

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

Eastern District of Kentucky
FILED
FEB 22 2023
AT LEXINGTON
Robert R. Carr
CLERK U.S. DISTRICT COURT

CRIMINAL ACTION NO. 7:22-CR-00009-REW-EBA-1

UNITED STATES OF AMERICA

PLAINTIFF

V.

PLEA AGREEMENT

SAMUEL J. PATRICK

DEFENDANT

* * * * *

1. Pursuant to Federal Rule of Criminal Procedure 11(c), the Defendant will enter a guilty plea to Counts 1 and 8 of the superseding indictment. Counts 1 and 8 charge two violations of 18 U.S.C. § 242, Deprivation of Rights Under Color of Law. Pursuant to Rule 11(c)(1)(A), the United States will move at sentencing to dismiss Counts 2, 5, 9, and 10.

2. The essential elements of Count 1 of the superseding indictment are:

- (a) that the Defendant acted under color of law;
- (b) that the Defendant deprived the victim, C.T., of the right, protected and secured by the Constitution and laws of the United States, to be free from cruel and unusual punishment;
- (c) that the Defendant did so willfully, and;
- (d) that the Defendant's conduct resulted in bodily injury to C.T.

3. The essential elements of Count 8 of the superseding indictment are:

- (a) that the Defendant acted under color of law;

(b) that the Defendant deprived the victim, E.G., of the right, protected and secured by the Constitution and laws of the United States, to be free from cruel and unusual punishment;

(c) that the Defendant did so willfully, and;

(d) that the Defendant's conduct resulted in bodily injury to E.G., or involved the use of a dangerous weapon.

4. The parties agree that, as to Counts 1 and 8, the United States could prove the following facts that establish the essential elements of the offenses beyond a reasonable doubt, and that these facts are true. The parties further agree that the following facts do not encompass all of the evidence that would have been presented had this matter proceeded to trial:

(a) On or about April 29, 2021, the Defendant was working a shift as a Case Management Coordinator ("CMC") at United States Penitentiary Big Sandy ("Big Sandy"). That same day, the Defendant was in the Big Sandy Lieutenants' Office when an inmate, C.T., was escorted into the office in order to request protective custody. While C.T. was in the office, the Defendant took C.T. to the ground and elbowed him repeatedly in the head. The Defendant did this out of anger and not due to any legitimate correctional purpose. During the assault, the Defendant believed Defendant Clinton L. Pauley was holding C.T.'s legs to assist the Defendant. Defendant Kevin C. Pearce, a Lieutenant, was also in the Lieutenants' Office and witnessed the Defendant's assault on C.T. C.T. did not threaten or attempt to harm the COs or himself before, during, or after the Defendant assaulted him. C.T. was compliant through his entire time in the office and was not resisting or physically aggressive at any point. He was not handcuffed after the Defendant's assault. The Defendant knew that his actions were unlawful and violated Constitutional limits on the use of force and the federal Bureau of Prisons' policies and training regarding use of force. His assault on C.T. resulted in bodily injury to C.T. After the assault and in violation of BOP policies and procedures, Defendant Pearce then unilaterally denied C.T.'s protective custody request and ordered that C.T. should be taken to a general housing unit.

(b) On or about April 29, 2021, the Defendant and other BOP employees, including Defendant Pauley and Defendant Pearce, unlawfully agreed to

cover up the assault. As part of this agreement, Defendant Patrick later drafted a false memorandum in which he omitted any mention of his assault on C.T., and Defendant Pauley and Defendant Pearce agreed to write similarly false memoranda. Also as part of this agreement, the Defendant sent an email entitled "call me," to a BOP Employee identified in the superseding indictment as BOP Employee 1. BOP Employee 1 had witnessed the Defendant's assault of C.T., and the Defendant and other members of the cover-up, including Defendant Pearce, were attempting to corruptly persuade BOP Employee 1 to join the cover-up. The Defendant hoped that by speaking with BOP Employee 1, he could assist with ongoing efforts to convince BOP Employee 1 to join the cover-up.

