No. _____

In The

Supreme Court of the United States

LAQUANDA GILMORE GARROTT

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

One long-standing principle of separation of powers is that the Executive Branch decides who to prosecute for a crime, which charges to file and whether to proceed with—or instead terminate—a prosecution. In this case, in exchange for petitioner's guilty plea to one charge, the government agreed to dismiss all others. Although the judge retained the power to imprison petitioner up to the statutory maximum term, the judge rejected the plea agreement and refused to dismiss the remaining charges because he believed that even the statutory maximum prison sentence for the count of conviction was "too lenient." The question presented is:

> Whether a district judge violates the separation of powers by rejecting a plea agreement containing a "charge bargain"—a guilty plea to one or more counts in exchange for dismissal of the others—based solely on the judge's view that the maximum sentence available on the count(s) of conviction would be too lenient.

PARTIES TO THE PROCEEDINGS

The petitioner, LaQuanda Gilmore Garrott, was the defendant in the district court and the appellant in the Eleventh Circuit. Ms. Garrott is an individual, so there are no disclosures to be made pursuant to Supreme Court Rule 29.6.

The respondent is the United States.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

CONSTITUTIONAL PROVISIONS

STATUTES AND RULES

GOVERNMENT BRIEFS

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

LaQuanda Gilmore Garrott respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

ORDERS AND OPINIONS OF THE COURTS BELOW

The opinion of the Eleventh Circuit, *United States v. Garrott*, No. 19-13299, is available at 812 F. App'x 905 (11th Cir. 2020) and contained in the Appendix at App. 1.

The order of the district court rejecting the provision in the plea agreement dismissing counts is contained in the Appendix at App. 39.

JURISDICTION

The Eleventh Circuit issued its decision on May 1, 2020.

On March 19, 2020, the Court ordered that in light of the pandemic, "the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing." *Order Regarding Filing Deadlines*, 589 U.S. (Mar. 19, 2020).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provisions are contained in the Appendix as follows: Article II, Section 1, Clause 1 (App. 60); Article II, Section 2, Clause 1 (App. 61); Article II, Section 3 (App. 62); Article III, Section 1 (App. 63); and Article III, Section 2 (App. 64).

The provisions of law are contained in the Appendix as follows: Federal Rule of Criminal Procedure 11 (App. 65) and Federal Rule of Criminal Procedure 48(a) (App. 71).

INTRODUCTION

No Good Plea Goes Unpunished

Few legal issues have gripped the Nation more in recent times than the question of whether a federal judge can reject the decision of the Department of Justice to dismiss criminal charges pending against a defendant. The media has widely reported on the ongoing saga of General Michael T. Flynn, a high-profile defendant who pled guilty and was awaiting sentencing when the Department of Justice determined that the criminal case against him should be dismissed.

Following the district court's refusal to immediately grant dismissal, General Flynn's case traversed multiple motions in the district court, the appointment of a former federal judge as amicus counsel for the district court, a petition for a writ of mandamus to the United States Court of Appeals for the D.C. Circuit, a panel opinion granting mandamus, an en banc opinion reversing the panel and denying mandamus, and the filing of numerous amici briefs, including

by former Attorney General Edwin Meese III, Senate Majority Leader Mitch McConnell and other Senators, members of the United States House of Representatives, and by various State Attorneys General, all supporting the settled constitutional principle that the Department of Justice, as the Executive Branch of government, has absolute and exclusive authority to decide whether to prosecute a case, and the "'indubitable' power to 'direct that the criminal be prosecuted no further.' *In re Aiken County*, 725 F.3d 255, 263 (D.C. Cir. 2013) (opinion of Kavanaugh, J.)." UNITED STATES' RESPONSE TO PETITION FOR REH'G EN BANC, *In re: Michael T. Flynn*, U.S.C.A. No. 20-5143, 2020 WL 5104220 (D.C. Cir. August 31, 2020), Doc#1852570 (filed July 20, 2020) at Page 9 of 24. In the words of the Department of Justice, "[o]nce the prosecution and the defense agree that a case should come to an end, there no longer remains a case or controversy over which a court may exert judicial power." *Id*.

Petitioner LaQuanda Garrott has not achieved similar fame, nor has her case received any media attention. Her fate was determined in an unpublished opinion by the United States Court of Appeals for the Eleventh Circuit. But her case raises the same legal issue now captivating the Nation's attention in General Flynn's case.

Charged in a ten-count indictment, Ms. Garrott reached an agreement with the government under Rule 11(c)(1)(A), Fed. R. Crim. P., to plead guilty—and in fact did plead guilty—to one count in exchange for dismissal of the other nine counts. But at the scheduled sentencing, the district judge expressed his view that

the 36-month statutory maximum prison sentence on the count to which Ms. Garrott had pled "would not merely be unreasonable but would be outright irrational … too lenient … inappropriate." App. 4, 5 (underlining in original). Announcing that he would not dismiss the remaining counts despite the parties' agreement, the district judge permitted Ms. Garrott to withdraw her plea. App. 5.

Ms. Garrott then reached another plea agreement with the government, calling for Ms. Garrott to plead guilty to two counts in exchange for dismissal of the other eight; the agreement would "bind the district court to a sentence at the bottom of the guidelines range" below the combined 72-month statutory maximum. App. 5. The judge declined to accept that plea agreement, too. App. 5.

Ms. Garrott proceeded to trial on all ten counts. She was acquitted of two counts, convicted of eight, and sentenced to 72 months incarceration, double the maximum sentence she was facing on the single count to which she had originally entered her (later withdrawn) guilty plea. App. 4, 7.

On plain error review, the Eleventh Circuit affirmed, citing *United States v. Bean*, 564 F.2d 700, 703-04 (5th Cir. 1977) (a binding decision by the former Fifth Circuit), for the proposition that "[a] decision that a plea bargain will result in the defendant's receiving too light a sentence under the circumstances of the case is a sound reason for a judge's refusing to accept the agreement." App. 10.

The Eleventh Circuit's holding does not square with cases in other circuits, which recognize that "in the context of reviewing a proposed plea agreement under Rule 11, a district court lacks authority to reject a proposed agreement based on

mere disagreement with a prosecutor's underlying charging decisions." *United States v. Fokker Servs. B.V.,* 818 F.3d 733, 745 (D.C. Cir. 2016). "[T]rial judges are not free to withhold approval of guilty pleas . . . merely because their conception of the public interest differs from that of the prosecuting attorney." *Id.* (quoting *United States v. Ammidown*, 497 F.2d 615, 622 (D.C. Cir. 1973)). As the Department of Justice reiterated in the case of General Flynn, "'the Judiciary's traditional authority over sentencing decisions' could not justify judicial interference with 'the Executive's traditional power over charging decisions.'" BRIEF OF THE UNITED STATES, *In re: Michael T. Flynn,* U.S.C.A. No. 20-5143, 2020 WL 5104220 (D.C. Cir. Aug. 31, 2020), Doc#1845183 (filed June 1, 2020) at Page 32 of 42 (quoting *Fokker Servs.,* 818 F.3d at 746). Once "no case or controversy exists between the actual parties—the government and the defendant— … any continuation of the criminal proceedings would transform them into a judicial, rather than executive, prosecution." UNITED STATES' RESPONSE TO PETITION FOR REH'G EN BANC, *In re: Michael T. Flynn*, U.S.C.A. No. 20-5143, 2020 WL 5104220 (D.C. Cir. Aug. 31, 2020), Doc#1852570 (filed July 20, 2020) at Page 6 of 24.

The legal issue is an important one, given that the overwhelming majority of criminal cases are resolved by way of plea bargains. In 2012, the Court highlighted that "[n]inety-seven percent of federal convictions … are the result of guilty pleas." *Missouri v. Frye*, 566 U.S. 134, 143 (2012). Last year's statistics continue to bear out this trend. The United States Sentencing Commission reports that 97.6% of federal convictions are obtained through a guilty plea and only 2.4%

of cases go to trial.[1] Accordingly, plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system." *Frye*, 566 U.S. at 144 (quoting Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 Yale L.J. 1909, 1912 (1992)). In the lion's share of cases resolved by way of plea, prosecutors agree to dismiss (or not seek additional) charges. Accordingly, the Court should grant Ms. Garrott's petition to address whether a district judge may reject a valid plea agreement calling for dismissal of certain charges, based solely on the judge's view that the maximum sentence available on the count(s) of conviction would be too lenient.

[1] *See* U.S. Sentencing Comm'n, 2019 Annual Report and Sourcebook of Federal Sentencing Statistics tbl.11 (2019), www.ussc.gov/sites/default/files/pdf/research-and-publications/annualreports-and-sourcebooks/2019/2019-Annual-Report-and-Sourcebook.pdf.

STATEMENT OF THE CASE

Ms. Garrott was indicted on ten counts of assisting in the filing of false tax returns in violation of 26 U.S.C. § 7206(2). Each count carried a statutory maximum sentence of 36 months in prison. App. 2.

A. First Plea Agreement, Rule 11(c)(1)(A)[2]

In a written plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), Ms. Garrott agreed to plead guilty to count one of the indictment, exposing her to the maximum prison sentence for that count, and the government agreed to terminate prosecution of the remaining nine counts in the indictment. App. 2, 23(I)(C), 24(III)(1). The government made no promises about what sentence Ms. Garrott should receive, and the district court retained full discretion to impose any sentence on Ms. Garrott up to 36 months in prison. App. 25(IV)(4). On behalf of the government, the plea agreement was signed and

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[2] Rule 11(c)(1)(A) provides:

> (1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:
>
> (A) not bring, or will move to dismiss, other charges;

App. 67-68.

approved by the line prosecutor and by the Chief of the Criminal Division of the U.S. Attorney's Office for the Middle District of Alabama. App. 32.

A magistrate judge held a change of plea hearing, expressed no impediment to Ms. Garrott tendering a guilty plea or to the factual basis for it, and accepted Ms. Garrott's guilty plea. App. 2. The matter was set for sentencing before the district judge. App. 2. But at the sentencing hearing, having reviewed the probation department's presentence report, the district judge rejected the government's agreement to end the prosecution of Ms. Garrott on the remaining counts in the indictment. App. 3-5; *see* Rule 11(c)(3)(A), Fed. R. Crim. P. ("To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.").

The presentence report highlighted Ms. Garrott's criminal history and calculated an advisory guidelines range of 51 to 63 months without an acceptance-of-responsibility reduction (37 to 46 months incarceration with full credit for acceptance-of-responsibility). App. 4. "[B]ecause she pleaded guilty to just one count, the plea agreement limit[ed Ms.] Garrott's sentence to no more than the statutory maximum of 36 months' imprisonment," App. 39-40, which the judge felt was "too lenient." App. 5. At that hearing, followed by a written order, the court held: "So for that reason, Ms. Garrott, I am rejecting the plea agreement at this time in your case. *And the provision I'm particularly rejecting is the dismissal of all the charges except for the one count*." App. 3, 36:11 (emphasis added). The

written order concluded with a footnote: "Another binding plea agreement—under Rule 11(c)(1)(A) or (c)(1)(C)—after a binding plea agreement has been rejected, would most likely be viewed as a guess as to what the judge is thinking, or bait to catch the best deal." App. 43.

Following this order, Ms. Garrott withdrew her guilty plea. App. 5; *see* Rule 11(d)(2)(A), Fed. R. Crim. P. ("A defendant may withdraw a plea of guilty … after the court accepts the plea, but before it imposes sentence if: … the court rejects a plea agreement under 11(c)(5)").

B. Second Plea Agreement, Rule 11(c)(1)(C)[3]

One month later, the parties entered into a new plea agreement. Ms. Garrott agreed to plead guilty to counts one and two. App. 5, 51:7.[4] The

[3] Rule 11(c)(1)(C) provides, in relevant part that

> (1) …the plea agreement may specify that an attorney for the government will:
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> ***
>
> (C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

App. 67-68.

[4] Due to an apparent oversight, the second plea agreement was not made part of the district court or appellate records. The Assistant Federal Defender who represented Ms. Garrott at trial retained a copy, which shows that Ms. Garrott agreed to plead guilty to counts one and two, specifically. The identity of the two counts is not essential to this petition, but Ms. Garrott includes that detail in the petition because it is noteworthy that the district judge later entered post-trial judgments of acquittal

government agreed to dismiss the remaining eight counts and to recommend a sentence at the bottom of the advisory sentencing guidelines range that would be binding upon the district court pursuant to Rule 11(c)(1)(C). App. 5.

The district court rejected this plea agreement as well, told the parties that the court viewed their proposed plea agreements as "manipulating the Court," and asked if the parties were ready for trial. App. 5-6, 52. Ms. Garrott's lawyer responded: "I don't know what other option there is, Your Honor, I guess, other than her pleading guilty to all of the counts in the indictment." App. 52:11-13. The court proposed an agreement under Rule 11(c)(1)(B): "I mean, there's always a [Rule 11(c)(1)(B) agreement]. I don't know—that's what most courts do is a (B). I'm just saying."[5] App. 5-6. As the judge described it, "[t]his is all about sentencing. And sentencing is the court's prerogative, and I won't be manipulated into caps, bottoms, whatever, when I've told you this is a serious case." App. 6.

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on those two counts because the evidence presented at trial was constitutionally insufficient.

[5] Rule 11(c)(1)(B) provides, in relevant part that

> (1) … the plea agreement may specify that an attorney for the government will:
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> ***
>
> (B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court);

App. 67-68.

C. Trial and Sentencing

Ms. Garrott proceeded to trial and was convicted on all ten counts. However, based on insufficiency of the evidence, the district court entered a post-trial, judgment of acquittal on two counts: Count one (the count to which Ms. Garrott had pled guilty as part of the first plea agreement under Rule 11(c)(1)(A)) and count two (the additional count to which Ms. Garrott had agreed to plead guilty under Rule 11(c)(1)(C)). App. 59. The district court upheld the jury's verdict of guilty on the remaining eight counts (the counts that the government had proposed *not* to prosecute as part of both plea agreements, see ante n. 4). App. 59.

