

Eastern District of Kentucky
FILED

MAY 12 2017

AT LEXINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

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

CRIMINAL ACTION NO. 17-66-DCR

UNITED STATES OF AMERICA

PLAINTIFF

V.

PLEA AGREEMENT

DAVID BLACK DAUGHERTY

DEFENDANT

* * * * *

1. Pursuant to Federal Rule of Criminal Procedure ("Rule") 11(c), DAVID BLACK DAUGHERTY (hereinafter "the Defendant") will enter a plea of guilty to Counts 1 and 2 of the Information, charging violations of 18 U.S.C. § 201(c)(1)(B), Receiving Illegal Gratuities. Pursuant to Rule 11(c)(1)(A) and this agreement, the United States will move at sentencing to dismiss Counts 1, 3 through 6, and 12 of the Indictment in *United States v. Eric Christopher Conn, et al.*, Lexington Criminal Action No. 16-CR-22, as to the Defendant.

2. The United States and the Defendant agree that the essential elements of Counts 1 and 2 are:

- (a) Other than as provided by law for the proper discharge of his official duty, the defendant, a public official, directly or indirectly received, accepted, or agreed to receive or accept anything of value personally; and
- (b) That the defendant did so for or because of an official act performed or to be performed by him.

3. The Defendant agrees that the United States would prove the facts described in Attachment A enclosed with this Plea Agreement beyond a reasonable doubt at trial. The Defendant further agrees that these facts fairly and accurately describe the Defendant's actions and involvement in the offenses for which he was charged, and to which he is pleading guilty, and establish the essential elements of these offenses beyond a reasonable doubt. The Defendant understands the nature and elements of the crimes to which guilt is admitted and agrees that the factual statement in support of the guilty plea the Defendant has signed is true and will be submitted as evidence in this case. The Defendant further understands that the factual statement in support of the guilty plea the Defendant has signed may be received into evidence in any litigation involving the United States and Defendant. The Defendant hereby waives any defense based on any applicable statutes of limitations and agrees that the Indictment in *United States v. Eric Christopher Conn, et al.*, Lexington Criminal Action No. 16-CR-22, and the Information, are timely for all purposes.

4. The Defendant further understands that a violation of 18 U.S.C. § 201(c)(1)(B) carries a maximum sentence of not more than two years of imprisonment; a term of supervised release of not more than one year; a fine of not more than \$250,000 or not more than the greater of twice the gross gain or twice the gross loss, pursuant to 18 U.S.C. § 3571(d); and forfeiture of property, real and personal, which constitutes or is derived from proceeds traceable to the violation of 18 U.S.C. § 201(c)(1)(B), and any property traceable to such property. In addition, the Defendant agrees to pay a mandatory

special assessment of \$200 and the Defendant will pay this assessment by cashier's check or money order to the U.S. District Court Clerk at the time of the entry of the guilty plea.

5. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant agree upon and recommend the following sentencing guidelines calculations, and they may object to or argue in favor of other calculations. These recommendations do not bind the Court. As to Counts 1 and 2 of the Information, which group together pursuant to §3D1.2(d) of the United States Sentencing Guidelines (U.S.S.G.) such that §3D1.3(b) governs the sentencing guidelines calculation:

- (a) The U.S.S.G., November 1, 2016, manual, will determine the Defendant's guidelines range and U.S.S.G. §2C1.2 is the appropriate guidelines provision for these offenses.
- (b) Pursuant to U.S.S.G. §1B1.3, the Defendant's relevant conduct includes the facts set forth in Attachment A enclosed with this agreement.
- (c) Pursuant to U.S.S.G. §2C1.2(a)(1), the base offense level is **11** because the Defendant was a public official.
- (d) Pursuant to U.S.S.G. §2C1.2(b)(1), increase the offense level by **2** for the Defendant's receiving more than one gratuity.
- (e) Pursuant to U.S.S.G. §2C1.2(b)(2) and §2B1.1(b)(1)(H), increase the offense level by **14** as the value of the gratuities exceeded \$550,000.
- (f) Pursuant to U.S.S.G. §2C1.2(b)(3), increase the offense level by **4** as the offenses involved a public official in a high-level decision-making position.
- (g) 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.

6. Although not binding on the Court, the United States and Defendant agree that the maximum terms of imprisonment as to Counts 1 and 2 should be imposed, and run consecutively to one another. The United States and Defendant further agree that the maximum authorized term of supervised release should be imposed on the Defendant, and that conditions of supervised release including mandatory community service are appropriate in this case.

7. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4, but the Defendant understands, based upon information now available to the government, that the United States expects to take the position at sentencing that the Defendant's Criminal History Category is I.

