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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,) Case No. 3:06-CR-00090-H
)
Plaintiff,)
)
VS.)
)
JIAN TIAN LIN,)
) December 18, 2006
Defendant.) Louisville, Kentucky

TRANSCRIPT OF CHANGE OF PLEA AND SENTENCING HEARINGS
BEFORE HONORABLE JOHN G. HEYBURN, II
UNITED STATES DISTRICT JUDGE

APPEARANCES:
For United States: Daniel P. Kinnicutt
U.S. Attorney's Office
717 West Broadway
Louisville, KY 40202

For Defendant: Caroline Pitt Clark
R. Kent Westberry
Landrum & Shouse
220 West Main Street, Suite 1900
Louisville, KY 40202

Interpreter: Edward Leong

[Defendant present.]

Dena Legg, CCR, RMR, CRR
Official Court Reporter
221 U.S. Courthouse
Louisville, KY 40202
(502) 625-3778

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 (The interpreter, sworn before the proceedings
2 commenced, interpreted the following testimony from Chinese into
3 English.)

4 (Begin proceedings in open court at 11:43 a.m.)

5 DEPUTY CLERK: Next case, Your Honor?

6 THE COURT: Yes.

7 DEPUTY CLERK: *United States of America v. Jian Tian*
8 *Lin*, Case Number 3:06-CR-90-01-H.

9 MR. KINNICUTT: Daniel Kinnicutt for the United States
10 Government.

11 THE COURT: All right. We're here for a plea?

12 MR. WESTBERRY: Yes, Judge.

13 THE COURT: Okay.

14 MR. WESTBERRY: And we have signed a plea agreement,
15 as well as a preliminary order of forfeiture. I can tender them
16 to the court, if you would like.

17 THE COURT: All right.

18 MR. WESTBERRY: Thank you.

19 THE COURT: Mr. Lin, before I allow you to enter your
20 guilty plea, I'm going to need to ask you a number of questions
21 to make sure you understand your constitutional rights, the
22 consequences of waiving them, and to make sure you're doing it
23 voluntarily. Before we go any further, I'm going to ask the
24 clerk to administer the oath to you.

25 DEPUTY CLERK: Yes, Your Honor.

1 Raise your right hand, please.

2 MR. WESTBERRY: He agrees.

3 THE INTERPRETER: He agrees.

4 (Defendant sworn.)

5 THE COURT: Would you please state your full name and
6 address, please.

7 THE DEFENDANT: My name is Jian Tian Lin.

8 THE COURT: Okay. And what's your local address?

9 THE DEFENDANT: It's in Kentucky. I'm not quite -- I
10 couldn't quite remember the exact address or the street name.
11 Plus, I do not speak English.

12 THE COURT: Does anyone have any doubt as to the
13 defendant's competence to change his plea?

14 MR. WESTBERRY: I do not, Judge. Other than the
15 obvious language barrier, he does understand with the help of an
16 interpreter.

17 THE COURT: Okay. Mr. Kinnicutt?

18 MR. KINNICUTT: No, Your Honor.

19 THE COURT: Okay. The court finds that defendant is
20 competent to change his plea.

21 By the way, Mr. Lin, if at any time you don't understand
22 what's going on, raise your hand. We'll stop the proceedings
23 and make sure that you do. All right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Or you can also tell your interpreter at

1 any time if you're not understanding.

2 THE DEFENDANT: Good.

3 THE COURT: Have you had plenty of opportunity to
4 discuss this case with your attorney?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. Do you understand your
7 constitutional rights, your right to trial?

8 THE DEFENDANT: Yes, Your Honor, I know.

9 THE COURT: The fact that you are presumed innocent
10 and must be proven guilty beyond a reasonable doubt?

11 THE DEFENDANT: I understand that.

12 THE COURT: All right. The interpreter has to speak a
13 little louder so the court reporter can take --

14 THE INTERPRETER: Sure.

15 THE COURT: And you understand that no one can force
16 you to testify or testify against yourself?

17 THE DEFENDANT: I understand that, Your Honor.

18 THE COURT: Okay. The court finds that the defendant
19 does understand his constitutional rights.

20 I gather, Mr. Lin, you're willing to give up your
21 constitutional rights in order to plead.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Is the defendant -- what counts of the
24 indictment is the defendant pleading to?

25 MR. KINNICUTT: Your Honor, he's pleading to Count 2,

1 which is conspiracy to harbor aliens, and that's the sole count
2 that he's pleading to.

3 THE COURT: All right. Now, has anyone forced you or
4 threatened you in any way to enter into this plea agreement?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Okay. I'm going to ask the United States
7 to summarize the plea agreement. When the United States is
8 finished, I'm going to ask you whether that's the agreement as
9 you understand it.