The district court sentenced Ms. Garrott to 72 months in prison, exactly *double* the 36-month statutory maximum that the government had agreed would have been sufficient punishment for Ms. Garrott under the original plea agreement. App. 7. The court also ordered Ms. Garrott to pay $56,897 in restitution to the IRS. App. 7, 21. Explaining his reasons for imposing a sentence higher than previously negotiated,

> [t]he district court emphasized that "the problem . . . driving the size of [her] sentence" was her extensive criminal history. Pointing to the § 3553(a) factors, the district court explained that (1) Garrott's conduct contributed to the rampant tax fraud that was going on in Montgomery at the time, (2) the crime and the amount of loss were serious, (3) the sentence was appropriate to deter "other people who might think that they could help cheat the government," and (4) it wanted to protect the public from any further crimes Garrott would commit.

App. 7.

D. Appeal to the Eleventh Circuit

In the court of appeals, Ms. Garrott argued that the district court improperly participated in plea negotiations by rejecting her guilty plea to count one and the government's proposal to end prosecution on the remaining counts and foreclosing any possibility of a plea with provisions that would be binding on the court. App. 5-6.[6]

Applying plain error review without objection from Ms. Garrott, the Eleventh Circuit affirmed. The court held that the district court's statements did not rise to the level of engaging in plea discussions. App. 11. The Eleventh Circuit also held that "[t]he district court was well within its authority" to reject the government's proposal to end prosecution on the remaining counts in the indictment in exchange for Ms. Garrott's guilty plea. App. 10. Quoting *United States v. Bean*, 564 F.2d 700, 703-04 (5th Cir. 1977), a binding decision by the former Fifth Circuit,[7] the court held that a plea agreement that "will result in the defendant's receiving too light a sentence under the circumstances of the case is a sound reason for a judge's refusing to accept the agreement." App. 10.

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[6] Ms. Garrott also argued that her sentence was substantively unreasonable, but that issue is not a subject of this petition.

[7] *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (adopting as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981).

Bean held that because "a plea bargain to dismiss charges is an indirect effort to limit the sentencing power of the judge ... over the duration of imprisonment," the judge may properly reject the prosecutor's proposal to dismiss counts in an indictment if the judge views the resulting sentence as "too light." *Bean,* 564 F.2d at 704. The defendant in *Bean* was charged with one count of theft of property and one count of burglary. Pursuant to a plea agreement, Bean plead guilty to the theft count and the prosecutor agreed to dismiss the burglary count. *Id*. at 701. The court deferred acceptance of the plea agreement, expressing reluctance about the government's agreement to dismiss the more serious burglary count. *Id.* The court eventually rejected the plea agreement, "stating that the bargain was 'contrary to the manifest public interest.'" *Id.* The court granted Bean's motion to withdraw his guilty plea, denied Bean's motion to enforce the plea agreement, and the case proceeded to trial. Bean was convicted on both counts. *Id.*

On appeal, the Fifth Circuit rejected Bean's challenge to the district court's refusal to enforce the plea agreement. The court held that Rule 11 "does not contravene a judge's discretion to reject such a plea. The Rule itself states that 'the court may accept or reject the agreement....' Fed. R. Crim. P. 11(e)(2). Indeed, the judge must refuse the plea in the absence of a factual basis for the plea. *See* Fed. R. Crim. P. 11(f)." *Id*. at 702-03. The court found that "[t]he plea agreement procedure does not attempt to define criteria for the acceptance or rejection of a

plea agreement," so the "decision is left to the discretion of the individual judge." *Id*. at 703.

The court found little guidance from other circuits on how the district court should exercise its discretion to reject a plea agreement. The court noted that most cases at the time dealt with a challenge to the factual basis for the plea, the timeliness of the plea in relation to deadlines imposed by the court, or the *Alford* plea, "where the defendant wishes to plead guilty while maintaining his innocence." *Id*.; *see North Carolina v. Alford*, 400 U.S. 25 (1970). However, "little attention ha[d] been given to the formulation of a standard for the district court's exercise of discretion." *Bean*, 564 F.2d at 703.

In the absence of substantive guidance from the circuits, the *Bean* court concluded that the "broad standards that apply in sentencing" should govern the court's discretion in accepting or rejecting a plea agreement:

> In considering plea bargains, courts may be governed by the same broad standards that apply in sentencing. The trial court's control over the length of sentence is analogous to that in plea bargains since in plea bargaining the defendant is ultimately concerned with the duration of imprisonment. Even when the agreement relates to the dismissal of some of the charges, the primary effect is to limit the punishment which the court may impose. See Alschuler, The Trial Judge's Role in Plea Bargaining, Part I, 76 Colum.L.Rev. 1059, 1074 (1976). Consistently, this circuit, as well as other circuits, has permitted the decision of the trial court as to sentencing to prevail except in extreme circumstances.

Id.

With respect to the district court's discretion to reject a plea agreement that contemplates dismissal of charges, the *Bean* court considered and rejected the

Rule 48(a) standard applied to government motions to dismiss an indictment. *Id.* at 704. The court acknowledged that "Rule 48(a) requires leave of court to grant a dismissal," and that "appellate review of these refusals has been more stringent than review of sentencing." *Id*. However,

> since the counts dismissed pursuant to plea bargains often carry heavier penalties than the counts for which a guilty plea is entered, a plea bargain to dismiss charges is an indirect effort to limit the sentencing power of the judge. *See Alschuler*, supra at 1074, 1136-37. Because the judge's discretion over the duration of imprisonment is being limited, the standard for review of refusal of plea bargains should be closer to the standards for review of sentencing than for review of a dismissal which does not involve a plea bargain under Rule 48(a).

Id. The court concluded that the trial judge acted "well within the scope of his discretion" when he rejected Bean's plea and held: "A decision that a plea bargain will result in the defendant's receiving too light a sentence under the circumstances of the case is a sound reason for a judge's refusing to accept the agreement …. Rule 11 does not compel a judge to impose an inappropriate sentence." *Id.*

The Fifth Circuit continues to follow *Bean*. *See United States v. Jeter,* 315 F.3d 445, 447 (5th Cir. 2002) (citing *Bean* to hold that "[t]he court's belief that the defendant would receive too light a sentence is a sound reason for rejecting a plea agreement" and that "[t]he Government's authority in choosing what offenses a defendant will face is tempered by the role of the district court in accepting or rejecting plea agreements.").

Several other circuits embrace the essential holding of *Bean*. *See, e.g.*, *United States v. Brown*, 595 F.3d 498, 518 (3d Cir. 2010) (holding that district judge did not abuse his discretion in rejecting a charge bargain that the judge thought was "unacceptably lenient"); *United States v. Jackson*, No. 97-4081, 1997 WL 602426, at *1 (4th Cir. 1997) (affirming rejection of plea agreement where defendant pleaded to one count in exchange for dismissal of other count because plea agreement "did not adequately represent [defendant's] criminal conduct"); *United States v. Carrigan*, 778 F.2d 1454, 1464 (10th Cir. 1985) ("The reasoning and holding of *Bean* apply to the case before us. The ultimate effect of the dismissal of charges against Landry under the plea bargain was to restrict the district court's ability to impose what it considered an appropriate sentence….").[8]

[8] *But see United States v. Vanderwerff*, 788 F.3d 1266, 1277 (10th Cir. 2015) ("The district court's decision is particularly troubling because Mr. Vanderwerff's plea agreement involved a charge bargain, where the zone of judicial discretion is ordinarily quite limited…. Notwithstanding the district court's laments that charge bargains 'shunt[ ] to the margins' its 'act of judging,' the law expressly contemplates that charge bargaining is a province primarily for the exercise of prosecutorial—not judicial—discretion.") (internal citations omitted); *United States v. Robertson*, 45 F.3d 1423, 1438 (10th Cir. 1995) ("Thus, while district courts may reject charge bargains in the sound exercise of judicial discretion, concerns relating to the doctrine of separation of powers counsel hesitancy before second-guessing prosecutorial choices."). Ms. Garrott's petition does not canvas the circuit cases, like *Robertson*, addressing when a judge may reject plea agreements under Rule 11(c)(1)(C), formerly Rule 11(e)(1)(C), that bind the court to a particular sentence / range, although Ms. Garrott acknowledges that they all appear to hold (wrongly, we submit) that "the court has the power—and under the Sentencing Guidelines, the explicit obligation—to consider whether that sentence is adequate and to reject the plea agreement if the court finds it not to be." *United States v. Kraus*, 137 F.3d 447, 453 (7th Cir. 1998)*; see Robertson*, 45 F.3d at 1439 ("As such, 11(e)(1)(C) pleas directly and unequivocally infringe on the sentencing discretion of district courts. In our judgment, the court's categorical refusal to accept pleas pursuant to subsection (C) can only be understood

REASON FOR GRANTING THE WRIT

In *Rinaldi v. United States,* the Court held that the district court abused its discretion when it denied an unopposed government motion to dismiss an indictment and set aside a conviction. 434 U.S. 22, 32 (1977). The Court rejected the contention of the courts below that the "leave of court" prerequisite to dismissing an indictment, Rule 48(a), Fed. R. Crim. P., authorized the district court to deny the motion to dismiss based solely on the court's view that termination of the prosecution "clearly disserved the public interest." *Id.* at 29.

The question presented in Ms. Garrott's case is whether, in light of the same separation of powers principles that animated the decision in *Rinaldi*, a district judge can reject dismissal of counts agreed to by the parties under Rule 11(c)(1)(A), based solely on the judge's view that the maximum sentence available on the count(s) to which the defendant pleads guilty would be too lenient (which, in the judge's view, would "clearly disserve[] the public interest," *Rinaldi*, 434 U.S. at 29).

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as its refusal to completely yield its discretion in sentencing. There can be little doubt that rejecting a plea agreement due to the court's refusal to permit the parties to bind its sentencing discretion constitutes the exercise of sound judicial discretion.").

I. Other circuits have held that a district judge cannot countermand the decision of a prosecutor to dismiss charges merely because the judge believes that the prosecutor is being too lenient.

Three circuits, in the context of petitions for writs of mandamus, have addressed the limit of a district judge's authority to reject an agreement between the government and a defendant that contemplates the dismissal of charges. *See In re: United States*, 345 F.3d 450, 452 (7th Cir. 2003); *In re Ellis*, 356 F.3d 1198, 1209 (9th Cir. 2004); *United States v. Fokker Servs. B.V.*, 818 F.3d 733, 737 (D.C. Cir. 2016). In all three cases, the petitioners met the demanding standard for mandamus relief, which requires a showing that the "right to issuance of the writ is 'clear and indisputable,'" *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 381 (2004) (quoting cases), "a clear legal error," *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 762 (D.C. Cir. 2014) (discussing *Cheney*), "where there is clear abuse of discretion or 'usurpation of judicial power.'" *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953). "[M]andamus is the appropriate remedy … to correct a *plain error*." *U.S. ex rel. Chicago Great W. R. Co. v. I.C.C.*, 294 U.S. 50, 61 (1935) (emphasis added). In all three cases, the Circuits held that the district judge committed clear error in derailing the agreement of the parties.

The "plain error" standard, applied without objection by the Eleventh Circuit in evaluating Ms. Garrott's appeal, mirrors the mandamus standard: To be plain error, "the legal error must be clear or obvious, rather than subject to

reasonable dispute." *Puckett v. United States*, 556 U.S. 129, 135 (2009).[9] Thus, the plain error standard ("clear or obvious" error) applied by the Eleventh Circuit in Ms. Garrott's case, is the functional equivalent of the mandamus standard ("clear legal error") applied by the Seventh, Ninth, and D.C. Circuits to command the district judges to abide by the agreements of the parties. Yet, in Ms. Garrott's case, the Eleventh Circuit found no "plain" (*i.e.*, no "clear") error in the district judge's refusal to accept the government's agreement to dismiss charges.

A. The Seventh Circuit

> The historic and still the central function of mandamus is to confine officials within the boundaries of their authorized powers, and in our system of criminal justice, unlike that of some foreign nations, the authorized powers of federal judges do not

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[9] The Court has established a four-prong test for plain error review:

> First, there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings. Fourth and finally, if the above three prongs are satisfied, the court of appeals has the discretion to remedy the error—*discretion* which ought to be exercised only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

Puckett, 556 U.S. at 135 (underlining added, *italics* in original, other internal citations and quotations omitted). If the Court agrees that rejecting dismissal of counts is "clear or obvious error," then Ms. Garrott is entitled to relief because she did not "waive" her argument, the error "substantially affected" the length of her sentence, and, for the reasons expressed in this petition, the usurpation of judicial power "seriously affects the fairness, integrity or public reputation of judicial proceedings."

> include the power to prosecute crimes. A judge in our system does not have the authority to tell prosecutors which crimes to prosecute or when to prosecute them.

In re: United States, 345 F.3d 450, 452 (7th Cir. 2003) (internal citations and quotations omitted).

In *In re: United States*, the defendant was a law enforcement officer who was charged with one count of civil rights violations and two counts of obstruction of justice. Pursuant to a plea agreement, the defendant pleaded guilty to one count of obstruction of justice in exchange for the government's agreement to dismiss the remaining two counts. *Id.* at 451.

At the sentencing hearing, the judge asked the prosecutor to explain why the government was dismissing the civil rights count, which carried a more severe sentence. "The prosecutor explained that his main aim was to get a felony conviction, which would bar [the defendant] from remaining in law enforcement, without the risk of a trial, which might result in [defendant] being acquitted." *Id.* The judge was not satisfied and "rejected the plea agreement on the ground that the one count of which [defendant] would be convicted if the agreement were accepted did not reflect the gravity of his actual offense." *Id.*

The defendant decided to proceed with the guilty plea, even without the benefit of a plea agreement. After the judge "sentenced him to 16 months in prison, the top of the guideline range,"[10] *id.* at 452, the government moved to dismiss the

[10] Until the Court's decision in *Booker v. United States*, 543 U.S. 220 (2005), the U.S. Sentencing Guidelines were mandatory.

two remaining counts. The judge dismissed the second obstruction of justice count "but refused to dismiss the civil rights count and instead appointed a private lawyer to prosecute it." *Id.* The judge felt "that the government was trying to circumvent his sentencing authority because it considered the sentence that he would have imposed had [defendant] been convicted of the civil rights violation excessive, even though it would have been consistent with the sentencing guidelines." *Id.*

The government petitioned the Seventh Circuit "to issue a writ of mandamus commanding the district judge to dismiss that count as well and to rescind the appointment of the prosecutor." *Id.* In analyzing the rule governing motions to dismiss, the Seventh Circuit acknowledged that "Rule 48(a) . . . requires leave of court for the government to dismiss an indictment, information, or complaint—or, we add, a single count of such a charging document." *Id.* at 452. But this "leave of court" condition on dismissal of charges, the Seventh Circuit held, could not serve as a barrier to dismissal if "[t]he district judge simply disagrees with the Justice Department's exercise of prosecutorial discretion." *Id.* at 453. Rather, the "principal purpose" of the "leave of court" provision, the court held, "is to protect a defendant from the government's harassing him by repeatedly filing charges and then dismissing them before they are adjudicated." *Id.* (citing *Rinaldi*, 434 U.S. at 29 n. 15). Finding "no issue of that sort here," and reiterating that "[t]he government want[ed] to dismiss the civil rights count with prejudice, and that is what [the defendant] want[ed] as well," the Seventh Circuit

granted the government's petition for mandamus, ordering the district judge "to grant the government's motion to dismiss the civil rights count against the defendant," and to vacate the appointment of the special prosecutor. *Id.* at 454. Along the way, the court made this observation:

> Paradoxically, the plenary prosecutorial power of the executive branch safeguards liberty, for, in conjunction with the plenary legislative power of Congress, it assures that no one can be convicted of a crime without the concurrence of all three branches (again, criminal contempt of judicial orders constitutes a limited exception). When a judge assumes the power to prosecute, the number shrinks to two.