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 pleas, convictions, sentence, fine, order of restitution, or order of forfeiture in any post-conviction proceeding, including but not limited to a proceeding under 28 U.S.C. § 2255. The Defendant waives the right to appeal any determination made by the Court at sentencing with the sole exception that the Defendant may appeal any aspect of the sentence if the length of the term of imprisonment exceeds the statutory maximum. Except for claims of ineffective

assistance of counsel, the Defendant also waives the right to attack collaterally the guilty pleas, convictions, and sentence, or any other order issued in this matter.

10. The United States will recommend releasing the Defendant on the current conditions set by the Court in this case for future court appearances if the Defendant does not violate the terms of the order setting conditions of release.

11. The Defendant understands that the Court has an obligation to determine whether, and in what amount, restitution applies in this case under 18 U.S.C. § 3663 and 18 U.S.C. § 3663A. The Defendant agrees that this may include restitution for all losses caused by the Defendant's criminal conduct, as described in Attachment A to this plea agreement. The Defendant waives any defense or objection to any action to enforce the collection of financial obligations to be imposed in connection with this prosecution, including, but not limited to, all collection procedures authorized by 28 U.S.C. § 3001, 18 U.S.C. § 3664(j)(2), or 18 U.S.C. § 3613(f).

12. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the Defendant agrees to the imposition of a forfeiture money judgment in favor of the United States for the sum of \$609,000.00, which represents the amount of property, real or personal, which constitutes or is derived from proceeds traceable to the violations of 18 U.S.C. § 201(c)(1)(B), that he received. The Defendant further agrees that the forfeiture of assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the Defendant in addition to the forfeiture. The Defendant agrees to waive any claim or defense under the Eighth Amendment to the United

States Constitution, including any claim of excessive fine, to the forfeiture of assets by the United States or its subdivisions.

13. The Defendant agrees to forfeit to the United States any property owned by the Defendant up to the value of the \$609,000.00 money judgment, whether real or personal, because the traceable proceeds described above, as a result of act(s) and omission(s) of the Defendant, (a) cannot be located upon the exercise of due diligence; (b) have been transferred or sold to, or deposited with, a third party; (c) have been placed beyond the jurisdiction of the court; (d) have been substantially diminished in value; and/or (e) have been commingled with other property which cannot be divided without difficulty.

14. The Defendant agrees not to file, or assist others in filing, a claim to the forfeitable property in any civil proceeding, administrative or judicial, that may be initiated. The Defendant knowingly and voluntarily agrees to waive, with regard to the forfeiture of traceable proceeds and substitute assets: the right to notice of any forfeiture proceeding; the right to a jury trial; all constitutional, legal, and equitable defenses; any claim under the Eighth Amendment to the United States Constitution, including any claim of excessive fine; and the requirements of Rules 32.2 and 43(a) regarding notice of forfeiture in the charging instrument, announcement of forfeiture at sentencing, and incorporation of forfeiture in the judgment.

15. The Defendant and Defendant's attorney also understand that the United States may file motions for preliminary and final orders of forfeiture regarding the property described herein, and they agree that the United States may file such motions unopposed

and may state in the certificates of conference for the motions that the Defendant has no objection to the relief sought without having to further contact the Defendant or Defendant's attorney. The United States will not seek to forfeit the Defendant's Social Security Administration's pension.

16. The Defendant agrees to cooperate fully with the United States Department of Justice by both himself and his spouse making a full and complete financial disclosure. Within 30 days of pleading guilty, the Defendant agrees to complete and sign a United States Department of Justice Form OBD-500 or more inclusive financial disclosure affidavit disclosing all assets in which the Defendant and/or his spouse has any interest or over which the Defendant and/or his spouse 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 Department of Justice. If the Defendant is 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).

17. 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.

18. If the Defendant violates any part of this Agreement, or if the guilty pleas pursuant to this Agreement or convictions are vacated or withdrawn, 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 or re-initiation of additional federal charges. In such event, the Defendant waives any objections based upon delay in prosecution and reiterates his waiver of any defense based upon a statute of limitations. The Defendant further agrees that if the guilty pleas pursuant to this Agreement are

withdrawn for any reason, the Defendant's factual statements in support of the guilty pleas will be admissible as evidence in all judicial proceedings.

19. If the Defendant abides by the terms of this Agreement, the Fraud and Money Laundering and Asset Recovery Sections of the Criminal Division of the United States Department of Justice agree not to prosecute the Defendant for any additional criminal charges based upon the conduct underlying and related to the Defendant's pleas of guilty in this case.

20. This Agreement does not bind any federal, state, or local prosecuting authority other than the United States Department of Justice, Criminal Division, Fraud and Money Laundering and Asset Recovery Sections. Nothing in this Agreement shall be construed to release the Defendant from possible related or consequential civil liability to any individual, legal entity, or the United States, nor does this Agreement provide any limitation or release from liability arising out of any acts of violence.

