

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON**

CRIMINAL ACTION NO. 5:22-CR-94-DCR

UNITED STATES OF AMERICA

PLAINTIFF

V.

PLEA AGREEMENT

CHARLES E. JOHNSON, JR.

DEFENDANT

* * * * *

1. Pursuant to Federal Rule of Criminal Procedure 11(c), the Defendant will enter a guilty plea to Counts 1, 2, and 5 of the Superseding Indictment, charging violations of 18 U.S.C. § 1001(a), false statements (Counts 1 and 2), and 18 U.S.C. § 3146, failure to appear (Count 5). Pursuant to Rule 11(c)(1)(A), the United States will move at sentencing to dismiss Counts 3 and 4.

2. The essential elements of 18 U.S.C. § 1001(a) are:

- (a) The Defendant made a statement;
- (b) The statement was false or fictitious;
- (c) The statement was material;
- (d) The statement pertained to a matter within the jurisdiction of the judicial branch of the United States government; and.
- (e) The Defendant acted knowingly and willfully.

3. The essential elements of 18 U.S.C. § 3146 are:

- (a) The Defendant was released pursuant to the Bail Reform Act of 1966;

- (b) The Defendant was required to appear in court;
- (c) The Defendant was aware of this required appearance;
- (d) The Defendant failed to appear as required; and
- (e) The Defendant was willful in his failure to appear.

4. As to Counts 1, 2, and 5, the United States could prove the following facts that establish the essential elements of the offense beyond a reasonable doubt, and the Defendant admits these facts:

(a) At all relevant times, the Defendant was serving a term of supervised release, and was supervised by the United States Probation Office for the Eastern District of Kentucky, part of the judicial branch of the United States government. As a condition of his supervised release, the Defendant was required to give the assigned Probation Officer access to any requested financial information, and periodically submitted, under penalty of perjury, sworn financial disclosure statements referred to as Probation Forms 48. The Defendant knew that he was obligated to disclose to the Probation Officer a full and accurate description of his financial resources on the Probation Form 48, including all assets he owned or controlled as of the date of the disclosure. The financial information provided therein was material to the United States Probation Office because it was used to determine the resources available to the Defendant to pay restitution to victims of his prior criminal offense.

(b) On or about April 14, 2021, and again on October 26, 2021, the Defendant submitted to Probation Officer J.R. sworn Probation Forms 48 that he signed under penalty of perjury and that he knew contained materially false information. Specifically, the Defendant intentionally failed to disclose his control over and personal use of Company A's bank account at JP Morgan Chase ending in *8705. The Defendant had access to Company A's bank account through a debit card issued in the name of his friend, G.D., blank checks that had been pre-signed by G.D., and electronic access permitting the transfer of funds. Among other things, the Defendant used that access and control to pay off more than \$60,000 in credit card debt of his own, his ex-partner's, and his then-girlfriend's; to issue numerous checks and payroll payments to his then-girlfriend, who did not work for Company A, totaling more than \$40,000; to make \$27,000 in payments on a loan he owed to C.C.; to conduct cash-back transactions at area grocery stores totaling more than

\$14,000; and to pay for a variety of other expenses personal to the Defendant. In his sworn financial disclosures, the Defendant did not disclose this control of Company A's account to his Probation Officer, and instead reported receiving only a net monthly salary from Company A of approximately \$3,500.

(c) The Defendant was indicted in August 2022 in the instant case. On or about August 17, 2022, the Defendant was released pending trial pursuant to the Bail Reform Act of 1966, 18 U.S.C. §§ 3141 *et seq.* The Order setting the conditions of his pre-trial release mandated that the Defendant appear for all hearings, and that his travel be restricted to the Eastern District of Kentucky. After receiving evidence that the Defendant traveled outside the Eastern District of Kentucky without authorization, the United States moved to revoke his pre-trial release, and the Court scheduled a bond revocation hearing for April 14, 2023 in Lexington, Kentucky. The Defendant was required to attend this hearing. The Defendant knew about the April 14, 2023 hearing and knew that his attendance was required. Nonetheless, the Defendant intentionally failed to appear for the hearing, traveling instead to Las Vegas, Nevada.

5. The statutory punishment for Counts 1 and 2 is imprisonment for not more than 5 years, a fine of not more than \$250,000, and a term of supervised release of not more than 3 years. The statutory punishment for Count 5 is imprisonment for not more than 5 years, consecutive to the sentence of imprisonment for any other offense, a fine of not more than \$250,000, and a term of supervised release of not more than 3 years. A mandatory special assessment of \$100 per count applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

6. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend the following sentencing guidelines calculations, and they may object to or argue in favor of other calculations. This recommendation does not bind the Court.

(a) United States Sentencing Guidelines (U.S.S.G.), November 1, 2021, manual, will determine the Defendant's guidelines range.

(b) Pursuant to U.S.S.G. § 1B1.3, the Defendant's relevant conduct includes the conduct described in Paragraph 4, above, and in all provided discovery materials.

(c) Pursuant to U.S.S.G. § 2B1.1(a)(2), the base offense level for Counts 1 and 2 is 6.

(d) Pursuant to U.S.S.G. § 2J1.6(a)(2), the base offense level for Count 5 is 6.

(e) Pursuant to U.S.S.G. § 2J1.6(b)(2)(B), increase the offense level for Count 5 by 6 levels because the underlying offense is punishable by 5 years or more.

(f) Pursuant to U.S.S.G. §§ 3D1.2 and 3D1.3, Counts 1, 2, and 5 shall be grouped together as closely related Counts, and the offense level applicable to the Group is the offense level for Count 5.

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

The parties have agreed to disagree on the application of the sophisticated means enhancement in U.S.S.G. § 2B1.1(b)(10). The parties have further agreed to disagree on the application of the obstructive conduct enhancement in U.S.S.G. § 3C1.1.

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

8. The Defendant will not file a motion for a decrease in the offense level based on a mitigating role pursuant to U.S.S.G. § 3B1.2 or a departure motion pursuant to U.S.S.G. Chapter 5, Parts H or K. The Defendant also will not seek a sentence below the advisory sentencing guidelines range as determined by the Court at sentencing.

9. The Defendant waives the right to appeal the guilty plea, conviction, and sentence. Except for claims of ineffective assistance of counsel, the Defendant also waives the right to attack collaterally the guilty plea, conviction, and sentence.

10. The Defendant agrees to cooperate fully with the United States Attorney's Office by making a full and complete financial disclosure. Within 30 days of pleading guilty, the Defendant agrees to complete and sign a financial disclosure statement or affidavit disclosing all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. The Defendant will submit to an examination, which may be taken under oath and may include a polygraph examination. The Defendant will not encumber, transfer, or dispose of any monies, property, or assets under the Defendant's custody or control without written approval from the United States Attorney's Office. If the Defendant is ever incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments. If the Defendant fails to comply with any of the provisions of this paragraph, the United States, in its discretion, may refrain from moving the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may argue that the Defendant should not receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a).

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

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

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

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

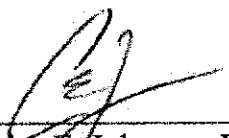
15. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

CARLTON S. SHIER, IV
UNITED STATES ATTORNEY


Date: 7/10/23

By: 
Paul McCaffrey
Assistant United States Attorney

Date: 6/30/23


Charles E. Johnson, Jr.
Defendant

Date: 7/7/23


Yale Galanter
Attorney for Defendant