Id.

Three times in the opinion, the court cited its earlier decision in *United States v. Martin*, 287 F.3d 609, 623 (7th Cir. 2002). In *Martin*, the Seventh Circuit affirmed a district court's rejection of a plea agreement that contained a charge bargain: Plead guilty to one count in exchange for dismissal of the other two, which capped the defendant's exposure to a statutory maximum sentence of 240 months. With a plea agreement in hand, the defendant pled guilty but, before sentencing, perjured himself by giving false "testimony at trial [that] was directly contradictory to his prior sworn testimony. [The defendant] denied that he and the other three defendants on trial engaged in any drug deals, purchases, or conspiracy." *Id.* at 622. At sentencing, the district judge rejected the plea agreement, "finding it did not adequately reflect the severity of the defendant's conduct and would 'undermine the sentencing guidelines.'" *Id.* The government (gladly, it seems) obtained a superseding indictment charging five counts (instead

of just the original three); a jury found the defendant guilty of all five, and the judge sentenced him to 360 months incarceration. *Id.*

The court of appeals overruled the defendant's argument that, by rejecting the plea agreement, "the district court usurped the authority of the prosecutor in violation [of] the principle of separation of powers," *id.*, noting that the government "did not once object to the district court's rejection of the plea agreement, and does not assert that prosecutorial authority has been, in any way, usurped." *Id.* at 623. Not surprisingly, the government "was not upset by the rejection of the plea agreement because [the defendant], after accepting the benefits of the plea agreement, attempted to sabotage the U.S. Attorney's case by taking the witness stand and committing perjury in the trial of three other co-conspirators." *Id.*[11]

[11] Although not cited or addressed in *In re: United States, Martin* cited *United States v. Greener*, 979 F.2d 517 (7th Cir. 1992), in which the Seventh Circuit upheld the rejection of plea agreements that, in the view of the district judge, "would not adequately represent the defendant's criminal conduct and would undermine the sentencing guidelines." *Id.* at 520. The district judge rejected a plea agreement to count IV, alleging a "violation of 18 U.S.C. § 922(a)(1)(A)," *id.* at 518, which carries a 60-month statutory maximum sentence. 18 U.S.C. § 924(a)(1)(D). The defendant ultimately pled guilty to count II, alleging a "violation of 26 U.S.C. § 5861(e)," *id.*, which carries a 120-month statutory maximum sentence. 26 U.S.C. § 5871. Even though rejection of the charge bargain exposed the defendant to a higher statutory maximum, the guideline sentence imposed on the count of conviction—41 months—was well below the 60-month statutory maximum sentence of the count to which the defendant had proposed to plead guilty in the rejected plea agreement. Ms. Garrott, in contrast, received a sentence that was double the statutory maximum of the count to which the government had agreed she could (and did) plead guilty as part of the rejected plea agreement.

B. The Ninth Circuit

> [W]hen the district court made the further decision that the second degree murder charge itself was too lenient, it intruded into the charging decision, a function generally within the prosecutor's exclusive domain.

In re Ellis, 356 F.3d 1198, 1209 (9th Cir. 2004) (quotations omitted).

Sitting en banc, the Ninth Circuit, too, granted mandamus relief, finding error in a district court decision to vacate an agreed-upon plea to a second-degree murder charge and reinstating the first-degree murder charge because the court believed (as the district judge believed in Ms. Garrott's case) that the lesser charge was too lenient in light of the defendant's criminal history and because the circumstances of the offense were serious. *Id*.

The 16-year old defendant in *Ellis* was charged with first degree murder and was to be tried as an adult due to a prior conviction for residential burglary. *Id*. at 1201. After much negotiation, the government agreed to file a superseding information charging the defendant with second degree murder, to which the defendant would plead guilty. "The agreement recognized that the court could impose any sentence authorized by law, but provided that either party had the right to withdraw from it if the court pronounced a sentence of incarceration other than 132 months." *Id*.

The court accepted the defendant's guilty plea but announced at the sentencing hearing that it would not accept the plea agreement to second degree murder because "[t]he presentence report had disclosed three prior juvenile

adjudications and seven other arrests and charges for serious crimes...." *Id.* at 1202. The government urged the court to reconsider, expressed concern about the evidence available to prove first-degree murder, and informed the court that the victim's family supported the plea to second degree murder. The court nevertheless concluded:

> I have read the government's Sentencing Memorandum, together with the Defendant's Sentencing Memorandum, and I have listened to the government and the Defendant. I must tell you, justice in my opinion hasn't been done in this case, the way it stands now. I think the matter should go to a jury. I think the matter should go to a jury, period. So the ball is back in the government's court.

Id. The court then arraigned the defendant on the still-pending first-degree murder indictment and set the date for jury trial. *Id.*

The defendant filed a motion to "compel the district court to afford him the opportunity to withdraw his second-degree murder guilty plea or to allow him to persist in that plea," which the government supported. *Id.* The court refused to hear argument on the motion, stating, "I never intended to accept the plea agreement in this case, nor did I accept the plea in this case." *Id.* at 1203. "With his only alternative being proceeding to trial on a first degree murder charge—a case even the government no longer desired to charge and was not sure it could prove—Ellis filed this petition for writ of mandamus, which the government did not oppose." *Id.*

The Ninth Circuit granted the writ, concluding that the district court's order was "clearly erroneous," *id.* at 1210, because the district court had

"effectively and improperly inserted itself into the charging decision by vacating Ellis's plea and reinstating the first degree murder indictment. The procedures contemplated by Rule 11 guard against an intrusion of this nature into the separate powers of the executive branch." *Id*. at 1209. Noting that

> many of the policies underlying Rule 48 are equally applicable to judicial consideration of charge bargains, [c]ourts should be wary of second-guessing prosecutorial choices because courts do not know which charges are best initiated at which time, which allocation of prosecutorial resources is most efficient, or the relative strengths of various cases and charges.

Id. at 1210 (internal citations and quotations omitted). The writ was necessary to avoid the "uncorrectable prejudice" that could ensue if the court insisted that the government proceed with the first degree charge: The defendant might be acquitted and "go free" (because he could not thereafter be tried on the lesser included offense). *Id*.[12]

Admittedly, the Ninth Circuit expressed the view that it is "properly within the judicial function" to reject a plea agreement under Rule 11 "when the court believes a sentence is too lenient or otherwise not in the public interest." *Id*. at 1209. That dicta was then followed, however, by the recognition that

> when the district court made the further decision that the second degree murder charge itself was too lenient, it intruded into the charging decision, a function generally within the prosecutor's exclusive domain. Because the prosecutor represents the executive

[12] In Ms. Garrott's case, the district judge rejected both proposed plea agreements, so she withdrew her plea to count one and was acquitted of that count, as well as count two, after a trial. *See ante* n. 4. The judge's rejection of the plea agreements thus cost the government convictions on those counts.

> branch, the district court's reinstatement of the first degree murder charge over the government's objection disregarded the traditional requirement of separation of powers—that the "judiciary remain independent of executive affairs."

Id. (internal quotation omitted).[13]

C. The District of Columbia Circuit

> The Executive's charging authority embraces decisions about whether to initiate charges, whom to prosecute, which charges to bring, and whether to dismiss charges once brought. It has long been settled that the Judiciary generally lacks authority to second-guess those Executive determinations, much less to impose its own charging preferences.

United States v. Fokker Servs. B.V., 818 F.3d 733, 737 (D.C. Cir. 2016).

Fokker Services agreed to an 18-month Deferred Prosecution Agreement (DPA) with the government after voluntarily disclosing that it had potentially violated federal sanctions and export control laws. *Id.* Pursuant to the DPA, the government filed a one-count information against Fokker for conspiracy to violate the International Emergency Economic Powers Act. *Id.* at 739. The parties submitted a joint motion to exclude time under the Speedy Trial Act, which "excludes '[a]ny period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, *with the approval of the court*, for the purpose of allowing the defendant to

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[13] *See also In re Vasquez-Ramirez*, 443 F.3d 692, 698 (9th Cir. 2006) ("The judge's sentencing discretion will be cabined only by the prosecutor's decision regarding which charges to pursue, and by Congress's decision to create a statutory maximum sentence for those charges. A judge has no constitutional role in either of these decisions; one is strictly executive and the other is strictly legislative.").

demonstrate his good conduct.'" *Id.* at 738 (quoting 18 U.S.C. § 3161(h)(2)) (emphasis added).

The district court denied the joint motion because "in the court's view, the prosecution had been too lenient in agreeing to, and structuring, the DPA." *Id.* at 737-38. In other words, "the court rejected the DPA as an [in]appropriate exercise of prosecutorial discretion." *Id.* at 740 (internal quotations omitted).

Both parties filed a timely notice of appeal, and the D.C. Circuit appointed an amicus to argue on behalf of the district court. *Id.* "Conclud[ing] that the district court's decision 'constitute[d] a clear legal error,'" *id.* at 749, the D.C. Circuit found that there were no grounds to read the "approval of the court" language as conferring "free-ranging authority in district courts to scrutinize the prosecution's discretionary charging decisions." *Id.* at 741.

The court of appeals compared its authority to scrutinize a DPA with that of a Rule 48(a) motion to dismiss—which the court stated "involves no formal judicial action imposing or adopting its terms." *Id.* at 746. Because each shared similar prosecutorial charging decisions, the court concluded there was no reason to expand the court's authority for a DPA beyond that of Rule 48(a). *Id.* at 743. Additionally, the Court found unpersuasive amicus' attempt to analogize to the court's role in reviewing Rule 11 plea agreements, which, the court stated, does not grant the district court authority to "second-guess the prosecution's charging decisions." *Id.* at 745. The D.C. Circuit expressly stated that "in the context of reviewing a proposed plea agreement under Rule 11, a district court lacks

authority to reject a proposed agreement based on mere disagreement with a prosecutor's underlying charging decisions." *Id.* at 745. "[T]rial judges are not free to withhold approval of guilty pleas . . . merely because their conception of the public interest differs from that of the prosecuting attorney." *Id.*[14]

The decision in *Fokker Servs.* animated the litigation in General Flynn's case. *In re Flynn*, No. 20-5143, 2020 WL 5104220 (D.C. Cir. Aug. 31, 2020) (en banc). Pursuant to a plea agreement, General Flynn pled guilty and was awaiting sentencing when the government moved to dismiss all charges. The district judge did not immediately grant the motion; instead, he appointed an amicus curiae to

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[14] *Fokker* quoted from an earlier D.C. Circuit case, *United States v. Ammidown*, which announced

> the appropriate doctrines governing trial judges in considering whether to deny approval either to dismissals of cases outright or to the diluted dismissal—a guilty plea to a lesser included offense.
>
> First, the trial judge must provide a reasoned exercise of discretion in order to justify a departure from the course agreed on by the prosecution and defense. This is not a matter of absolute judicial prerogative. The authority has been granted to the judge to assure protection of the public interest, and this in turn involves one or more of the following components: (a) fairness to the defense, such as protection against harassment; (b) fairness to the prosecution interest, as in avoiding a disposition that does not serve due and legitimate prosecutorial interests; (c) protection of the sentencing authority reserved to the judge. The judge's statement or opinion must identify the particular interest that leads him to require an unwilling defendant and prosecution to go to trial.

497 F.2d 615, 622 (D.C. Cir. 1973). *Fokker* did not address, much less endorse, those factors.

present arguments in opposition to the motion. *Id.* at *1. General Flynn petitioned the D.C. Circuit for mandamus relief; a panel granted the petition in part, issuing the writ to compel the judge to dismiss the charges. *Id.* On petition for en banc review filed by the judge himself, the D.C. Circuit vacated the panel order and denied the writ, finding that General Flynn (and the government) had "an adequate alternate means of relief" and no "extraordinary harm" would befall them "from waiting to seek [] review (if necessary) after the District Court decides the motion in the ordinary course." *Id.* at *2-*3. The en banc majority expressly reserved on the question of whether the judge would "violate the separation of powers or some other clear and indisputable right" should the judge ultimately deny the motion to dismiss. *Id.* at *5.

The concurring judge noted that "it would be highly unusual" if the judge denied the motion, "given the Executive's constitutional prerogative to direct and control prosecutions and the district court's limited discretion under Rule 48(a), especially when the defendant supports the Government's motion." *Id.* at *7 (concurring). The two dissenting judges likewise thought that "there can be little question that the district court must ultimately grant the government's motion to dismiss." *Id.* at *23 (Henderson, J., with whom Rao, J., joins, dissenting). Highlighting "the essential connection between the Constitution's structure of separated powers and the liberty interests of individuals," the dissenters concluded the writ should issue:

> By allowing the district court to scrutinize the reasoning and motives of the Department of Justice, the majority ducks our obligation to correct judicial usurpations of executive power and leaves Flynn to twist in the wind while the district court pursues a prosecution without a prosecutor. The Constitution's separation of powers and its protections of individual liberty require a different result.

Id. at 24.

