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8 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

9 UNITED STATES OF AMERICA,)
10 Plaintiff,)
11 vs.)
12 TERRENCE BOLES, II,)
13 Defendant.)
14

Case No. CR 04-132-S-EJL
RULE 11 PLEA AGREEMENT

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.	GUILTY PLEA	2
	A. <u>Summary of Terms</u>	2
	B. <u>Acceptance</u>	2
II.	WAIVER OF CONSTITUTIONAL RIGHTS	2
III.	NATURE OF THE CHARGES	3
	A. <u>Elements of the Crime</u>	3
	B. <u>Factual Basis</u>	3
IV.	SENTENCING FACTORS	4
	A. <u>Maximum Penalties</u>	4
	B. <u>Supervised Release</u>	4
	D. <u>Fines and Costs</u>	5
	E. <u>Special Assessment</u>	5
V.	UNITED STATES SENTENCING GUIDELINES	5
	A. <u>Application of Sentencing Guidelines</u>	5
	B. <u>Sentencing Guidelines Recommendations and Requests</u>	5
	1. <u>Acceptance of Responsibility</u>	5
	2. <u>Downward Departure Request by Defendant</u>	6
VI.	COOPERATION	6
	A. <u>Truthful Information and Assistance</u>	6
	B. <u>Use of Information Against Defendant</u>	7
	C. <u>Substantial Assistance Determination</u>	8
	D. <u>Defendant's Assumption of Risk</u>	8
	E. <u>Benefits for Cooperation</u>	9
VII.	WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS	9
VIII.	PROVIDING INFORMATION FOR THE PRESENTENCE REPORT	10
IX.	NO RIGHT TO WITHDRAW PLEA	10
X.	CONSEQUENCES OF VIOLATING AGREEMENT	10
	A. <u>Government's Options</u>	10
	B. <u>Defendant's Waiver of Rights</u>	11
XI.	MISCELLANEOUS	11
	A. <u>No Other Terms</u>	11
	B. <u>Plea Agreement Acceptance Deadline</u>	12
XII.	UNITED STATES' APPROVAL	12
XIII.	ACCEPTANCE BY DEFENDANT AND COUNSEL	13

1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree that
4 the defendant will plead guilty to Counts One and Three of the Indictment. The defendant
5 acknowledges that the plea is voluntary and did not result from force, threats, or promises, other
6 than any promise made in this Plea Agreement. More specifically, the parties agree as follows:

7 Count One charges the defendant with Possession of an Unregistered Firearm, in violation
8 of Title 26, United States Code, Section 5861(d).

9 Count Three charges the defendant with Possession of Methamphetamine with Intent to
10 Distribute, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

11 **B. Acceptance.** Upon acceptance of the defendant's guilty plea(s), and the
12 defendant's full compliance with the other terms of this Agreement, including the terms of
13 cooperation set forth below, the Government, under Rule 11(c)(1)(B) of the Federal Rules of
14 Criminal Procedure, agrees to recommend a sentence at the low-end of the applicable sentencing
15 guideline range and agrees that it will dismiss, under Rule 11(c)(1)(A), Counts Two, Four, and
16 Five of the Indictment. As consideration for the defendant's cooperation in this case, the parties
17 agree, pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, that the
18 defendant's offense conduct charged in Count Five of the Indictment, and dismissed pursuant to
19 this Agreement, shall not be considered as relevant conduct under §1B1.3 of the Sentencing
20 Guidelines in determining the defendant's offense level under the Sentencing Guidelines.

21 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

22 Defendant understands that he will be placed under oath at the plea hearing and that the
23 government, in a prosecution for perjury or false statement, has the right to use against the
24 defendant any statement that the defendant gives under oath. Moreover, the defendant understands
25 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense(s) charged
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27 _____
28 ¹ The word "Government" in this Agreement refers to the United States Attorney for the
District of Idaho.