10 THE DEFENDANT: Okay.

11 MR. KINNICUTT: Your Honor, in exchange for the
12 defendant's plea of guilty to Count 2 of the indictment, at the
13 time of sentencing and after sentencing, the government will
14 move to dismiss the remaining counts of the indictment.

15 The government will also recommend the lowest end of the
16 guideline range, which we believe in this case comes out to six
17 months. Furthermore, we're going to recommend a fine at the
18 lowest end of the range, whatever guideline that is. I don't
19 know what it is. And furthermore, we're going to ask the court
20 to adjust his offender score offense level by two, since he is
21 accepting responsibility by pleading guilty in this case.

22 And lastly, Your Honor, the defendant is waiving his right
23 to appeal or collaterally attack his conviction in this case.

24 And, I'm sorry, one last thing is that with reference to the
25 indictment, there's Count 9, which is a notice requirement of

1 forfeiture, and the defendant to that end is forfeiting all
2 interest that he has in the houses, or the checking account, or
3 the restaurant. Now, it is my understanding that he doesn't
4 have any interest in it, that it belongs to his brother, but
5 he's forfeiting that nonetheless in terms of any rights that he
6 may later have to come in and say, "Hey, that was my money."

7 MR. WESTBERRY: And that is our understanding.

8 THE COURT: Is that the plea agreement as you
9 understand it?

10 THE DEFENDANT: I understand, Your Honor.

11 THE COURT: All right. Now, would the United States
12 please summarize the evidence that support the charges in Count
13 2.

14 MR. KINNICUTT: I will, Your Honor. Your Honor,
15 between May of 2003 and May 10th of 2006, the defendant and his
16 brother, Chai Lin, conspired to harbor or house about 18 aliens,
17 individuals who had illegally entered the United States, wherein
18 the defendant, Tian Lin, knew that they were here illegally.

19 Now, the purpose for the harboring was to keep them in two
20 separate residences in Radcliff, Kentucky. And they would be
21 transported to the Golden China Buffet Restaurant that is owned
22 by his brother, Chai Lin.

23 And to that end, Tian Lin at times drove the individuals
24 from the residence to the hotel. There was never any facts of
25 abuse -- the aliens were free to leave any time they wanted

1 to -- but rather it's a matter of them being housed for the
2 purposes of working at the restaurant.

3 And to that end, Tian Lin conspired with his brother to
4 house the aliens in the residence of 713 Wilma Court and 597
5 Lincoln Trail in Radcliff, Kentucky. Three of those -- two of
6 those aliens were of Hispanic descent, Francisco Torres-
7 Hernandez, Jose Luis Meraz-Ramirez, and the third was Ai Mei
8 Chen, who was a National Republic -- I mean a National of China.
9 And that would be the evidence that we would proffer to the
10 court, Your Honor.

11 THE COURT: Do you agree with the government's
12 evidence and the summary of the facts?

13 THE DEFENDANT: I agree.

14 THE COURT: So all of the things the government has
15 just said are true?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. The court finds there is a factual
18 basis for the charges against the defendant and now with respect
19 to the *United States of America v. Jian Tian Lin*, Mr. Lin, how
20 do you plead as to Count 2 of the indictment?

21 THE DEFENDANT: I plead guilty.

22 THE COURT: Okay. The court will let the guilty plea
23 be entered and accepted as to Count 2 --

24 Is this a superseding indictment?

25 MR. KINNICUTT: No, Your Honor.

1 THE COURT: -- Count 2 of the indictment. Mr. Lin, do
2 you agree to the -- is it a forfeiture in Count 9?

3 MR. KINNICUTT: It is a forfeiture, Your Honor.

4 THE COURT: Do you agree to the forfeiture contained
5 in Count 9 of the indictment?

6 THE DEFENDANT: I agree.

7 THE COURT: Okay. The defendant has agreed to the
8 forfeiture contained in Count 9 of the indictment.

9 Now, how long has the defendant been in custody?

10 MR. KINNICUTT: Your Honor, I believe he's been in
11 custody approximately seven months. The guideline range that we
12 have calculated -- we placed that inside the plea agreement --
13 works out to six to 12 months.

14 The reason why it works out six to 12 months in terms of our
15 calculations is because the defendant is in a different posture
16 than his brother, meaning that his involvement with this
17 conspiracy was not for private gain or commercial advantage, but
18 rather, he's helping his brother. And his brother was the one
19 who was actually running the restaurant operation. And to that
20 effect, that's why his guideline range would be reflected at
21 approximately between six to 12 months incarceration.

22 I tell the court that, since he's already served his time
23 and the government is recommending the low end of the range,
24 that at this point in time I believe there's also a motion by
25 the defense to have their client released on bond. We're not

1 opposed to that based on the fact that he's not going to be
2 getting the benefit of the time.

3 Now, that's -- we're assuming a lot here, that the court
4 would be inclined to recommend the bottom end of the range and
5 we're not backing down from that, but I wanted to present that
6 to the court.