II. The question presented is important and timely, and this case presents an excellent vehicle to address it.

Ms. Garrott's is the right case to resolve the question presented, as the parties were in agreement that this case should have ended at the original sentencing hearing; the judge should have imposed a sentence of (up to) the statutory maximum of 36 months. Instead, the district judge committed plain, clear, obvious, and indisputable error by refusing to impose the sentence, steering this case to a trial that the parties were willing to forego, and then imposing a 72-month sentence, double in duration of the one to which the parties had agreed.

Surely the government will oppose this petition and defend the actions of the district judge, as the government did in the court of appeals. *See United States v. O'Neill*, 437 F.3d 654, 660 (7th Cir. 2006) (Posner, J., concurring) ("Although the Department of Justice is dutifully defending the judge's action, it is doing so to maintain good relations with the district court, not because it thinks that what the judge did was right. The judge upended the Department's own agreement."). But the government is hard-pressed to deny the importance or timeliness of the question presented, given the government's position in the case of General Flynn

and the widespread attention it has received. The government's briefing in General Flynn's case makes the argument for Ms. Garrott:

> Article II [of the United States Constitution] provides that "[t]he executive Power shall be vested in a President," U.S. Const. art. II, § 1, cl. 1; that the President "shall have Power to grant Reprieves and Pardons for Offences against the United States," § 2, cl. 1; and that the President "shall take Care that the Laws be faithfully executed," § 3. Taken together, those provisions vest the power to prosecute crimes in the Executive. *In re Aiken County*, 725 F.3d 255, 263 (D.C. Cir. 2013). The Supreme Court thus has recognized that, as a general matter, "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *United States v. Nixon*, 418 U.S. 683, 693 (1974). This Court has likewise recognized that "[t]he power to decide when to investigate, and when to prosecute, lies at the core of the Executive's duty to see to the faithful execution of the laws." *CCNV v. Pierce*, 786 F.2d 1199, 1201 (D.C. Cir. 1986). Notably, "[t]he Executive's charging authority embraces decisions about … whether to dismiss charges once brought." *Fokker*, 818 F.3d at 737.
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> * * *
>
> Article III, meanwhile, provides that the federal courts may exercise only "judicial Power" over "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. A case or controversy is a "dispute between parties who face each other in an adversary proceeding." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242 (1937). And "an actual controversy must be extant at all stages of review." *Steffel v. Thompson*, 415 U.S. 452, 459 n.10 (1974). It follows that, if the dispute between the parties comes to an end, the court's exercise of judicial power must end as well. For instance, if all parties to a civil case agree that the case should be dismissed, the stipulated dismissal "resolves all claims before the court" and "leav[es] [the court] without a live Article III case or controversy." *In re Brewer*, 863 F.3d 861, 869 (D.C. Cir. 2017). Likewise in a criminal case: if the United States and the defendant agree that the indictment should be dismissed, there remains no dispute between the parties, there is no need for a court to impose judgment against the defendant, and there is thus no basis for the further exercise of judicial power.

BRIEF OF THE UNITED STATES, *In re: Michael T. Flynn,* U.S.C.A. No. 20-5143, 2020 WL 5104220 (D.C. Cir. Aug. 31, 2020), Doc#1845183 (filed June 1, 2020) at Pages 12-14 of 42. At bottom, "there is . . . no case or controversy within the meaning of Art. III of the Constitution," when "both litigants desire precisely the same result." *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47, 48 (1971).

In Ms. Garrott's case, "both litigants desire[d] precisely the same result": A plea of guilty to count one with a sentence not exceeding the statutory maximum. But because the judge thought Ms. Garrott needed to serve more time in prison, the judge refused to abide by the agreement and foisted upon the parties a trial that neither party requested. Some might describe as "activist" a judge who insists that the parties continue to litigate even after they have reached an agreement. After all, "[j]udges are like umpires … [t]hey make sure everybody plays by the rules, but it is a limited role … it's [their] job to call balls and strikes, and not to pitch or bat." *Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States*, Hearings before the Committee on the Judiciary, United States Senate, 109th Congress, U.S. Gov't Printing Office, 2005, pp. 55-56. The already over-burdened court system would burst at the seams if even more cases were pushed to trial by judges who thought the parties should "play on."

To be sure, the Court has stated, more than once, that a defendant does not have "an absolute right to have his guilty plea accepted by the court. As provided in Rule 11, Fed. Rules Crim. Proc., … the trial judge may refuse to accept such a

plea and enter a plea of not guilty on behalf of the accused." *Lynch v. Overholser*, 369 U.S. 705, 719 (1962); *accord Santobello v. New York*, 404 U.S. 257, 262 (1971) ("There is, of course, no absolute right to have a guilty plea accepted."). But that principle was articulated in *Lynch*, a case in which the "judge refused to accept the plea since a psychiatric report in the judge's possession indicated that Lynch had been suffering from 'a manic depressive psychosis, at the time of the crime charged,' and hence might have been not guilty by reason of insanity." *North Carolina v. Alford*, 400 U.S. 25, 34 (1970). While holding that there was no error in rejecting the guilty plea where the judge entertained doubts about the defendant's guilt, the Court in *Lynch* "implied that there would have been no constitutional error had his plea been accepted even though evidence before the judge indicated that there was a valid defense." *Alford*, 400 U.S. at 35 (finding guilty plea valid despite defendant's "protestations of innocence"). So, a court need not accept every proposed guilty plea; a court may properly reject a plea if not "voluntary and knowing," *Santobello v. New York*, 404 U.S. 257, 261 (1971), if the product of coercion or mental defect, if not supported by a factual basis, or if the defendant does not "understand[] the maximum possible penalty that he may face by pleading guilty," or "the important constitutional rights he is waiving, including the right to a trial"—what the Court describes as the "prerequisites to accepting a guilty plea." *United States v. Hyde*, 520 U.S. 670, 674 (1997). But those cases do not stand for the proposition that a judge can refuse to accept a guilty plea solely on the basis of his disdain for the bargain that the defendant has

obtained. And those cases presented no impediment to the Seventh, Ninth, or D.C. Circuits granting mandamus relief when the district judge impeded the parties' efforts to resolve criminal prosecutions by way of agreement rather than trial.

No one can seriously doubt that, if the government had initially charged Ms. Garrott with just one count, and she had agreed to plead to it in exchange for the government's agreement to file no additional charges, the judge would have had no wiggle room to reject that resolution—no matter how "lenient" or "unreasonable … outright irrational … … [or] inappropriate" the judge perceived the outcome, App. 4, 5, for he could not command the government, much less the grand jury, to return a superseding indictment. The converse must likewise hold true: The judge cannot command the government to proceed to trial on counts that it has decided to abandon in exchange for a guilty plea to another count, merely because the judge believes that the *maximum* sentence he can impose is *too lenient*.[15] This is fair and balanced, given that a judge's hands are tied even when he believes that the mandatory *minimum* sentence he must impose is *too harsh*.[16]

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[15] See *United States v. O'Neill*, 437 F.3d 654, 660 (7th Cir. 2006) (Posner, J., concurring) ("There is also a futility to such judicial interventions, since the prosecution can give a defendant a sentencing discount by dropping counts or otherwise altering the charges against him, and its decision is not judicially reviewable."); *In re United States*, 345 at 454 ("[A] judge could not possibly win a confrontation with the executive branch over its refusal to prosecute, since the President has plenary power to pardon a federal offender, U.S. Const. art. II, § 2, cl. 1—even before trial or conviction.").

[16] *See generally Wade v. United States*, 504 U.S. 181, 185 (1992) (accepting the petitioner's concession, "as a matter of statutory interpretation, that [18 U.S.C.] § 3553(e) imposes the condition of a Government motion upon the district court's

Insofar as a judge cannot deny the parties "leave of court" under Rule 48(a) to dismiss charges that have resulted in a constitutionally valid conviction and prison sentence, *see Rinaldi*, 434 U.S. at 25 (ordering dismissal after defendant tried, convicted and sentenced to 12 years imprisonment), a judge cannot refuse the dismissal of charges contemplated by a valid plea agreement under Rule 11(c)(1)(A) just because the judge would prefer to impose a more heavy-handed sentence than authorized by the statute of conviction. To be sure,

> [s]entencing judges are placed in a quandary by being authorized on the one hand to reject a plea that specifies a sentence that the judge considers too lenient and on the other hand being forbidden by Fed. R. Crim. P. 11(c)(1) "to participate in these discussions," that is, the discussions between the prosecutor and the defense lawyer or defendant that resulted in the plea agreement. If the judge gives no explanation for why he is rejecting the agreement, the defendant is left in the dark, *but if he explains the grounds of his rejection he may be thought to have initiated and participated in a discussion looking to the negotiation of a new plea agreement.* Reconciling these directives is the judicial equivalent of squaring the circle…. *It is another reason against the district judge's policy of refusing to accept the sentence negotiated by the parties.*

O'Neill, 437 F.3d at 663 (Posner, J., concurring) (emphasis added).

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authority to depart" below the mandatory minimum and such "Government-motion requirement" is not itself "unconstitutional"); *Bordenkircher v. Hayes*, 434 U.S. 357, 358 (1978) ("Due Process Clause of the Fourteenth Amendment is [not] violated when a state prosecutor carries out a threat made during plea negotiations to reindict the accused on more serious charges if he does not plead guilty to the offense with which he was originally charged."); *United States v. Bajakajian*, 524 U.S. 321, 336 (1998) ("[J]udgments about the appropriate punishment for an offense belong in the first instance to the legislature."); *United States v. Wiltberger*, 18 U.S. 76, 95 (1820) (Marshall, C.J.) ("[T]he power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment").

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

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September 2020

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13299
Non-Argument Calendar

D.C. Docket No. 2:17-cr-00487-WKW-WC-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LAQUANDA GILMORE GARROTT,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama

(May 1, 2020)

Before WILLIAM PRYOR, MARTIN, and LUCK, Circuit Judges.

PER CURIAM:

After she was convicted of eight counts of aiding and assisting in the filing of false federal income tax returns, Laquanda Garrott was sentenced to seventy-

two months' imprisonment. On appeal, she asks us to vacate her conviction because the district court participated in plea negotiations and her sentence because it was substantively unreasonable. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

An investigation by the Internal Revenue Service revealed that Garrott, who operated a small tax return preparation business, falsified and submitted around one hundred tax returns on behalf of her customers. She received nearly $675,000 from the Treasury as a result of the false returns. The government charged Garrott with ten counts of aiding and assisting in the filing of false federal income tax returns, in violation of 26 U.S.C. § 7206(2).

Almost a year after the charges were filed, Garrott and the government entered into a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(A).[1] Pursuant to the agreement, Garrott would plead guilty to one count, and the government agreed to dismiss the remaining nine counts. The maximum sentence would have been three years' imprisonment. See 26 U.S.C. § 7206. A magistrate judge accepted the plea agreement, and the district judge set a date for the sentence hearing.

[1] Rule 11(c)(1)(A), in relevant part, provides: "If the defendant pleads guilty . . . to . . . a charged offense . . . , the plea agreement may specify that an attorney for the government will . . . move to dismiss[] other charges." If the district court accepts a plea agreement under this rule, it is bound by its terms. Fed. R. Crim. P. 11(c)(4).

Before the sentence hearing, however, Garrott was arrested for violating the conditions of her pretrial release by failing to pay rent and thus acquiring further debt without the permission of her pretrial release officer. The district court found that Garrott violated her pretrial release conditions, revoked her bond, and placed her in custody pending sentencing.

At the scheduled sentence hearing, the district court rejected Garrott's plea agreement:

> So we are facing, per charge—or at least per the charge of conviction, if I accepted the plea agreement, a statutory maximum of [thirty-six] months. The reason I don't accept and will not accept the plea agreement at the moment—I might sentence within that; I just . . . won't be bound to it—is because of the extensive criminal history, over 11 years, of—well many years, with [seventy-nine] bad check cases over the last 11 years and other offenses and I think some more recent ones I didn't know about.
>
> So for that reason, Ms. Garrott, I am rejecting the plea agreement at this time in your case. And the provision I'm particularly rejecting is the dismissal of all the charges except for the one count.

In a follow-up memorandum, the district court explained that it rejected the plea agreement because it compelled an "unreasonable sentence." Garrott had an "extensive criminal history, including no less than eighty-seven previous convictions,"[2] the district court noted, and that, "[w]ith a total offense level of

[2] Garrott had seventy-nine convictions for writing bad checks, four for theft, one for reckless endangerment, one for domestic violence and harassment, one for giving a false name to law enforcement, and one for driving with a revoked license and using a license plate to conceal one's identity.

[twenty-two] and a criminal category of III, [her] guidelines range would have been [fifty-one] to [sixty-three] months, without an acceptance-of-responsibility reduction." But the plea agreement, the court recognized, "limit[ed] Garrott's sentence to no more than the statutory maximum of [thirty-six] months' imprisonment." The court emphasized that, according to the sentencing factors set forth in 18 U.S.C. § 3553(a), it had a "duty to impose a sentence sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing.'" Considering these factors and Garrott's "history and characteristics," the court determined that "a sentence of [thirty-six] months would not merely be unreasonable but would be outright irrational"—especially because Garrott had served only thirteen days in custody total for her prior convictions. Her prior conduct, the court continued, was "rife with falsity and fraud" and "demonstrate[d] the impropriety of a [thirty-six]-month sentence." Aside from Garrott's criminal history, the court observed that her "relevant conduct, according to the presentence report, [was] much more serious than the ten pending charges suggest"; she had "filed approximately 100 false tax returns—totaling $674,372 in fraudulent refunds—which were all paid out by the IRS." With "all ten counts in play," the court said that Garrott could "potentially be facing a [thirty]-year maximum sentence."

The court stated that it was "express[ing] no view on either the weight or the nature of the evidence against Garrott or what sentence Garrott would receive if she

were found guilty on some or all of the ten counts." It noted that it could, however, "express its view that a particular sentence [was] too lenient." The court stressed that it was "declin[ing] to say what an appropriate sentence [was]" and, instead, was "only say[ing] that [thirty-six] months' imprisonment [was] inappropriate." Finally, in a footnote, the district court informed the parties that another binding plea agreement—whether under rule 11(c)(1)(A) or (C)[3]—"would most likely be viewed as a guess as to what the judge is thinking, or bait to catch the best deal." The district court said it would keep "an open mind as to what constitute[d] a reasonable sentence." Following the memorandum, Garrott withdrew her guilty plea.

