with little, if any, physical examination or other type of subjective testing measures generally accepted by practitioners in the health care field for determining maladies. For the majority of the conspiracy, both GHA and PCB operated as cash-only businesses. Later, the Defendant requested that PCB patients pay for their visits using only pre-paid debit cards.

(f) The Defendant further states that he and his employees, to include both physicians and staff, were aware that many of these out-of-state patients were

sponsored by a single individual, typically a large-scale oxycodone/alprazolam distributor, who would send groups of persons to GHA and/or PCB several times per month (hereinafter referred to as a "sponsor"). It was reasonably foreseeable to the Defendant and his co-conspirators that these sponsors were covering the costs associated with these visits – to include the travel costs (gas, food, hotel stays, etc.). In return, the sponsor would receive a portion of the pills prescribed by at GHA and/or PCB, which he or she would sell to mid-level drug distributors and/or end drug users in southeastern Kentucky.

(g) In light of these facts, the Defendant states that it was reasonably foreseeable that the oxycodone and alprazolam pills that were being prescribed to hundreds of Kentucky residents on a weekly basis were being illegally distributed and abused. The Defendant further admits that it was reasonably foreseeable that a portion of these pills were being distributed by and to persons located in the Eastern Judicial District of Kentucky.

(h) The Defendant states that various Kentucky-based sponsors, Michael S. Johnston, George Pierce Jones, III, Enrique Augustin Gonzalez-Pujol, Patricia Ann Solomon, Catherine Nicole Russell, and Carroll Llyod Elliott, as well as others, were also part of this conspiracy.

(i) Furthermore, the Defendant states he also conspired with others to conduct various financial transactions – which affected interstate and/or foreign commerce – involving proceeds of these unlawful activities, knowing that these transactions were designed, in whole or in part, to conceal and disguise the nature, location, source, ownership, and/or control of these proceeds. The Defendant knew that the aforementioned proceeds were derived from these unlawful activities.

(j) In this regard, the Defendant states that he took the proceeds of the aforementioned unlawful drug distribution and placed them in various accounts, annuities, insurance policies, and other similar financial instruments at numerous financial institutions by and through his financial advisors. This was done in an attempt to legitimize these proceeds as lawful profits of legitimate health care providers – that is GHA and PCB.

4. The maximum statutory punishment for Count One is not more than 20 years imprisonment, a $1,000,000.00 fine, and at least 3 years supervised release. The maximum statutory punishment for Count Three is not more than 20 years imprisonment, a

$500,000 fine or a fine of twice the amount of loss, and 3 years of supervised release. A mandatory special assessment of $200.00 applies, and the Defendant will pay this assessment to the U.S. District Court Clerk as directed by the Court.

5. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, The United States and the Defendant agree to the following specific sentence, which binds the Court upon acceptance of this plea agreement:

The Defendant's sentence of imprisonment shall be **168** months.

6. With the exception of claims of ineffective assistance of counsel, the Defendant waives the statutory right to **collaterally attack** and **appeal** his guilty plea, conviction, and sentence - including any order of restitution.

7. The Defendant will forfeit to the United States any and all interest in the property set forth in the criminal forfeiture allegation and the foregoing plea agreement, and will execute any documents necessary for this forfeiture, with the following exceptions. The United States agrees that it will not seek forfeiture of proceeds from the following accounts: G87-5145190 FBO, a Roth IRA account in the name of Joel Shumrak for the amount of $94,172.85; G51-1468808, an IRA account in the name of Amy Shumrak for the amount of $137,445.68; G87-5145182 FBO, an IRA account in the name of Amy Shumrak for the amount of $48,239.68; and G87-5145174 FBO, a Roth IRA account also in the name of Amy Shumrak for the amount of $7,655.83. The United States further agrees that it will not seek forfeiture of real property identified as 2164 NW 62nd Drive, Boca Raton, Florida, parcel # 0642-47-02-30-000-0100, more particularly described as follows: Lot 10,

of Bay Pointe of University Park P.U.D, according to the Plat thereof as recorded in the Plat Book 69, at Page 112 and 113, of the Public records of Palm Beach County, Florida. This being the same property conveyed to Joel A. Shumrak and Amy L. Shumrak by Warranty Deed dated April 28, 2000, recorded in ORB 11774, Page 870, in the records of the Clerk of Palm Beach County, Florida.

8. After pleading guilty, the Defendant will make a full and complete financial disclosure to the United States and will assist the United States in the gathering of all financial information. The Defendant will complete and sign a financial disclosure statement or affidavit, will sign financial releases prepared by the United States, and will submit to a deposition in aid of collection at times and places that the United States directs. The Defendant agrees that any unpaid penalty will be submitted to the United States Treasury for offset.

9. If the Defendant violates any part of this Agreement, the United States may void this Agreement and seek an Indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.

10. This document and the sealed supplement contain the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky and the Defendant. The United States has not made any other promises to the Defendant.

11. This Agreement does not bind the United States Attorney's Offices in other districts, or any other federal, state, or local prosecuting authorities.

12. The Defendant and the Defendant's attorney acknowledge that the Defendant

understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

KERRY B. HARVEY
UNITED STATES ATTORNEY

Date 4/14/15 By: _____
W. Samuel Dotson
Assistant United States Attorney

Date: 4/14/15 _____
Joel A. Shumrak
Defendant

Date: 4/14/15 _____
Bernie M. Cassidy
Attorney for Defendant

APPROVED, this 28th day of May, 2015.

_____
AMUL ~~R. THAPAR~~
UNITED STATES DISTRICT JUDGE