1 against the defendant and to persist in that plea; 2) the right to a trial by jury; 3) the right to be
2 represented by counsel, and if necessary, to have the court appoint counsel at trial and at every
3 stage of the proceeding; and 4) the rights, at trial, to confront and cross-examine adverse
4 witnesses, to be protected from compelled self-incrimination, to testify, to present evidence and to
5 compel the attendance of witnesses. The defendant understands that by pleading guilty he waives
6 (gives up) all of the rights set forth above. The defendant fully understands that by entering a plea
7 of guilty, if that plea is accepted by the District Court, there will be no trial and defendant will
8 have waived (given up) these trial rights.

9 **III. NATURE OF THE CHARGES**

10 **A. Elements of the Crime.** The elements of the crime of Possession of an
11 Unregistered Firearm, as charged in Count One, are as follows:

- 12 1. The defendant knowingly possessed a firearm, specifically a weapon made
13 from a shotgun, as modified having a barrel of less than 18 inches.
- 14 2. The firearm was not registered to the defendant in the National Firearms
15 Registration and Transfer Record.

16 The elements of the crime of Possession of Methamphetamine with Intent to Distribute, as
17 charged in Count Three, are as follows:

- 18 1. The defendant knowingly and intentionally possessed methamphetamine.
- 19 2. The defendant possessed it with the intent to deliver it to another person.

20 **B. Factual Basis.** If this matter were to proceed to trial, the Government and the
21 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts
22 accurately represent the defendant's readily provable offense conduct. This factual summary is not
23 intended to detail all relevant conduct, or cover all specific offense characteristics, which will be
24 determined by the Court after its consideration of the Presentence Report.

25 On May 2, 2004, at 8:55 p.m., in the District of Idaho, Nampa City Police Officers stopped
26 a white passenger car driven by the defendant. The defendant gave consent to search the car.
27 Officers recovered a loaded Winchester, Model 1200, 20 gauge shotgun, bearing serial number
28

1 202983, located in plain view partially under the passenger seat. Officers observed that the
2 shotgun was altered in that the butt stock and barrel were both sawed-off and the butt stock was
3 configured into a pistol grip. Inside the car, officers also recovered 7.6 grams of
4 methamphetamine and a digital scale, both located on top of the shotgun.

5 The defendant was advised of his Miranda rights and agreed to speak with officers. He
6 stated he purchased the shotgun approximately one week prior for \$20 from a friend. He stated
7 that the barrel was cut prior to his purchase of the shotgun. He admitted cutting off the butt stock
8 of the shotgun. He also admitted possessing the methamphetamine in the car. He admitted
9 delivering methamphetamine to several persons prior to the traffic stop that evening.

10 ATF agents measured the shotgun and determined the barrel length to be 15 3/4 inches.
11 Agents also searched the National Firearms Registration and Transfer Record, which indicated
12 there were no firearms registered to the defendant.

13 **IV. SENTENCING FACTORS**

14 **A. Maximum Penalties.** A violation of Possession of an Unregistered Firearm, as
15 charged in Count One, is punishable by a term of imprisonment of ten years, a term of supervised
16 release of not more than three years, a maximum fine of \$10,000, and a special assessment of
17 \$100.

18 A violation of Possession of Methamphetamine with Intent to Distribute, as charged in
19 Count Three, is punishable by a term of imprisonment of twenty years, a term of supervised
20 release of at least three years, a maximum fine of \$1,000,000, and a special assessment of \$100.

21 **B. Supervised Release.** Defendant will be sentenced to a term of supervised release,
22 to be served after incarceration, of at least three years. The defendant's term of supervised release
23 will be a specific (i.e., a determinate) term chosen by the Court at sentencing. The combination of
24 prison time and supervised release is permitted, by law, to exceed the maximum term of
25 incarceration allowed under the statute(s) that defendant is pleading guilty to violating. Violation
26 of any condition of supervised release may result in defendant being imprisoned for the entire term
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1 of supervised release or being prosecuted for contempt of court under Title 18, United States
2 Code, Section 401(3).

3 **D. Fines and Costs.** Unless the Court determines that the defendant will not
4 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's
5 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The
6 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised
7 release.