On the eve of trial, the parties reached another plea agreement. This agreement, made pursuant to rule 11(c)(1)(C), proposed to bind the district court to a sentence at the bottom of the guidelines range so long as Garrott pleaded guilty to two of the ten counts. At a hearing, the district court rejected the agreement, reiterating its position that a binding plea agreement "would be seen as manipulating the court" and that it could not participate in the plea negotiations. When asked whether she was ready to proceed to trial, Garrott told the court that she did not "know what other option there [was] . . . other than . . . pleading guilty to all of the counts in the indictment." The court responded, "I mean, there's always a [rule

[3] In a plea agreement under rule 11(c)(1)(C), the government "agree[s] that a specific sentence or sentencing range is the appropriate disposition of the case." Such a recommendation binds the district court once it accepts the plea agreement. Fed. R. Crim. P. 11(c)(1)(C).

11(c)(1)(B) agreement]. I don't know—that's what most courts do is a (B). I'm just saying." "[W]hether she pleads to one or ten," the court continued, "isn't going to affect the sentence . . . is my point. This is all about sentencing. And sentencing is the court's prerogative, and I don't want to be manipulated into caps, bottoms, whatever, when I've told you once that this is a serious case." The court concluded the hearing by informing Garrott that it "[could not] participate in [plea agreement] discussions" and that its rejection of the plea was not driven by the number of counts she pleaded to; instead, "[it was] driven by what is a reasonable sentence."

On the first day of trial, Garrott notified the district court that the government offered her another plea agreement, which required her to plead guilty to two counts. She told the district court that she had rejected this plea agreement. The trial proceeded, and she was ultimately convicted of eight of the ten counts.

In its presentence investigation report, the probation office calculated Garrott's offense level at twenty-two, her criminal history score at nine, and her criminal history category at IV. The probation office did not include a three-level reduction for accepting responsibility. Based on her offense level and criminal history, Garrott's guidelines range was sixty-three to seventy-eight months' imprisonment. The parties did not object to the presentence report.

At the sentence hearing, Garrott asked for a downward variance from her guidelines range because she had accepted responsibility for her conduct before trial.

She claimed that she had admitted to some wrongdoing when she pleaded guilty twice and that she withdrew those pleas only because the district court rejected the plea agreements. The government opposed the downward variance because Garrott had violated her conditions of pretrial release, had an extensive criminal history, and received a large sum of money as a result of the scheme. However, the government did acknowledge that Garrott accepted responsibility for her crimes at the sentence hearing and attempted to do so "in the past."

The district court denied the variance because Garrott violated the conditions of her pretrial release and did not accept responsibility by pleading guilty. The district court sentenced Garrott to seventy-two months' imprisonment and ordered her to pay restitution in the amount of $56,897. The district court noted that it would have imposed this same sentence even if it found that she had accepted responsibility. The district court emphasized that "the problem . . . driving the size of [her] sentence" was her extensive criminal history. Pointing to the § 3553(a) factors, the district court explained that (1) Garrott's conduct contributed to the rampant tax fraud that was going on in Montgomery at the time, (2) the crime and the amount of loss were serious, (3) the sentence was appropriate to deter "other people who might think that they could help cheat the government," and (4) it wanted to protect the public from any further crimes Garrott would commit. Garrott

objected that the sentence was substantively unreasonable, but the district court overruled her objection. This is her appeal.

DISCUSSION

Garrott raises two issues on appeal: First, she contends the district court improperly participated in her plea negotiations with the government. Second, she argues her sentence was substantively unreasonable.

Plea Negotiations

Garrott contends that her conviction should be vacated because the district court inappropriately participated in plea negotiations when it rejected her first plea agreement and stated that the thirty-six-month sentence the parties agreed to was unreasonable considering her criminal history. She claims that by rejecting the agreement for this reason, the district court "implied that the parties needed to craft an agreement that would allow for a greater term of imprisonment." She also argues that the district court participated in plea negotiations when it stated in its memorandum that a binding plea agreement under rule 11(c)(1)(A) or (C) "would most likely be viewed as a guess as to what the judge is thinking, or bait to catch the best deal" and when it told the parties at a hearing that they could enter into a non-binding agreement under rule 11(c)(1)(B). Based on these statements, Garrott claims that the district court "effectively laid out what plea agreement it would find

acceptable, namely a plea under [r]ule 11(c)(1)(B) that would permit the court to sentence . . . Garrott to more than [thirty-six] months."

Because Garrott did not raise these objections below, we review for plain error. United States v. Castro, 736 F.3d 1308, 1313 (11th Cir. 2013). In doing so, we must examine the entire record. United States v. Harrell, 751 F.3d 1235, 1237 (11th Cir. 2014). To succeed under the plain-error rule, Garrott must show that "the district court commit[ted] an error that [was] plain, affect[ed] [her] substantial rights, and 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" Id. at 1236 (quoting United States v. Vonn, 535 U.S. 55, 63 (2002)). An error is plain if "the error . . . is obvious and is clear under current law," United States v. Dortch, 696 F.3d 1104, 1112 (11th Cir. 2012), and an error is not obvious or clear when "'[n]o Supreme Court decision squarely supports' the defendant's argument, 'other circuits . . . are split' regarding the resolution of the defendant's argument, and 'we have never resolved the issue,'" id. (quoting United States v. Humphrey, 164 F.3d 585, 588 (11th Cir. 1999)).

Rule 11(c)(1) provides that "an attorney for the government and the defendant's attorney . . . may discuss and reach a plea agreement," but "[t]he court must not participate in these discussions." Rule 11(c)(1) "creates a 'bright line rule' that prohibits 'the participation of the judge in plea negotiations under any circumstances.'" Harrell, 751 F.3d at 1239 (quoting United States v. Johnson, 89

F.3d 778, 783 (11th Cir. 1996)). The rule serves two purposes: it acts as a "safeguard [to] the trial judge's actual neutrality" and "protect[s] [against] the appearance of impartiality." United States v. Tobin, 676 F.3d 1264, 1303–04 (11th Cir. 2012) (citing United States v. Adams, 634 F.2d 830, 840–41 (5th Cir. 1981)).

Here, there was no error. The district court was well within its authority to reject the plea agreement as unreasonable. See United States v. Bean, 564 F.2d 700, 703–04 (5th Cir. 1977) ("A decision that a plea bargain will result in the defendant's receiving too light a sentence under the circumstances of the case is a sound reason for a judge's refusing to accept the agreement.");[4] see also Fed. R. Crim. P. 11(c)(5)(A) (requiring a district court to inform the parties that it rejected a rule 11(c)(1)(A) or (C) plea agreement "on the record and in open court").

The record shows that the district court did not participate in the parties' plea negotiations. The district court denied Garrott's motion for a status conference, explaining that the "motion border[ed] on an invitation for the court to engage in plea negotiations, which of course it [could not] do." The district court stated that it was "express[ing] no view on either the weight or the nature of the evidence against Garrott or what sentence Garrott would receive if she were found guilty on some or all of the ten counts." At the hearing on the second plea agreement, the district court

[4] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

said again that it "[could not] participate in [plea agreement] discussions." The district court's statements here were unlike those we've held to be engaging in plea negotiations. See, e.g., United States v. Diaz, 138 F.3d 1359, 1361 (11th Cir. 1998) (concluding that the district court participated in plea discussions when it listened to the government's summary of the evidence, told the defendant that the evidence against him was "compelling," and told the defendant that he needed "to think about [his] options" "because if this is a one-day or two-day trial, [he's] going to risk ten years in prison"); Adams, 634 F.2d at 836 (holding that the district court participated in plea discussions when it discussed the bargain with the parties in chambers and "offered a plea bargain to [the defendant] on [its] own initiative").

Even if the district court erred when it mentioned the non-binding plea under rule 11(c)(1)(B), the error was not plain. We have never held, and Garrott doesn't cite to any case holding, that a district court violates rule 11(c)(1) when it rejects a plea agreement because it doesn't want to be bound to a specific sentence under rules 11(c)(1)(A) and 11(c)(1)(C). We thus conclude that the district court did not plainly err when it rejected Garrott's plea agreements.

Whether Garrott's Sentence Was Substantively Unreasonable

Garrott next argues that her seventy-two month sentence was substantively unreasonable because the district court gave too much weight to her criminal history, erroneously found that she did not accept responsibility for her conduct, gave too

much weight to the seriousness of the loss amount, sought to deter Garrott from criminal conduct that she could no longer partake in, and imposed a sentence that was disproportionate to other defendants in similar circumstances.

The party challenging the sentence—here, Garrott—bears the burden of establishing that her sentence was substantively unreasonable. United States v. Sarras, 575 F.3d 1191, 1219 (11th Cir. 2009). Specifically, we apply the deferential abuse-of-discretion standard. Gall v. United States, 552 U.S. 38, 51 (2007). We give "due deference" to the district court "because it has an institutional advantage in making sentencing determinations." United States v. Shabazz, 887 F.3d 1204, 1224 (11th Cir. 2018) (internal quotation marks omitted). In evaluating the reasonableness of the sentence, we consider the totality of the circumstances. United States v. Alberts, 859 F.3d 979, 985 (11th Cir. 2017).

To determine an appropriate sentence, district courts must consider the § 3553(a) sentencing factors. "A district court abuses its considerable discretion and imposes a substantively unreasonable sentence only when it '(1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors.'" United States v. Rosales-Bruno, 789 F.3d 1249, 1256 (11th Cir. 2015) (quoting United States v. Irey, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc)).

Garrott's sentence was not substantively unreasonable. Seventy-two months' imprisonment is considerably lower than the statutory maximum of 288 months and within the guidelines range of sixty-three to seventy-eight months—both signs that the sentence was reasonable. See United States v. Stanley, 739 F.3d 633, 656 (11th Cir. 2014) ("[W]hen the district court imposes a sentence within the advisory [g]uidelines range, we ordinarily will expect that choice to be a reasonable one. A sentence imposed well below the statutory maximum penalty is an indicator of a reasonable sentence." (citation and internal quotation marks omitted)). The district court did not abuse its discretion when it weighed Garrott's criminal history and the loss she caused over other factors. "District courts have broad leeway in deciding how much weight to give to prior crimes the defendant has committed." Rosales-Bruno, 789 F.3d at 1261. Garrott's criminal history, which the district court emphasized was "the problem . . . driving the size of [her] sentence," included 87 crimes that were, like the ones in this case, based on theft and fraud. And the presentence investigation report showed that Garrott filed approximately one hundred false tax returns, which resulted in a $674,372 loss to the Treasury.

Garrott cites to two cases—United States v. Fox, 626 F. App'x 841 (11th Cir. 2015) (unpublished), and United States v. Angulo, 638 F. App'x 856 (11th Cir. 2016) (unpublished)—as evidence that her sentence was disproportionate compared to defendants "with similar records who have been found guilty of similar conduct."

These cases do not show disparate treatment because Garrott had a more severe, extensive, and long-standing criminal history, which, as the district court explained, made all the difference in this case. See Fox, 626 F. App'x at 842 (criminal history category of II); Angulo, 638 F. App'x at 859 (criminal history category of I). The sentencing record reflects that the district court reviewed the relevant § 3553(a) factors, did not give significant weight to an improper or irrelevant factor, and committed no clear error of judgment in its sentencing decision.

CONCLUSION

For these reasons, we conclude that the district court did not plainly err in participating in Garrott's plea negotiations, and Garrott's sentence was not substantively unreasonable.

AFFIRMED.

UNITED STATES DISTRICT COURT

Middle District of Alabama

UNITED STATES OF AMERICA
v.
LAQUANDA GILMORE GARROTT

JUDGMENT IN A CRIMINAL CASE

(wo)

Case Number: 2:17cr487-WKW-01

USM Number: 17355-002

Cecilia Vaca
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) 3-10 of the Indictment on 5/9/2019 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	3
	See Next Page		

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has been found not guilty on count(s) 1 and 2 of the Indictment

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/8/2019
Date of Imposition of Judgment

/s/ W. Keith Watkins
Signature of Judge

W. KEITH WATKINS, United States District Judge
Name and Title of Judge

8/14/2019
Date

DEFENDANT: LAQUANDA GILMORE GARROTT
CASE NUMBER: 2:17cr487-WKW-01

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	4
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	5
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	6
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	7
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	8
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	9
26§7206(2)	Aiding and Assisting in the Filing of False Federal Income Tax Returns	4/1/2014	10

DEFENDANT: LAQUANDA GILMORE GARROTT
CASE NUMBER: 2:17cr487-WKW-01

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Seventy Two (72) Months. This sentence consists of 36 months per count, to be served consecutively to the extent necessary to produce a total sentence of 72 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LAQUANDA GILMORE GARROTT
CASE NUMBER: 2:17cr487-WKW-01

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

One Year. This term consists of one year as to each of counts 3 - 10, to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: LAQUANDA GILMORE GARROTT
CASE NUMBER: 2:17cr487-WKW-01

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: LAQUANDA GILMORE GARROTT
CASE NUMBER: 2:17cr487-WKW-01

SPECIAL CONDITIONS OF SUPERVISION

1.) The defendant shall provide the probation officer any requested financial information.

2.) The defendant shall not incur new credit charges or open additional lines of credit without approval of the Court or the Probation Officer unless in compliance with the payment schedule.

3.) The defendant shall submit to a search of his person, residence, office and vehicle pursuant to the search policy of this court.

4.) The defendant is prohibited from preparing tax returns for anyone except herself and her immediate family.

5.) The defendant is prohibited from working in any tax preparation business in any capacity.

6.) The defendant shall complete and file any delinquent tax returns and enter a payment plan with the Internal Revenue Service to pay any delinquent taxes owed.