21. This document, Attachment A enclosed with this document, and the sealed supplement contain the complete and only Plea Agreement between the United States and the Defendant. It supersedes all other plea agreements and may not be modified unless the modification is in writing and signed by all parties. References in this document to "Agreement" or "Plea Agreement" refer to both this document, Attachment A, and the sealed supplement. The United States has not made any other promises or representations to, or understandings or agreements with, the Defendant.

22. The Defendant has thoroughly reviewed all legal and factual aspects of this case with Defendant's attorney and is fully satisfied with the legal representation provided by Defendant's attorney. The Defendant has received satisfactory explanations from Defendant's attorney concerning each paragraph of this Plea Agreement, each of the Defendant's rights affected thereby, and the alternatives to entering a guilty plea. After conferring with counsel, the Defendant concedes guilt and has concluded that it is in the Defendant's best interest to enter this Agreement rather than proceeding to trial. 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 and is not the

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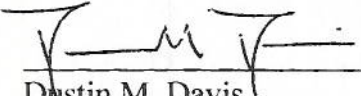
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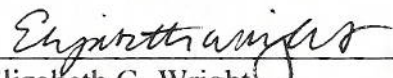
result of force, threats, or promises other than those set forth in this Agreement.

KENNETH A. BLANCO
ACTING ASSISTANT ATTORNEY
GENERAL
CRIMINAL DIVISION
ATTORNEY FOR THE GOVERNMENT

Date: 5/12/17

By: 
Dustin M. Davis
Trial Attorney


Date: 5/12/17

By: 
Elizabeth G. Wright
Trial Attorney

Date: 5/12/17


DAVID BLACK DAUGHERTY
DEFENDANT

Date: 5/12/17


PATRICK F. NASH
ATTORNEY FOR DEFENDANT

ATTACHMENT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

CRIMINAL ACTION NO. 17-66-DCR

UNITED STATES OF AMERICA

PLAINTIFF

V.

FACTUAL BASIS

DAVID BLACK DAUGHERTY

DEFENDANT

The United States could prove the following facts that establish the essential elements of the offense(s) beyond a reasonable doubt, and David Black Daugherty ("Defendant") admits these facts:

A. Background

1. In August 1990, the Social Security Administration ("SSA") hired Defendant to serve as an Administrative Law Judge ("ALJ") within the Office of Disability Adjudication and Review ("ODAR") at the hearing office located in Huntington, West Virginia ("Huntington ODAR"), where Defendant served from the time of his hiring, and continuing through his retirement in July 2011. As an ALJ assigned with the Huntington ODAR, Defendant's primary responsibility was to adjudicate disability claims on behalf of the SSA, specifically those originating in the Huntington ODAR's service area, which included, among other counties, Floyd and Lawrence Counties, in the Eastern District of Kentucky.

B. The SSA Disability Process – Generally

2. Individuals in Kentucky seeking Social Security disability benefits (“Claimants”), on their own or with the assistance of attorney representatives, filed applications for benefits with SSA field offices located throughout Kentucky, including the field office located in Prestonsburg, Kentucky (“Prestonsburg Field Office”). The Kentucky field offices routed these applications, together with any available medical evidence, to Kentucky’s Disability Determination Services (“DDS”), located in Frankfort, Kentucky for an initial disability determination. In the event DDS, after an initial review and upon reconsideration, denied benefits, Claimants, or their representatives, through the originating SSA field office, requested hearings with the SSA’s ODAR, to seek again awards of disability benefits.

3. Beginning at least as early as 2004, and continuing through at least Defendant’s retirement, all requests for hearings filed with the Prestonsburg Field Office were automatically forwarded to the Huntington ODAR. Although the Huntington ODAR was principally located in Huntington, West Virginia, the Huntington ODAR also maintained an unstaffed satellite office in Prestonsburg, Kentucky (“Prestonsburg Satellite ODAR”), which required ALJs serving at the Huntington ODAR, including Defendant, to periodically travel to Prestonsburg, Kentucky to adjudicate disability claims.

4. In the event Claimants were awarded benefits, commonly referred to as receiving a “favorable decision,” at either the DDS level or ODAR level, and had agreed to representation by an attorney, attorneys were awarded representative’s fees. These representative’s fees were either twenty-five percent of the total amount of benefits owed

to Claimants, or the maximum amount permitted by the Social Security Act, which was between approximately \$5,300 and \$6,000.

C. Eric Christopher Conn

5. Eric Christopher Conn ("Conn") was an attorney licensed to practice law in Kentucky, who maintained an office in Floyd County, Kentucky. Conn's practice primarily focused on representing Claimants not only before the DDS, but also the Huntington ODAR. By 2004, Conn had grown his practice so much so that he represented a majority of the Claimants with cases pending with the Prestonsburg Satellite ODAR, and Defendant regularly received cases for adjudication where Conn was the representative.