8 **E. Special Assessment.** Defendant will pay a special assessment of \$100 per count, in
9 addition to any fine imposed. This assessment will be paid by defendant before sentence is
10 imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the United
11 States District Court, Clerk's Office, Federal Building and United States Courthouse, 550 W. Fort
12 Street, Fourth Floor, Boise, ID 83724.

13 **V. UNITED STATES SENTENCING GUIDELINES**

14 **A. Application of Sentencing Guidelines.** Defendant understands that defendant will
15 be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet been
16 determined by the District Judge; (2) any estimate of the likely sentence received from any source
17 is a prediction and not a promise; and (3) the District Judge has the final authority to decide what
18 the sentence will be.

19 The defendant also understands that the Court will determine the applicable sentencing
20 factors at sentencing and that the Court's determination will affect the sentence range under the
21 Sentencing Guidelines. While the Court may take the defendant's cooperation and the
22 recommendations of the parties into account in determining the sentence to be imposed, the Court
23 has complete discretion to impose a sentence other than the sentence recommended, including the
24 maximum sentence possible for the crimes to which defendant has pled.

25 **B. Sentencing Guidelines Recommendations and Requests.**

26 **1. Acceptance of Responsibility.** Unless the Government learns of new
27 information to the contrary, defendant will be entitled to a reduction of two levels in the combined
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1 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant
2 clearly accepts responsibility for the offense. The Government will move for an additional one-
3 level reduction in the combined offense level under Section 3E1.1(b) if the following conditions
4 are met: the defendant qualifies for a decrease under Section 3E1.1(a); the offense is level 16 or
5 greater; and the defendant has assisted authorities in the investigation or prosecution of
6 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea
7 of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court
8 to allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant
9 fails to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner
10 inconsistent with acceptance of responsibility, the Government will not make such a
11 recommendation and/or motion or, if one has already been made, it will withdraw the
12 recommendation and/or motion.

13 **2. Downward Departure Request by Defendant.** The defendant will not
14 seek a downward departure without first notifying the Government of defendant's intent to seek a
15 downward departure and defendant's reasons and basis therefor, 21 days before the date set for
16 sentencing.

17 **VI. COOPERATION**

18 **A. Truthful Information and Assistance.** Defendant promises to provide truthful
19 and complete information to the Government and its investigative agencies, including full
20 debriefings and truthful testimony at all proceedings, criminal, civil or administrative, including,
21 but not limited to, grand jury proceedings, trials, and pretrial and post-trial proceedings,
22 concerning defendant's role and the roles of all others involved in the offense or offenses that were
23 part of the same course of conduct or of a common scheme or plan as the offense of conviction. In
24 so doing, the defendant shall neither attempt to protect any person or entity through false
25 information or omission, nor falsely implicate any person. The defendant shall testify truthfully no
26 matter who asks the questions, the prosecutor, judge or defense counsel. It is further understood
27 that the defendant shall be subject to prosecution for perjury and obstruction of justice for any
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1 intentional deviation from the truth. The defendant's duty under the terms of this Agreement is to
2 tell the truth whether or not it bolsters the Government's case against any particular individual.
3 The defendant specifically understands that this Agreement is not contingent upon the conviction
4 of any person or the forfeiture of any property.

5 The defendant agrees to cooperate in good faith, meaning that the defendant will not only
6 respond truthfully and completely to all questions asked, but will also volunteer all information
7 that is reasonably related to the subjects discussed in the debriefings or testimony. In other words,
8 the defendant may not omit facts about crimes, participants, or defendant's involvement, and then
9 claim not to have breached the Agreement because he was not specifically asked questions about
10 those crimes, participants, or involvement. Any actions or statements inconsistent with continued
11 cooperation under this Agreement, including but not limited to, criminal activity, or a statement
12 indicating a refusal to testify, constitutes a breach of this Agreement.

13 Defendant agrees to be available for interviews in preparation of all testimony. If
14 necessary, defendant further agrees to submit, upon request, to government-administered
15 polygraph examinations to verify defendant's full and truthful cooperation.