DEFENDANT: LAQUANDA GILMORE GARROTT
CASE NUMBER: 2:17cr487-WKW-01

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 800.00	$ 0.00	$ 0.00	$ 56,897.00

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☑ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Internal Revenue Service		$56,897.00	
Attn: Mail Stop 6261			
Restitution			
333 W. Pershing Avenue			
Kansas City, MO 64108			

TOTALS $ 0.00 $ 56,897.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LAQUANDA GILMORE GARROTT
CASE NUMBER: 2:17cr487-WKW-01

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 57,697.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk, United States District Court, Middle District of Alabama, One Church St., Montgomery, Alabama 36104. Any balance of restitution remaining at the start of supervision shall be paid at a rate of not less than $100 per month.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:17-CR-487-WKW-TFM
	)	
LAQUANDA GILMORE GARROTT	)	

PLEA AGREEMENT

I. BACKGROUND INFORMATION

A. Attorneys

Defense Attorney: Cecilia Vaca

Assistant United States Attorney: Jonathan S. Ross

B. Counts and Statute Charged

Counts 1–10: 26 U.S.C. § 7206(2) – Aiding and assisting in the filing of false federal income tax returns

C. Count Pleading Pursuant to Plea Agreement

Count 1: 26 U.S.C. § 7206(2)

D. Statutory Penalties

Count 1: 26 U.S.C. § 7206(2)

A term of imprisonment of not more than 3 years, a fine of not more than $100,000 and the cost of prosecution or twice the value of the property involved in the transaction, whichever is greater, or both the fine and imprisonment; a term of supervised release of not than 1 year; an assessment fee of $100; and an order of restitution.

E. Elements of the Offense

Count 1:	26 U.S.C. § 7206(2)
First:	The defendant aided in the preparation of a return arising under the Internal Revenue laws;
Second:	The return contained a false statement;
Third:	The defendant knew that the statement in the return was false;
Fourth:	The false statement was material; and

Fifth: The defendant did so with the intent to do something the defendant knew the law forbids.

II. INTRODUCTION

Jonathan S. Ross, Assistant United States Attorney, and Cecilia Vaca, attorney for the defendant, LaQuanda Gilmore Garrott, pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, with the authorization of the defendant, submit this plea agreement. The terms are as follows.

III. THE GOVERNMENT'S PROVISIONS

1. Pursuant to Rule 11(c)(1)(A), the government agrees that it will, at the sentencing hearing, move to dismiss Counts 2 through 10. The government further agrees that it will not bring any additional charges against the defendant for the conduct described in the Indictment.

2. The government acknowledges that the defendant assisted authorities in the investigation and prosecution of the defendant's own misconduct by timely notifying the government of the defendant's intention to enter a guilty plea, thereby permitting the government to avoid preparing for trial and allowing the government and the Court to allocate resources efficiently. Provided the defendant otherwise qualifies, and that the defendant does not, before the date of the sentencing hearing, either personally or through the actions of the defense attorney on behalf of the defendant, take any action inconsistent the acceptance of responsibility, the government will move at or before the sentencing hearing for a further reduction of one level. See U.S.S.G. § 3E1.1(b). Determination of whether the defendant met the defendant's obligations to qualify for a reduction pursuant to § 3E1.1(b) is at the sole discretion of the government. Further, the government reserves the right to oppose the defendant's receiving a two-level reduction pursuant to § 3E1.1(a) should the government receive information indicating that, between the

date of the plea hearing and the date of the sentencing hearing, the defendant, either personally or through the actions of the defense attorney on behalf of the defendant, has acted inconsistent with the acceptance of responsibility.

IV. THE DEFENDANT'S PROVISIONS

3. The defendant agrees to plead guilty to Count 1 and to make factual admissions of guilt in open court. The defendant further agrees to waive any right the defendant may have to subsequently withdraw the guilty plea pursuant to Rule 11(d). The defendant also promises to refrain from taking any action inconsistent with the defendant's acceptance of responsibility for the offense to which the defendant is pleading guilty.

4. The defendant understands that the parties have no agreement regarding any sentence recommendation that the government may make, or any recommendations the government may make regarding the calculation of the defendant's advisory Guidelines range.

5. The defendant understands that the defendant will be allowed to withdraw the guilty plea in the event that the Court does not accept any or all of the provisions set forth pursuant to Rule 11(c)(1)(A).

6. The defendant agrees not to commit any other federal, state, or local offense while awaiting sentencing, regardless of whether that offense is charged or chargeable. The defendant agrees to provide truthful information to Probation and to the Court in all presentence and sentencing proceedings.

7. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of the Court. The defendant acknowledges that the full fine and restitution amounts shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately

and is placed in custody or under the supervision of Probation at any time, the defendant agrees that the United States Bureau of Prisons and Probation will have the authority to establish payment schedules to ensure payment of the fine and restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off from federal payments, execution on non-exempt property, and any other means the government deems appropriate. The defendant also agrees that the defendant may be contacted by government officials regarding the collection of any financial obligation imposed by the Court without notifying the defendant's attorney and outside the presence of the defendant's attorney.

8. To facilitate the collection of financial obligations imposed in this case, the defendant agrees to disclose fully 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 third party. Further, the defendant will, if requested by the government, promptly submit a completed financial statement to the Office of the United States Attorney for the Middle District of Alabama in a form the government provides and as the government directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful. The defendant expressly authorizes the government to obtain a report on the defendant's credit in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

9. The defendant certifies that the defendant has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by this agreement or that may be imposed upon the defendant by the Court. In addition, the defendant promises that the defendant will make no such transfers in the future.

10. The defendant agrees to pay the $100 assessment fee on the date of sentencing.

11. The defendant agrees to waive and hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, but not limited to, any records that may be sought under the Freedom of Information Act, see 5 U.S.C. § 552, or the Privacy Act of 1974, see 5 U.S.C. § 552a.

V. FACTUAL BASIS

12. The defendant admits the allegations charged in the Indictment and understands that the nature of the charges to which the plea is offered involves proof as to Count 1. Specifically, the defendant admits the following to be true and correct:

a. In or about 2010, Garrott opened a federal income tax return preparation business. The business was located on East South Boulevard in Montgomery, Alabama. At this business, Garrott prepared federal income tax returns for others. Garrott generally did not accept payment at the time of service. In most cases, Garrott's customers paid Garrott for doing so by assigning to Garrott a percentage of whatever tax refunds the customers received. Accordingly, whenever the Internal Revenue Service (IRS) issued a tax refund to one of Garrott's clients, a portion of that refund would come to Garrott without ever going to the client. Garrott was the only employee of her business who electronically filed tax returns.

b. On or about April 1, 2014, Garrott, from her Montgomery office, electronically transmitted to the IRS a 2013 federal income for one of her clients, D.B. Garrott had prepared the return. The return claimed that D.B. was entitled to claim $23,751.00 in losses from a sole proprietorship business. As Garrott then knew, D.B. was not actually entitled to claim any losses from a sole proprietorship business for calendar year 2013. The IRS subsequently paid

a refund to D.B. The IRS would not have issued as large a refund had Garrott not included the false statement regarding losses from a sole proprietorship business.

c. Garrott acted with the intent to do something she knew the law forbids.

VI. THE DEFENDANT'S WAIVER OF APPEAL AND COLLATERAL ATTACK

13. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the conviction or sentence. The defendant further expressly waives the right to attack the conviction or sentence in any post-conviction proceeding, including proceedings pursuant to 28 U.S.C. § 2255. Exempt from this waiver is the right to appeal or collaterally attack the conviction or sentence on the grounds of ineffective assistance of counsel or prosecutorial misconduct.

14. In return for the above waiver by the defendant, the government does not waive its right to appeal any matter related to this case, as set forth at 18 U.S.C. § 3742(b). However, if the government decides to exercise its right to appeal, the defendant is released from the appeal waiver and may pursue any appeal pursuant to 18 U.S.C. § 3742(a).

VII. BREACH OF THE PLEA AGREEMENT

15. The parties agree that the issue of whether either party has breached this agreement at any time is one that will be resolved by the Court by a preponderance of the evidence, except as set forth in paragraph 17. The parties agree that, should either party obtain information causing the party to develop a good faith belief that the other party has breached this agreement, then the party will promptly file a written motion—or make an oral motion if doing so would be more expedient—asking that the Court declare the other party to be in breach of the plea agreement.

16. The parties agree that, a breach of the plea agreement by the defendant would include, but not be limited to: (1) failing to fulfill each of the defendant's obligations under this plea agreement; (2) committing new criminal conduct; or (3) seeking to withdraw the guilty plea or otherwise engaging in conduct inconsistent with an acceptance of responsibility. Should the Court find the defendant to have breached this agreement: (1) the government will be free from its obligations under this agreement; (2) the defendant will not be permitted to withdraw the guilty plea; (3) the defendant's obligations and waivers under this agreement will remain in full force and effect; (4) the defendant will be subject to prosecution for other crimes; and (5) the government will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding, all statements by the defendant and any information or materials provided by the defendant, including statements made during the plea hearing and all statements made by the defendant pursuant to proffer letters.

17. The parties agree that, in the event that the defendant breaches this agreement by committing new criminal conduct, the government will be required to only establish probable cause to believe that the defendant committed a new criminal offense for the Court to find the defendant in breach of the plea agreement.

18. The parties agree that, should the Court find the government in breach of this plea agreement, the defendant may cancel this agreement and thus be released from the appellate and collateral attack waivers. The parties further agree that a breach of the plea agreement by the government will not automatically entitle the defendant to withdraw the guilty plea and, if the defendant should seek to withdraw the guilty plea on the basis of such a breach, then the defendant will be required to file a motion pursuant to Rule 11(d).

VIII. THE DEFENDANT'S ACKNOWLEDGEMENTS

19. The defendant understands that the Court is neither a party to nor bound by this agreement. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the Court will determine the advisory Guidelines range and the sentence. The defendant acknowledges that the defendant and the defendant's attorney have discussed the advisory Guidelines and the statutory sentencing factors set forth at 18 U.S.C. § 3553(a) and the defendant understands how those provisions may apply in this case. The defendant further understands that the defendant will have no right to withdraw a guilty plea on the basis that the Court calculates an advisory Guidelines range that differs from the range projected by the defense attorney or the government.

20. The defendant acknowledges that the defendant authorized and consented to the negotiations between the government and the attorney for the defendant that led to this agreement.

21. The defendant understands that: (1) in pleading guilty, the defendant may be required to make statements under oath; and (2) the government has a right to use against the defendant, in a prosecution for perjury or for making a false statement, any statement that the defendant makes. However, as the defendant understands, the government may not use as evidence against the defendant in any future proceeding involving the charges alleged in the Indictment or related offenses, the defendant's guilty plea if the Court permits the defendant to withdraw that guilty plea.

22. The defendant understands that if the defendant pleads guilty pursuant to this agreement and the Court accepts that guilty plea, the defendant will waive certain rights, namely: (1) the right to plead not guilty or to persist in a plea of not guilty; (2) the right to a jury trial;

(3) the right to be represented by counsel—and if necessary to have the Court appoint counsel—at trial and at every other stage of the proceeding; and (4) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

23. The defendant understands: (1) the nature of each charge to which the defendant is pleading guilty; (2) the maximum and minimum penalties associated with each charge to which the defendant is pleading guilty, including imprisonment, fine, and a term of supervised release; (3) any applicable mandatory minimum penalty associated with a charge to which the defendant is pleading guilty; (4) any applicable forfeiture provision applicable to a charge to which the defendant is pleading guilty; (5) the Court's authority to order restitution; and (6) the Court's obligation to impose a special assessment.

24. The defendant confirms that the entirety of any agreement between the defendant and the government is as set forth in this agreement and any addendum to this agreement and that the government has not made any promises to the defendant other than those contained in this agreement and any addendum to this agreement. This agreement consists of 11 pages and 29 paragraphs and an addendum.

25. The defendant confirms that counsel has competently and effectively represented the defendant throughout the proceedings leading to the entry of a guilty plea. The defendant is satisfied with such representation.

26. The defendant enters this plea agreement and pleads guilty freely and voluntarily. That is, the defendant acts without being influenced by any threats, force, intimidation, or coercion of any kind.

27. The defendant understands that this agreement binds only the Office of the United States Attorney for the Middle District of Alabama and that the agreement does not bind any other component of the United States Department of Justice, nor does it bind any state or local prosecuting authority.

IX. THE ATTORNEYS' ACKNOWLEDGEMENTS

28. The attorneys for the government and for the defendant acknowledge that this plea agreement contains the entirety of any agreement between the parties and that the parties reached this plea agreement in accordance with the procedure set forth at Rule 11.

29. The attorney for the defendant confirms that the attorney for the defendant advised the defendant of: (1) the nature of the charges to which the defendant is pleading guilty; (2) the penalties associated with those charges; (3) the rights that the defendant is waiving by pleading guilty; and (4) the possibility that statements made by the defendant under oath during a plea hearing may be used against the defendant in a subsequent prosecution for perjury or for making a false statement.

This 26th day of July, 2018.

Respectfully submitted,

LOUIS V. FRANKLIN, SR.
UNITED STATES ATTORNEY

Verne H. Speirs
Criminal Chief

Jonathan S. Ross
Assistant United States Attorney

LaQuanda Gilmore Garrott
Defendant

Cecilia Vaca
Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

UNITED STATES OF AMERICA,

vs. CASE NO.: 2:17cr487-WKW

LAQUANDA GILMORE GARROTT,

Defendant.

* * * * * * * * * * *

SENTENCING PROCEEDINGS (NOT HELD)

* * * * * * * * * * *

BEFORE THE HONORABLE W. KEITH WATKINS, UNITED STATES DISTRICT JUDGE, at Montgomery, Alabama, on Wednesday, January 16, 2019, commencing at 2:41 p.m.

APPEARANCES:

FOR THE GOVERNMENT: Mr. Jonathan S. Ross
Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
131 Clayton Street
Montgomery, Alabama 36104

FOR THE DEFENDANT: Ms. Cecilia Vaca
Assistant Federal Defender
FEDERAL DEFENDERS
MIDDLE DISTRICT OF ALABAMA
817 South Court Street
Montgomery, Alabama 36104

Proceedings reported stenographically;
transcript produced by computer.

* * * * * * * * * * *

(The following proceedings were heard before the Honorable W. Keith Watkins, United States District Judge, at Montgomery, Alabama, on Wednesday, January 16, 2019, commencing at 2:41 p.m.:)

THE COURT: All right. The next case is United States versus LaQuanda Gilmore Garrott, 17cr487.

Let's take appearance for the government first.

MR. ROSS: Jonathan Ross on behalf of the United States.

THE COURT: Good afternoon.

And for the defendant?

MS. VACA: Yes, Your Honor, Cecilia Vaca. I'm appearing for LaQuanda Garrott.

THE COURT: Good afternoon, Ms. Vaca.

And good afternoon, Ms. Garrott.

