

a substantial reduction from the life sentence as a career criminal that he may have received in the absence of a plea agreement. The essence of the claim on appeal is that the District Court erred by

Crawley, Kenneth Boston, Robert Walton, Leon Gilmore, Rodney Harris, Maceo Belt, Eric Allen, Doreen Riley did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree together and with each other, and with diverse others known and unknown, to possess with the intent to distribute and to distribute at least five kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II narcotic drug controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846.

b. Specifically, it was part of the conspiracy that DONNIE HATCHER, JR. would purchase quantities of cocaine from Sam Sims for re-sale.

c. In furtherance thereof and to effect the goals and conceal the existence of the conspiracy, the defendant and others performed overt acts including but not limited to the following:

(1) On or about September 13, 2002, at approximately 1:32 p.m., DONNIE HATCHER, JR. spoke to Sam Sims on the telephone. Sims said, "there are only like nine (ounces) left, you want them?" HATCHER said, "yeah, I got the money right in my pocket right now." Sims said, ". . . they are beautiful too, they like better than you usually get . . . they like the old breakable thing . . . how they just flake up."

(2) On or about September 21, 2002, at approximately 12:52 p.m., Sam Sims spoke to DONNIE HATCHER, JR. on the telephone. Sims asked HATCHER if he wanted one and one half (kilograms of cocaine). HATCHER replied, "yea, that's what I want." Sims said, "I got 10 . . . there's 12 more on the way."

(3) On or about October 2, 2002, at approximately 12:03 p.m., Sam Sims and DONNIE HATCHER, JR. spoke to Douglas Harris on the telephone. Sims told Harris, "we got cold hard cash for 14 (kilograms of cocaine)." HATCHER said he had enough (money) for three (kilograms of cocaine).

(4) On or about November 19, 2002, at approximately 8:31 a.m., Sam Sims spoke to DONNIE HATCHER, JR. on the telephone. Sims asked HATCHER if he wanted some more. HATCHER said, "yeah." Sims said I got the other one (kilogram) for you.

d. The defendant, DONNIE HATCHER, JR., acknowledges that the above outline of his conduct does not set forth each and every act he committed in furtherance of the offense to which he is pleading guilty, nor does it set forth each and every act that was part of the same course of conduct and common scheme and plan as the offense of conviction, and that the government could prove other acts evidencing his agreement and knowing participation with other persons to distribute and to possess with the intent to distribute cocaine. The defendant, DONNIE HATCHER, JR., also acknowledges that the amount of cocaine possessed and distributed by him during the course of the conspiracy and directly attributable to his actions was more than 3-1/2 but less than 5 kilograms of cocaine. The defendant, DONNIE HATCHER, JR., further acknowledges that he was aware that the substance he was possessing and distributing was actually cocaine.

overruling defendant's motion to dismiss the indictment on grounds of "governmental misconduct" or "governmental authorization" of his drug trafficking — the only basis for appeal preserved under the plea agreement. The misconduct is based on the assertion that the defendant's drug trafficking was conducted as a government "undercover agent," not as an independent criminal actor. The defendant also asserts that the District Court erred when it refused to allow him to withdraw his guilty plea.

In the plea agreement, the defendant waived all grounds of appeal other than (1) ineffective assistance of counsel (a claim he does not make in this appeal), (2) an upward departure for a sentence in excess of the statutory maximum (a claim he does not make in this appeal), and (3) any "legal remedies he may otherwise have on appeal or collateral attack pertaining to claims of . . . prosecutorial misconduct."

In essence, this is a factual case about whether the government authorized the defendant's drug trafficking. Although FBI agents did have contact with the defendant after he first contacted the FBI, and although the FBI did ask for the defendant's assistance in making a case against a large drug trafficker, District Judges Mattia and Polster both found after evidentiary hearings that the defendant initiated contact with the government and played a double game. The defendant said he would cooperate, while at the same time continuing his drug activity with Sam Sims and others without the agents' knowledge and approval. We find no error in the findings of the District Court that the defendant was not authorized to engage in drug trafficking.

No. 05-3585
United States v. Hatcher

On the question of the withdrawal of the guilty plea, again we have a factual question. We find no error in the findings of the District Court that the defendant entered his guilty plea voluntarily without coercion from his lawyer or the District Court.

The defendant also seeks on appeal to raise an issue regarding his sentence, but his plea agreement waived his right to appeal his sentence. He received a sentence below the statutory maximum and below the guideline range, and so we will enforce the defendant's waiver of appellate rights.

Accordingly, the judgment of the District Court is affirmed.