16 Defendant agrees to identify all property known to defendant, in which defendant or any
17 other person has a legal or equitable interest, that is or was the proceeds of, or acquired with the
18 proceeds of, a drug crime, or that was used in any manner to facilitate a drug crime. Defendant
19 also agrees to identify the extent of any person's or entity's (including defendant's) interest in any
20 such property. The defendant further agrees to assist in the recovery and forfeiture to the United
21 States of any property or property interest which may be forfeitable as the proceeds of criminal
22 activity, or as property which was involved in or facilitated criminal activity, or which is otherwise
23 forfeitable under federal law.

24 **B. Use of Information Against Defendant.** In exchange for defendant's agreement
25 to cooperate with the Government, the Government agrees not to use new information defendant
26 provides (pursuant to this Agreement) about the defendant's own criminal conduct. Such
27 information may be revealed to the Court but may not be used against the defendant in determining
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1 defendant's sentence range, choosing a sentence within the range, or departing from the range.
2 There shall be no such restrictions on the use of information: (1) previously known to law
3 enforcement agencies; (2) revealed to law enforcement agencies by, or discoverable through, an
4 independent source; (3) in a prosecution for perjury, obstruction of justice, or giving a false
5 statement; or (4) in the event there is a breach of this Agreement.

6 **C. Substantial Assistance Determination.** Upon the Government's determination
7 that defendant's cooperation amounts to "substantial assistance" in the investigation of others, the
8 Government will request that the Court depart downward from the applicable sentencing range,
9 pursuant to Section 5K1.1 of the Sentencing Guidelines and/or any mandatory minimum sentence
10 pursuant Title 18, United States Code, Section 3553(e). The Government reserves the right to
11 make the sole determination as to whether and when defendant has provided substantial assistance
12 for purposes of the Government's motion for a downward departure. If, in good faith, the
13 Government cannot conclude that the defendant has provided substantial assistance, the
14 Government will not be obligated to move for a downward departure.

15 The Government's final decision whether to file motions pursuant to Section 5K1.1 and/or
16 Title 18, United States Code, Section 3553(e) will be made after evaluating defendant's
17 cooperation with regards to: (1) the significance and usefulness of the defendant's cooperation, (2)
18 the truthfulness, completeness, and reliability of any information or testimony provided by the
19 defendant, (3) the nature and extent of the defendant's assistance, (4) any injury suffered, or any
20 danger or risk of injury to the defendant or defendant's family resulting from defendant's
21 cooperation, and (5) the timeliness of the defendant's cooperation. The Government's specific
22 recommendation will also be contingent upon its evaluation of all the facts of the case, the
23 sentence that would have been imposed absent an Agreement, and the extent and value of the
24 cooperation provided.

25 **D. Defendant's Assumption of Risk.** The defendant agrees that defendant's
26 cooperation is given freely and voluntarily, with a knowledge of the possible consequences of
27 cooperation with the Government. The defendant agrees that defendant's involvement in this case
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1 has been made known to defendant's attorney and that he has permission from defendant's
2 attorney to enter into such an agreement. The defendant hereby absolves the Government, any of
3 its political subdivisions and any of its employees from any liability associated with this
4 cooperation, and includes defendant's successors, heirs and assigns.

5 **E. Benefits for Cooperation.** As consideration for the defendant's early cooperation
6 with law enforcement, the Government agrees, pursuant to Rule 11(c)(1)(B) of the Federal Rules
7 of Criminal Procedure, that the defendant's offense conduct charged in Count Five of the
8 Indictment, which was dismissed pursuant to this Agreement, shall not be considered as relevant
9 conduct under §1B1.3 of the Sentencing Guidelines in determining his offense level under the
10 Sentencing Guidelines. This recommendation constitutes consideration for the defendant's early
11 cooperation. The defendant understands that the Government will consider the effect of this
12 recommendation on the defendant's offense level in filing any motion for downward departure for
13 substantial assistance.