I filed a notice in this case about the plea agreement. And as the parties know -- or the lawyers know, it's my practice, when I reject a plea agreement or a plea agreement provision, that I give the parties an opportunity for a recess to consider their options. And I'm going to do that, but today there's another reason I want to do that. And that is that new information has come in that's not -- that was not in the presentence report and I haven't had a chance to evaluate it. I'm not sure, because I don't know the exact nature of it, whether it's going to be included in the report as an amendment

or as an addendum or not at all. It may not be relevant.

So we are facing, per charge -- or at least per the charge of conviction, if I accepted the plea agreement, a statutory maximum of 36 months. The reason I don't accept and will not accept that plea agreement at the moment -- I might sentence within that; I just don't -- I won't be bound to it -- is because of the extensive criminal history, over 11 years, of -- well, many years, with 79 bad check cases over the last 11 years and other offenses and I think some more recent ones I didn't know about.

So for that reason, Ms. Garrott, I am rejecting the plea agreement at this time in your case. And the provision I'm particularly rejecting is the dismissal of all the charges except for the one count.

I'm going to continue the case. And I would ask counsel for Ms. Garrott to consult with the government and let me know how you wish to proceed within the next two weeks, and then I will reset the matter for a hearing at that time.

MS. VACA: Yes, Your Honor.

THE COURT: Okay?

MS. VACA: Yes. And so just for clarification, this information that you're saying -- this new information coming forward, will that be made available to me?

THE COURT: It will be. It will be an addendum or a modification, if it's relevant. It may not -- it may be totally

irrelevant or it may have been covered somewhere else, but I'll instruct the probation officer to be open with you about it. If it doesn't appear as an addendum or as a modified agreement -- I mean -- I'm sorry -- a modified PSR, then you can ask her. Call her and she'll tell you what it was about.

MS. VACA: Understood. Thank you.

THE COURT: All right?

MS. VACA: Yes.

(Off-the-record discussion)

THE COURT: The case will be reset for February 21st at what time?

THE CLERK: Two o'clock.

THE COURT: At two o'clock. If that's not appropriate for either one of you, just let me know.

MS. VACA: Yes, Your Honor.

THE COURT: We'll cooperate with you. Okay?

MS. VACA: Thank you, Your Honor.

THE COURT: We're adjourned in this case until that time.

(Proceedings concluded at is 2:46 p.m.)

* * * * * * * * * * *

COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

This 19th day of September, 2019.

/s/ Risa L. Entrekin
Registered Diplomate Reporter
Certified Realtime Reporter
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NO. 2:17-CR-487-WKW
	)	(WO)
LAQUANDA GILMORE GARROTT	)	

MEMORANDUM OPINION AND ORDER

This is a case where the time does not fit the crime; or, more specifically, the offender. LaQuanda Gilmore Garrott was charged in a November 1, 2017 indictment with ten counts of aiding and assisting in the filing of false federal income tax returns in violation of 26 U.S.C. § 7206(2). Each count carries a statutory maximum sentence of 3 years' imprisonment and a $100,000 fine. *See* 26 U.S.C. § 7206. Per a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(A), Garrott pleaded guilty to only *one* of those counts. (Doc. # 28.) The government promised to move to dismiss the other nine counts at sentencing.

When it came time for sentencing, it became clear that this plea agreement would result in an unreasonable sentence. The presentence report revealed Garrott's extensive criminal history, including no less than eighty-seven previous convictions, detailed below. With a total offense level of 22 and a criminal history category of III, Garrott's guidelines range would have been 51 to 63 months, without an acceptance-of-responsibility reduction. But because she pleaded guilty

to just one count, the plea agreement limits Garrott's sentence to no more than the statutory maximum of 36 months' imprisonment.

This court has a duty to "impose a sentence sufficient, but not greater than necessary, to comply" with the statutory purposes of sentencing. 18 U.S.C. § 3553(a). These purposes include the need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," *see id.* § 3553(a)(2)(A), "to afford adequate deterrence to criminal conduct," *see id.* § 3553(a)(2)(B), and "to protect the public from further crimes" of Garrott, *see id.* § 3553(a)(2)(C). In evaluating whether the sentence furthers these purposes, the court must consider "the nature and circumstances of the offense and the history and characteristics" of Garrott. *See id.* § 3553(a)(1).

Considering Congress's sentencing mandate and the history and characteristics of Garrott, the court is convinced that a sentence of 36 months would not merely be unreasonable but would be outright *irrational*. The presentence report showed that Garrott has *seventy-nine* convictions for writing bad checks, four for theft, one for reckless endangerment, one for domestic violence and harassment, one for giving a false name to law enforcement, and one for driving with a revoked license and using a license plate to conceal one's identity. So far, however, Garrott has managed to serve, by the court's estimation,

only 13 days' custody on those prior convictions, not counting 30 days served on a probation revocation. Fourteen of Garrott's custodial sentences were suspended. Garrott was ordered to pay restitution at least twelve times, and still owes at least $6,680.71 in unpaid restitution. Additionally, the court calculates that Garrott has been in the criminal justice system — by serving probation, by being subject to an unpaid restitution order, or, for most of the time, *both* — uninterrupted, from September 23, 2003, to the present.[1] The sheer volume of criminal conduct, as well as its nature — rife with falsity and fraud — demonstrates the impropriety of a 36-month sentence.

More than criminal history is relevant here. Garrott's relevant conduct, according to the presentence report, is much more serious than the ten pending charges suggest. Garrott submitted returns under three different electronic filing identification numbers (EFIN), filed approximately 100 false tax returns — totaling $674,372 in fraudulent refunds — which were all paid out by the IRS.

Put simply, 36 months' imprisonment would thwart the purposes of § 3553(a). With the guidelines in play, Garrott's guidelines range would be as high as 51 to 63 months, depending on whether she receives an acceptance-of-responsibility reduction. Such a properly calculated guidelines sentence may be presumed reasonable on appeal. *See Rita v. United States*, 551 U.S. 338, 347

[1] An analysis of Garrott's criminal history is included below as the court's Exhibit A.

(2007). And were all ten counts in play, Garrott would potentially be facing a 30-year maximum sentence.

If Garrott wishes to withdraw her plea, the court will set a date for the next Montgomery trial term. The court expresses no view on either the weight or the nature of the evidence against Garrott, *see United States v. Diaz*, 138 F.3d 1359, 1363 (11th Cir. 1998), *abrogated on other grounds by United States v. Davila*, 569 U.S. 597 (2013), or what sentence Garrott would receive if she were found guilty on some or all of the ten counts, *see United States v. Bruce*, 976 F.2d 552, 555–58 (9th Cir. 1992), *abrogated on other grounds by United States v. Davila*, 569 U.S. 597 (2013). But it is not inappropriate for the court to express its view that a particular sentence is too lenient: "A decision that a plea bargain will result in the defendant's receiving too light a sentence under the circumstances of the case is a sound reason for a judge's refusing to accept the agreement." *United States v. Bean*, 564 F.2d 700, 704 (5th Cir. 1977).

Finally, Garrott's belated motion for a status conference warrants brief mention. Garrott, through counsel, sought a status conference so the "parties can discuss with the Court its concerns regarding the first plea agreement in order to try to fashion a new plea agreement or decide to go to trial." (Doc. # 63.) Two things should be said in response. First, the court made its view of a 36-month sentence clear at the January 16, 2019 hearing when it brought up Garrott's

extensive criminal history, including seventy-nine bad check convictions. Second, this motion borders on an invitation for the court to engage in plea negotiations, which of course it cannot do. *See* Fed. R. Crim. P. 11(c)(1). The court declines to say what an appropriate sentence is in this case. It will only say that 36 months' imprisonment is *inappropriate*, for the reasons described.

Relatedly, Garrott did not follow the court's instructions in the January 16, 2019 hearing. After rejecting the plea agreement, the court asked Garrott and her counsel to talk to the government and notify the court of her intentions within two weeks. Garrott did not do so. Instead, she filed the motion for status conference less than a week before the rescheduled sentencing. The court needs to know Garrott's intentions so it can determine how to proceed.

Accordingly, it is ORDERED that Garrott is directed to confer with the government and file a written notice with the court **on or before March 6, 2019**, stating whether she still intends to plead guilty or wants to go to trial.[2]

DONE this 20th day of February, 2019.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

[2] Another binding plea agreement — under Rule 11(c)(1)(A) or (c)(1)(C) — after a binding plea agreement has been rejected, would most likely be viewed as a guess as to what the judge is thinking, or bait to catch the best deal. Until there is a sentencing hearing, the court maintains, as it should, an open mind as to what constitutes a reasonable sentence.

EXHIBIT A

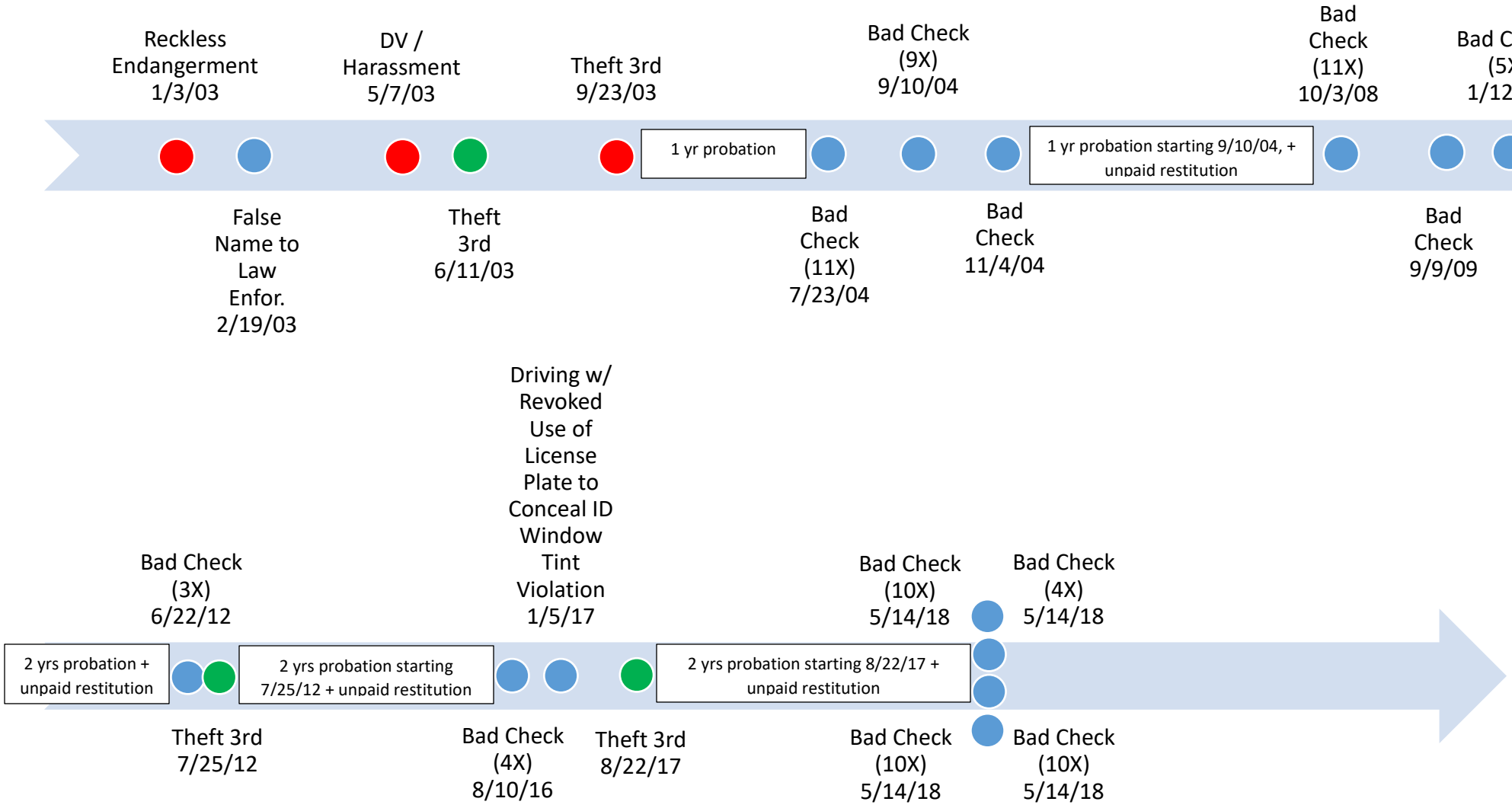
LaQuanda Gilmore Garrott

Criminal History Summary

Conviction	No. of Counts	No. of FTP/FTA	Probation?	Custody?	Probation Revoked?	Fine?	Restitution?
Reckless Endangerment (1/3/03)	1			30 days custody, split, 5 days imposed		$250	
False Name to LE (2/19/03)	1		Informal			Yes	
DV / Harassment (5/7/03)	1			30 days, suspended		Yes	
Theft 3rd (6/11/03)	1					Yes	
Theft 3rd (9/23/03)	1		1 year unsupervised	10 days, suspended		Yes	
Bad Check (7/23/04)	11	4 FTP	1 year	12 months, suspended		Yes	Yes, paid in full 3/21/13
Bad Check (11/4/04)	1	1 FTP				Yes	Yes, paid in full 7/19/2010
Bad Check (9/10/04)	9	2 FTA	1 year	12 months, suspended	Extended 6 months, then removed early		Yes, paid in full 5/3/2013

Bad Check (10/3/08)	11		1 year	1 year, suspended	Extended 6 months		Yes
Bad Check (9/9/09)	1		2 years	1 year, suspended		Yes	
Bad Check (1/12/10)	5	1 FTA	2 years	30 days, suspended			Yes, owes $2,042.76
Bad Check (6/22/12)	3	1 FTP		1 day (time served)		$500	
Theft 3rd (7/25/12)	1		2 years unsupervised	1 year, suspended		Yes	Yes, paid in full 2/11/13
Theft 3rd (8/22/17)	1		3 years	24 months, suspended	Yes, 30 days custody; another revocation hr'g scheduled	Yes	Yes, owes $2,289
Bad Check (8/10/16)	4	1 FTP, 1 FTA	2 years unsupervised	1 year, suspended			Yes, owes $2,348.95
DWR/License Plate/Window Tint (1/5/17)	1		1 year	7 days, time served	Violation affidavit filed, warrant issued	Yes	
Bad Check (5/14/18)	10		10 years unsupervised	1 year, suspended		Yes	Yes
Bad Check (5/14/18)	10		10 years unsupervised	1 year, suspended		Yes	Yes
Bad Check (5/14/18)	10		10 years unsupervised	1 year, suspended		Yes	Yes
Bad Check (5/14/18)	4		10 years unsupervised	1 year, suspended		Yes	Yes

TOTALS	79 bad check 4 theft (shoplifting) 1 reckless endangerment 1 DV / harassment 1 false name to law enforcement 1 driving while revoked, using license plate to conceal identity, window tint violation **87 total convictions in 15 years**	**7 failures to pay** **4 failures to appear**	**56 years probation** (aggregate; some terms effectively run concurrently)	**14 suspended sentences** 13 days on all counts + 30 days on probation revocation = **43 days total time served**	Probation extended twice Revoked once, another revocation hr'g scheduled for same probation Violation affidavit filed and warrant issued in another	$750+ (unclear from the record)	**Currently owes $6,680.71 in unpaid restitution**



KEY:

RED: Crime involved violence

BLUE: Crime involved falsity/fraud

GREEN: Property crimes

The four sets of bad-check convictions on 5/14/18, although sentenced on the same day, are based on separate conduct and appear to arise out of four separate charging instruments.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

UNITED STATES OF AMERICA

vs. CASE NO.: 2:17cr487-WKW

LAQUANDA GILMORE GARROTT,

Defendant.