6. Beginning at least as early as 2004, because Defendant knew that Conn, in representing Claimants, supplied medical evidence that provided bases under applicable SSA regulations to render favorable decisions, Defendant not only received Conn's cases in the normal course of business, but also came to seek out Conn's cases pending with the Huntington ODAR and, having sought them out, either self-assigned or reassigned those cases from other ALJs to himself. Accordingly, Defendant decided a large number of Conn's cases that were pending with the Huntington ODAR.

7. Moreover, to expedite rendering favorable decisions, Defendant telephoned Conn's law office and identified the names and Social Security numbers of the Claimants whose cases Defendant intended to decide the following month, either by hearing or by granting on the record ("OTR") decisions. Defendant further identified the type of medical evidence, whether evidencing a physical or mental impairment, that Conn should submit to support favorable decisions.

8. At least as early as 2004, and continuing through April 2011, with regard to Conn's cases, Defendant, without exception, either rendered favorable decisions by granting OTR decisions, or traveled to the Prestonsburg Satellite ODAR and rendered favorable decisions post-hearing.

D. Receiving Illegal Gratuities—Floyd County

9. In or around October 2004, while Defendant was at the Prestonsburg Satellite ODAR, Defendant asked Conn for \$5,000 to assist Defendant in paying for a specific expense related to a family member. Conn assented and, shortly after the request was made, delivered \$5,000, in cash to Defendant in Prestonsburg.

10. Rather than Defendant repaying the \$5,000 to Conn, the following month, Defendant and Conn agreed that, for every favorable decision rendered by Defendant in cases wherein Conn represented Claimants, Conn would pay Defendant a determinate amount of money.

11. Thereafter, beginning in or around November 2004 and continuing through 2006, in Prestonsburg, for every favorable decision rendered by Defendant, Conn paid, and Defendant personally received a cash payment, which averaged at least approximately \$8,000 per month.

D. Receiving Illegal Gratuities – Lawrence County

12. Beginning in or around 2006, and continuing through April 2011, Defendant discontinued traveling to the Prestonsburg Satellite ODAR to hear Conn's cases, but rather rendered favorable decisions in the vast majority, if not all of Conn's cases, via OTR decisions. Consequently, in 2006, because Defendant discontinued seeing Conn at the

Prestonsburg Satellite ODAR, Defendant and Conn agreed to meet monthly in Louisa, Kentucky—approximately halfway between Huntington, West Virginia and Prestonsburg, Kentucky—in either the parking lot of a restaurant or at a gas station so that Defendant could continue to receive cash payments from Conn.

13. During that timeframe, in Lawrence County, Kentucky, and on a monthly basis, Conn delivered to Defendant, personally, an average of approximately \$8,000 in cash, concealed in an envelope. In return, at least on occasion, Defendant delivered to Conn advanced copies of the favorable decisions that Defendant had granted via OTR decision.

E. Scope of Conduct

14. Between October 2004 and April 2011, otherwise than as provided by law for the proper discharge of official duty, Defendant, a public official, received from Conn, more than \$609,000, in cash, for performing an official act, that is, granting Social Security disability benefits to individuals represented by Conn in approximately 3,149 cases. To conceal the source of these cash payments, Defendant, on occasion, divided cash deposits into various bank branches and accounts.

15. In Conn's cases wherein Defendant rendered favorable decisions and Conn paid illegal gratuities to Defendant, Conn ultimately received at least \$7,100,000 in representative fees from the SSA. Moreover, in Conn's cases wherein Conn paid illegal gratuities to Defendant for rendering favorable decisions, those favorable decisions

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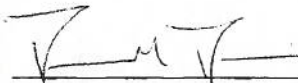
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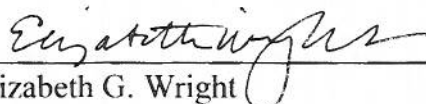
obligated the SSA to pay more than \$550,000,000 in lifetime benefits to Claimants represented by Conn.

KENNETH A. BLANCO
ACTING ASSISTANT ATTORNEY
GENERAL
CRIMINAL DIVISION
ATTORNEY FOR THE GOVERNMENT

Date: 5/12/17

By: 
Dustin M. Davis
Trial Attorney

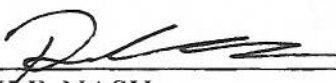
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By: 
Elizabeth G. Wright
Trial Attorney

Date: 5/12/17


DAVID BLACK DAUGHERTY
DEFENDANT

Date: 5/12/17


PATRICK F. NASH
ATTORNEY FOR DEFENDANT