(c) On or about March 30, 2021, the Defendant was working a shift as a CMC at Big Sandy. That day, the Defendant responded to the A-1 housing unit of Big Sandy in response to a call for staff assistance. Upon arriving, he observed inmate E.G. slowly walking towards a bank of cells. The Defendant ran up to him and delivered a burst of Oleoresin Capsicum ("O.C.") spray to his face. The Defendant did this to punish E.G. for not immediately returning to his cell, and not in furtherance of any legitimate correctional purpose. At no time before, during, or after the Defendant's OC-spraying of E.G. was E.G. aggressive or a threat. The Defendant knew that his actions were unlawful and violated Constitutional limits on the use of force and the federal Bureau of Prisons' policies and training regarding use of force and use of O.C. spray. The Defendant's assault on E.G. resulted in pain to E.G. and involved the use of a dangerous weapon (O.C. spray). Following the Defendant's assault on E.G., E.G. was taken to the ground. While E.G. was on the ground, Defendant Pauley kicked E.G. in the head and Defendant Pearce shot him with a pepper ball gun, even though E.G. was not aggressive at any point.

(d) The Defendant later watched a video of Defendant Pauley kicking E.G. in the head after E.G. was taken to the ground in the A-1 unit. It was apparent to the Defendant based on the video and what he had observed of E.G.'s behavior that Defendant Pauley's use of force was unlawful and violated Constitutional limits on the use of force as well as the Federal Bureau of Prisons' policies and trainings regarding use of force. He also later learned that Defendant Pearce used a pepper ball gun on E.G. while E.G. was on the floor. Once again, it was apparent to him based on the video and what he had observed of E.G.'s behavior that Defendant Pearce's use of force was unlawful and violated Constitutional limits on the use of force as well as the Federal Bureau of Prisons' policies and trainings regarding use of force.

(e) On or about March 30, 2021, the Defendant drafted an incident report in which he falsely claimed that E.G. had: (1) “refused to lock down” after being given orders to return to his cell; (2) “turned towards [Defendant Patrick] and stated ‘Make me mother fucker. I’ll kick your ass. Fuck you.’”; (3) concealed his hands in his coat and assumed a defensive position; (4) and “bec[o]me very aggressive” after Defendant Patrick sprayed him with O.C. spray and he was taken to the ground. The false portions of the incident report were created in order to cover up his and other correctional officers’ unlawful uses of force.

(f) On or about March 30, 2021, the Defendant spoke with a BOP employee identified in the superseding indictment as BOP Employee 3. BOP Employee 3 had witnessed the Defendant’s use of O.C. spray, and BOP Employee 3 asked the Defendant how the incident should be documented. The Defendant gave BOP Employee 3 the same false story that he later used in his own report. The Defendant provided BOP Employee 3 with a false explanation in order to cover up his and other correctional officers’ unlawful uses of force.

5. The statutory punishment for Counts 1 and 8 of the superseding indictment is imprisonment for not more than 10 years per count, a fine of not more than \$250,000 per count, and a term of supervised release of not more than 3 years per count. A mandatory special assessment of \$100 per count applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

6. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend the following sentencing guidelines calculations, and they may object to or argue in favor of other calculations. This recommendation does not bind the Court. The United States Sentencing Guidelines (U.S.S.G.), November 1, 2021, manual, will determine the Defendant’s guidelines range.

COUNT 1:

(a) Pursuant to U.S.S.G. § 2H1.1(a)(2), begin with a base offense level of 12 because the offense involved two or more participants.

- (b) Pursuant to U.S.S.G. § 2H1.1(b)(1), increase the offense level by 6 levels because the offense was committed under color of law.
- (c) Pursuant to U.S.S.G. § 3C1.1, increase the offense level by 2 levels because the Defendant willfully attempted to obstruct or impede the administration of justice with respect to the investigation of the instant offense and the obstructive conduct related to the Defendant's offense of conviction and relevant conduct.

Adjusted Offense Level (Subtotal): 20

COUNT 8:

- (d) Pursuant to U.S.S.G. § 2H1.1(a)(1), cross reference to U.S.S.G. § 2A2.2 as the underlying offense (as that is the greatest base offense level).
- (e) Pursuant to U.S.S.G. § 2A2.2(a), the base offense level is 14.
- (f) Pursuant to U.S.S.G. § 2A2.2(b)(2), increase the offense level by 4 because a dangerous weapon was used.
- (g) Pursuant to U.S.S.G. § 2H1.1(b)(1), increase the offense level by 6 levels because the offense was committed under color of law.
- (h) Pursuant to U.S.S.G. § 3C1.1, increase the offense level by 2 levels because the Defendant willfully attempted to obstruct or impede the administration of justice with respect to the investigation of the instant offense and the obstructive conduct related to the Defendant's offense of conviction and relevant conduct.