* * * * * * * * * * * * * * * * *

CHANGE OF PLEA (Not held)

* * * * * * * * * * * * * * * * *

BEFORE THE HONORABLE W. KEITH WATKINS, UNITED STATES DISTRICT JUDGE, at Montgomery, Alabama, on Monday, April 29, 2019, commencing at 9:43 a.m.

APPEARANCES

FOR THE GOVERNMENT: Mr. Jonathan S. Ross
Ms. Alice S. LaCour
Assistant United States Attorneys
OFFICE OF THE UNITED STATES ATTORNEY
131 Clayton Street
Montgomery, Alabama 36104

FOR THE DEFENDANT: Ms. Cecilia Vaca
FEDERAL DEFENDERS
MIDDLE DISTRICT OF ALABAMA
817 South Court Street
Montgomery, Alabama 36104

Proceedings reported stenographically;

transcript produced by computer

(The following proceedings were heard before the Honorable W. Keith Watkins, United States District Judge, at Montgomery, Alabama, on Monday, April 29, 2019, commencing at 9:43 a.m.)

(Call to Order of the Court)

THE COURT: We're here this morning in United States versus LaQuanda Gilmore Garrott, 17cr487. Let's take appearances for the government first.

MR. ROSS: Jonathan Ross and Alice LaCour on behalf of the United States.

THE COURT: Good morning. And for the defendant?

MS. VACA: Good morning, Your Honor. Cecilia Vaca. I'm appearing for Ms. Garrott.

THE COURT: All right. Okay. We're not going to be long this morning.

Under Rule 11(c)(5)(B) of the Federal Rules of Criminal Procedure, the Court is not required to accept the plea agreement. This notice serves to inform the defendant and the government of the Court's intent to reject the modified or new plea agreement.

The plea was withdrawn on March the 18th. A notice of -- or 16th. A notice of intent to change plea was filed on April the 17th or so. This case is set for trial next Tuesday. It's either going to trial, or if y'all want a continuance, you need to agree to it, and I would grant it. Or the third option

is we can strike a jury Tuesday and come back and try the case in a few weeks.

I thought I made it clear in my order that another binding plea agreement would be seen as manipulating the Court. That's the way I see it. I'm not going to participate in it. Rule 11 says I don't participate in any of your plea negotiations. The Court must not -- directly quoting -- "The Court must not participate." I'm boxed in with an 11(c)(1)(A). That's a boxed-in, binding plea.

The second one is a (c)(1)(C) at the bottom end of the guideline range. While I might give that sentence, I'm not going to be bound to give that sentence. So I'm not going to accept the plea agreement -- a plea under those circumstances.

Now, do y'all want to talk? Do you want to go on the record, Mr. Ross? What do you want to do?

MR. ROSS: If you would give Ms. Vaca and I just a moment, Your Honor.

THE COURT: Go ahead.

(Brief pause in the proceedings)

MS. VACA: Your Honor, I think that we're going to -- I'm going to need to meet with Ms. Garrott and determine what she would like to do so I could communicate that with the -- to the government regarding, I guess, whether we're going to go to trial in a couple weeks or what else we could possibly do.

And, Your Honor, I mean, I did want to -- I think I

did, I guess, note in our notice of intent to change plea, Your Honor, there had been a change in circumstances. So I guess that kind of impacted our new plea negotiations in that Ms. Garrott, since the time that we came before the Court the previous time, had been revoked in a state court case, and she's serving a two-year sentence on that case, Your Honor. And now, obviously, she was pleading guilty to two counts, which, obviously, allowed the Court to entertain a sentence that was actually in the guideline range rather than below based on her pleading to one count. So the defendant's currently serving that two-year sentence.

I just wanted to explain, Your Honor, that we weren't trying to -- I don't know -- circumvent what the Court was trying to accomplish, but there had been that change in circumstances for her. Your Honor --

And I think Mr. Ross, rightfully, wants to figure out whether we're going to go to trial. But I need to speak with Ms. Garrott about what she intends to do. I think --

THE COURT: All right. I need to know by Wednesday noon what you-all want to do. And you need to file something. Because, actually, the jury is coming in a week from tomorrow. It's not two weeks. It's a week from tomorrow, if I'm not mistaken.

Is that right, Mr. Ross?

MR. ROSS: Yes, Your Honor. The government will be

ready Tuesday.

THE COURT: Will be ready what?

MR. ROSS: We'll be ready Tuesday.

THE COURT: Oh, this coming Tuesday? All right. You said that really quickly.

MR. ROSS: Sorry.

THE COURT: So the government's position is they're ready to strike a jury Tuesday.

MS. VACA: That's fine, Your Honor. I mean, if that's what -- if Ms. Garrott intends to proceed to trial, we will do so on the scheduled date. But I don't know what other option there is, Your Honor, I guess, other than her pleading guilty to all of the counts in the indictment. So, Your Honor, I will inform the Court as soon as I speak with Ms. Garrott.

THE COURT: I mean, there's always a (B). I don't know -- that's what most courts do is a (B). I'm just saying.

MR. ROSS: Your Honor, the problem is the additional counts, the (A) provision. The (A) provision is binding, and any agreement -- she only pled to three counts. There would have to be an agreement on our part to dismiss the other seven.

THE COURT: I'm not sure I understand what you're saying in conjunction with a (B) plea?

MR. ROSS: Your Honor, there's -- the sentence recommendation in (B), the (A) provision is purely an agreement to dismiss counts. And so if Ms. Garrott were to do anything

other than plead to all ten counts, she would have to do so upon some expectation from the government that it would dismiss the counts that she did not plead to, which would be the binding (A) provision.

THE COURT: I understand that.

MS. VACA: I think that --

THE COURT: That doesn't -- but that doesn't -- whether she pleads to one or ten isn't going to affect the sentence --

MR. ROSS: Yes, Your Honor.

THE COURT: -- is my point. This is all about sentencing. And sentencing is the Court's prerogative, and I don't want to be manipulated into caps, bottoms, whatever, when I've told you once that this is a serious case.

MS. VACA: Your Honor, I'm not trying to get the Court to engage in the plea negotiation here, but I guess I'm trying to figure out if the biggest issue with the plea agreement that we've submitted to the Court was the 11(c)(1)(C) provision.

THE COURT: I can't participate in those discussions. I just -- I'm just telling you that this isn't driven by how many counts that she pleads to. It's driven by what is a reasonable sentence.

MR. ROSS: Yes, Your Honor.

THE COURT: And for the conduct, which is serious, and for her criminal history, which is very serious. History and characteristics.

So if you want to go to trial next Tuesday, which is fine with me, we'll be -- I'm ready to go. If you want to strike the jury next Tuesday and come back in a couple of weeks or three weeks, I don't know when I would fit it in.

How long would the trial take, Mr. Ross?

MR. ROSS: No more than three days, Your Honor.

THE COURT: Do you agree with that, Ms. Vaca?

MS. VACA: Yes, Your Honor.

THE COURT: So that's the answer I want by Wednesday, whether you want to try -- because I need to block -- change some things on my calendar and block it off. And so I want to hear from you by Wednesday noon or by then.

MR. ROSS: The government's position on that would be if we were going to trial, our preference would be to try it on Tuesday.

THE COURT: Are you going to oppose a motion for continuance by the defendant?

MR. ROSS: Yes, Your Honor.

THE COURT: Okay. That makes it pretty clear.

All right. So if there's any change -- if I don't hear from anybody by Wednesday noon, if I don't hear from you Wednesday noon, then we're going to trial next Tuesday.

MR. ROSS: Yes, Your Honor.

MS. VACA: Yes.

THE COURT: Okay? All right. We're adjourned.

(Proceedings concluded at 9:43 a.m.)

* * * * * * * * * * * * * *

COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

This 18th day of September, 2019.

/s/ Patricia G. Starkie
Registered Diplomate Reporter
Certified Realtime Reporter
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NO. 2:17-CR-487-WKW
	)	
LAQUANDA GILMORE GARROTT	)	

MEMORANDUM OPINION AND ORDER

At the close of the government's case-in-chief, Defendant moved for judgment of acquittal on Counts 1 and 2 under Federal Rule of Criminal Procedure 29. The court reserved ruling on the motion until after the verdict. *See* Fed. R. Crim. P. 29(b). For the reasons below, that motion will be granted.

A Rule 29 motion for judgment of acquittal "is a direct challenge to the sufficiency of the evidence presented against the defendant." *United States v. Aibejeris*, 28 F.3d 97, 98 (11th Cir. 1994). "Evidence is sufficient to support a conviction 'if a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt.'" *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009) (quoting *United States v. Calhoon*, 97 F.3d 518, 523 (11th Cir. 1996)). The court "view[s] the evidence in the light most favorable to the government and resolve[s] all reasonable inferences and credibility evaluations in favor of the jury's verdict." *United States v. Robertson*, 493 F.3d 1322, 1329 (11th

Cir. 2007) (quoting *United States v. Tinoco*, 304 F.3d 1088, 1122 (11th Cir. 2002)).

"The evidence need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." *Id.* (quoting *Tinoco*, 304 F.3d at 1122). "The test for sufficiency of evidence is identical regardless of whether the evidence is direct or circumstantial, and no distinction is to be made between the weight given to either direct or circumstantial evidence." *United States v. Mieres-Borges*, 919 F.2d 652, 656–57 (11th Cir. 1990) (quotation omitted). When "the government seeks to meet its burden of proof on the basis of circumstantial evidence, however, it must rely on *reasonable* inferences in order to establish a prima facie case." *Id.* (quoting *United States v. Villegas*, 911 F.2d 623, 628 (11th Cir. 1990)) (emphasis in original).

At bottom, the court must uphold the conviction "if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Gomez-Castro*, 605 F.3d 1245, 1248 (11th Cir. 2010) (emphasis in original).

A person is guilty of aiding and assisting in the filing of false income tax returns if she

> [w]illfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity

> or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document.

26 U.S.C. § 7206(2). As the court instructed the jury, the government must prove beyond a reasonable doubt that Defendant: (1) helped present a false tax return; (2) knew the return was false; (3) the false statement(s) were material — that is, they related to a matter of significance; and (4) acted willfully — that is, with the intent to do something the law forbids. It is proof of Defendant's knowledge of the falsity of the returns charged in Counts 1 and 2 that is lacking.

Counts 1 and 2 charge Defendant with helping Demarvin Brown file false income tax returns for 2013 and 2014. In 2013, Brown claimed income of $44,349 and Schedule C losses of $23,751 for a lawn care business, resulting in a claimed refund of $8,707 (the actual refund owed to Brown was $605). (Gov't Exs. 1A, 62.) In 2014, Brown claimed income of $39,139 and Schedule C losses of $20,646 for a lawn care business, resulting in a claimed refund of $7,947 (the actual refund owed to Brown was $1,519). (Gov't Exs. 2A, 62.) Defendant collected $460 and $550 in fees from filing Brown's returns in 2013 and 2014, respectively. (Gov't Ex. 62.)

Defendant's client file for Brown was also admitted into evidence. (Gov't Ex. 36.) That file contained no materials supporting Brown's 2013 and 2014 claims for Schedule C losses for a lawn care business. IRS Special Agent Christopher Forte confirmed that Defendant: (1) filed Brown's 2013 and 2014

returns; and (2) turned over Brown's client files in response to a subpoena. He also testified that there were no materials in those files that would support a claim for Schedule C losses for a lawn care business.

No rational juror could find beyond a reasonable doubt that Defendant had knowledge of the falsity of Brown's 2013 and 2014 returns. Agent Forte did not testify as to the completeness of those client files — that is, he could not say what documentation Brown gave Defendant to support the claims for Schedule C losses. And unlike the false returns charged in Counts 3 through 10, the taxpayer (Brown) did not testify as to what he told (or did not tell) Defendant when he asked her to prepare his taxes. For aught that appears in the record, Brown may have had a legitimate lawn care business with legitimate receipts. There was no proof either way. In short, the jury had no more than a client file, with no evidence of its completeness, and business losses that looked implausible based on the taxpayer's income. That is not enough evidence to sustain Defendant's convictions on Counts 1 and 2.

It is therefore ORDERED that Defendant's motion for judgment of acquittal under Federal Rule of Criminal Procedure 29 is GRANTED as to Counts 1 and 2 of the indictment. The jury's guilty verdict stands as to Counts 3 through 10.

DONE this 28th day of May, 2019.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

United States Constitution

Article II, § 1, cl. 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

United States Constitution

Article II, § 2, cl. 1

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

United States Constitution

Article II, § 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

United States Constitution

Article III, § 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

United States Constitution

Article III, § 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Federal Rules of Criminal Procedure

Rule 11. Pleas

(a) Entering a Plea.

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) **Rejecting a Plea Agreement.** If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) **Withdrawing a Guilty or Nolo Contendere Plea.** A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) **Finality of a Guilty or Nolo Contendere Plea.** After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

Federal Rules of Criminal Procedure

Rule 48. Dismissal

(a) By the Government. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

(b) By the Court. The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

(1) presenting a charge to a grand jury;

(2) filing an information against a defendant; or

(3) bringing a defendant to trial.