14 **VII. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

15 The defendant is aware that Title 18, United States Code, Section 3742 affords defendant
16 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the
17 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all
18 appeal rights defendant may have regarding both defendant's conviction and sentence, including
19 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,
20 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect
21 application of the sentencing guidelines to which the defendant filed a proper and timely
22 objection.

23 The defendant is also aware that under certain circumstances a defendant has the right to
24 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to
25 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms
26 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to
27 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any
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1 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal
2 claiming ineffective assistance of counsel based upon facts discovered after the entry of
3 defendant's guilty pleas.

4 The defendant further understands that nothing in this Plea Agreement shall affect the
5 Government's right and/or duty to appeal as set forth in Title 18, United States Code,
6 Section 3742(b).

7 **VIII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT**

8 The defendant agrees to provide all material financial and other information as may be
9 requested by a representative of the United States Probation Office for use in preparing a
10 Presentence Report. Failure to execute releases and/or provide such material information as may
11 be required is a violation of the terms of this Agreement, and will relieve the Government of its
12 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under
13 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the
14 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for
15 withdrawing the plea of guilty.

16 **IX. NO RIGHT TO WITHDRAW PLEA**

17 The defendant understands that the Court is not bound to follow any recommendations or
18 requests made by the parties at the time of sentencing. If the Court decides not to follow any of the
19 parties recommendations or requests, the defendant cannot withdraw from this Plea Agreement or
20 the guilty plea.

21 **X. CONSEQUENCES OF VIOLATING AGREEMENT**

22 **A. Government's Options.** If defendant fails to keep any promise in this Agreement
23 including any promise to cooperate or commits a new crime, the Government is relieved of any
24 obligation not to prosecute defendant on other charges, including any charges dismissed as part of
25 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the
26 Government determines after sentence is imposed under this Agreement that defendant's breach of
27 the Agreement warrants further prosecution, the Government will have the choice between letting
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1 the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such
2 charge(s) may be re-prosecuted. If the Government makes its determination before sentencing, it
3 may withdraw from the Plea Agreement in its entirety.

4 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep
5 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in
6 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed
7 under this Agreement; (2) any right under the Constitution and laws of the United States to be
8 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's
9 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of
10 limitations period for any charge that is brought as a result of defendant's failure to keep this
11 Agreement, and on which the statute of limitations expired after defendant entered into this
12 Agreement.

13 Furthermore, the defendant further understands and agrees that if defendant does not enter
14 a valid and acceptable plea, the Government will move to continue the trial now set. The
15 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be
16 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or
17 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to prepare
18 for trial.

19 **XI. MISCELLANEOUS**

20 **A. No Other Terms.** This Agreement incorporates the complete understanding
21 between the parties, and no other promises have been made by the Government to the defendant or
22 to the attorney for the defendant. This Agreement does not prevent any governmental agency from
23 pursuing civil or administrative actions against defendant or any property. Unless an exception to
24 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or
25 obligate governmental entities other than the United States Attorney's Office for the District of
26 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring
27 the defendant's cooperation and pleas to the attention of other prosecuting authorities.
28

1 **XIII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

2 I have read and carefully reviewed every part of this Plea Agreement with my attorney. I
3 understand the Agreement and its effect upon the potential sentence. Furthermore, I have
4 discussed all of my rights with my attorney and I understand those rights. No other promises or
5 inducements have been made to me, directly or indirectly, by any agent of the Government,
6 including any Assistant United States Attorney, concerning any plea to be entered in this case. In
7 addition, no person has, directly or indirectly, threatened or coerced me to do, or refrain from
8 doing, anything in connection with any aspect of this case, including entering a plea of guilty. I am
9 satisfied with my attorney's advice and representation in this case.

10
11 Terrence L. Boles
12 TERRENCE BOLES, II
Defendant

10/19/04
DATE

13 I have read this Plea Agreement and have discussed the contents of the Agreement with my
14 client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I
15 concur in my client's decision to plead guilty as set forth above.

16
17 S. Richard Rubin
18 S. RICHARD RUBIN
Attorney for the Defendant

10/19/04
DATE

19
20 July 04