Adjusted Offense Level (Subtotal): 26

MULTIPLE COUNT ADJUSTMENT:

- (i) Pursuant to U.S.S.G. § 3D1.4(a), one unit is assigned to Count 8 as the group with the highest offense level.
- (j) Pursuant to U.S.S.G. § 3D1.4(b), one-half unit is assigned to Count 1, as a group that is five to eight levels less serious than the highest offense level.

- (k) Pursuant to U.S.S.G. § 3D1.4, the number of units is one and one-half and the increase in offense level is 1.

Combined Adjusted Offense Level: 27

- (l) Pursuant to U.S.S.G. § 3E1.1 and unless the Defendant commits another crime, obstructs justice, or violates a court order, decrease the offense level by 2 levels for the Defendant's acceptance of responsibility. Because the offense level determined prior to this 2-level decrease is level 16 or greater, the United States will move at sentencing to decrease the offense level by 1 additional level based on the Defendant's timely notice of intent to plead guilty.

Total Offense Level: 24

7. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4.

8. In exchange for the benefits of this agreement, the Defendant waives the right to appeal the guilty plea, conviction, and sentence. Except for claims of ineffective assistance of counsel, the Defendant also waives the right to attack collaterally the guilty plea, conviction, and sentence.

9. The United States will recommend releasing the Defendant on the current conditions for future court appearances if the Defendant does not violate the terms of the order setting conditions of release.

10. The Defendant agrees to cooperate fully with the United States Attorney's Office by making a full and complete financial disclosure. Within 30 days of pleading guilty, the Defendant agrees to complete and sign a financial disclosure statement or affidavit disclosing all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse,

nominee, or other third party, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. The Defendant will submit to an examination, which may be taken under oath and may include a polygraph examination. The Defendant will not encumber, transfer, or dispose of any monies, property, or assets under the Defendant's custody or control without written approval from the United States Attorney's Office. If the Defendant is ever incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments. If the Defendant fails to comply with any of the provisions of this paragraph, the United States, in its discretion, may refrain from moving the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may argue that the Defendant should not receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a).

11. The Defendant understands and agrees that, pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, the Defendant agrees that it is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. The Defendant waives any requirement for demand of payment on any fine, restitution, or assessment imposed by the Court and agrees that any unpaid obligations will be submitted to the United States Treasury for offset. The Defendant authorizes the United States to obtain the Defendant's credit reports at any time.

The Defendant authorizes the U.S. District Court to release funds posted as security for the Defendant's appearance bond in this case, if any, to be applied to satisfy the Defendant's financial obligations contained in the judgment of the Court.

12. 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, including the right to raise any challenge based on the statute of limitations.

13. This document and the supplement contain the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky, the Criminal Section of the Civil Rights Division of the U.S. Department of Justice, and the Defendant. The United States has not made any other promises to the Defendant.

14. This Agreement is entered into by the Defendant, represented by counsel, and the United States, represented by the United States Attorney's Office for the Eastern District of Kentucky and the Criminal Section of the Civil Rights Division of the U.S. Department of Justice. The agreement does not bind any other United States Attorney's Office or any other federal, state, or local prosecuting authorities.

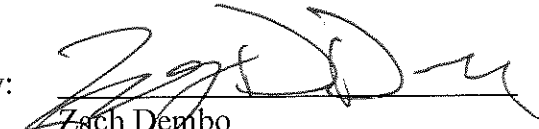
15. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

CARLTON S. SHIER, IV
UNITED STATES ATTORNEY

Date:

2/22/23

By:

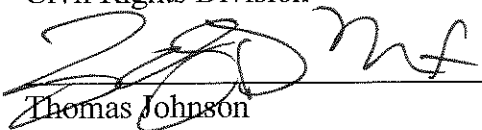

Zach Dembo
Assistant United States Attorney

KRISTEN M. CLARKE
ASSISTANT ATTORNEY GENERAL
Civil Rights Division

Date:

2/22/23

By:


Thomas Johnson
Trial Attorney

Date:

2/22/23


Samuel J. Patrick
Defendant

Date:

2/22/23


Dan Carman
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