7 How the defendant is going to deal with the administrative
8 hold that he has with Immigration and Customs Enforcement is
9 entirely up to him and separate from this court proceeding here,
10 but I believe that they are working on that.

11 And so to that end, the government is not opposed to the
12 defendant being released pending his sentence in this case.

13 THE COURT: Well, there are a number of different ways
14 we could handle this. Of course, we could -- if there was
15 general agreement, we could sentence him now, which would
16 involve potentially a sentence to time served, plus supervised
17 release.

18 Again, I have no way of determining what the ramifications
19 of that may or may not be or whether there would be reasons why
20 you would want to argue for a different sentence if we did the
21 sentencing in the normal course of events, or we could have had
22 him -- you could make a motion for his release pending sentence
23 and we could do the sentencing later.

24 MR. WESTBERRY: I don't see any reason why we couldn't
25 sentence today, Judge Heyburn.

1 Mr. Kinnicutt, I know we're waiving PSR.

2 MR. KINNICUTT: Right. My only hesitation in that,
3 Your Honor, is because there's a co-defendant in this case and
4 perhaps it might be prudent to have the probation office be able
5 to generate a set of facts to present to the court.

6 We're not going to deviate -- we're asking the court to
7 sentence him at the bottom end, which in this case -- because
8 his credit for time served would be seven months incarceration.
9 But in terms of gathering the facts to present to the court --
10 because my understanding that his brother enters a plea as well,
11 then those would be best, I think, to be put before the court.

12 I hesitate in that regard because it's a little complicated
13 because it took, you know, about three years for the
14 investigation of this case to come to fruition and perhaps it --
15 I'm just thinking it might be best to wait. We're not trying
16 get in the way of his being released at all. And I know that
17 sounds like probably the most efficient use of time, but just
18 because the nature of the case, Judge, we -- if we could.

19 THE COURT: Well, I don't know that -- if you're
20 asking for the low end, you know, then by sentencing to time
21 served, it doesn't really affect any other sentence because if
22 there was -- you're not asking for a higher sentence.

23 MR. KINNICUTT: Right.

24 THE COURT: And since the sentence would be for time
25 served, I'm not really considering whether -- if we were

1 starting from scratch, whether he should have been sentenced to
2 a lower sentence because it's not a practical reality.

3 So by sentencing him to time served, I don't think I'm --
4 you know, we're simply dealing with this defendant based on the
5 reality of what he's charged with, what he's pled with. And for
6 a whole host of reasons, most of which have nothing to do with
7 the actual charges here, he has, as I understand it, partially
8 made his own decision to remain in the custody of this federal
9 court as opposed to seeking release where the consequences at
10 very best would have been of an uncertain nature. So we are
11 where we are.

12 MR. WESTBERRY: Sure.

13 THE COURT: And it would seem to me that sometimes
14 there is a relationship between the sentencing of one defendant
15 and another. In this particular case, there wouldn't be because
16 we're dealing with the reality of the fact that he's already
17 served some time and the United States is not asking for
18 additional time.

19 At this point, I can't conclude that there's any likelihood
20 I would be sentencing above the United States' recommendation.
21 If we were in a different circumstance, again, whether I would
22 have sentenced below is sort of a moot point at this point. So
23 we sentence and it has no consequence to the other cases. And
24 to the extent we need -- obviously, may need more of an
25 investigation and facts surrounding the other cases, then we'll

1 get it for those cases. Does that make sense to you?

2 MR. KINNICUTT: Your Honor, it makes a whole lot of
3 sense. My only concern is I just wanted to make sure that in
4 terms of the defendant, if now he's going to waive the -- his
5 right to have a presentence report generated -- and that was not
6 part of the plea -- but we're not --

7 THE COURT: We'll certainly take -- that would be a
8 necessary consequence of going forward.

9 MR. WESTBERRY: We would waive the PSR --

10 THE COURT: Okay.

11 MR. WESTBERRY: -- Judge Heyburn.

12 THE COURT: Because, again, there are a lot of
13 potential consequences of anything we do of which I'm not
14 completely aware and I assume that you are.

15 MR. WESTBERRY: We're going to start immediately
16 contacting the immigration folks in Chicago. Agent Phillips has
17 given us a name and number. The process, basically, is they
18 might accept a cash bond. We're going to start that negotiation
19 process as soon as we leave here today.

20 THE COURT: But in the interim, if we sentence today,
21 sentence him to time served, then he'll be placed on supervised
22 release, a period of supervised release, which would be --
23 what -- two years probably?

24 MR. KINNICUTT: Correct, Your Honor, no more than
25 three.

1 THE COURT: So then you'll be dealing with other
2 agencies in terms of any other problems that develop.

3 MR. WESTBERRY: That's correct. He'll be out of your
4 court, Judge Heyburn, and on in the direction -- it seems like
5 the best way we can get this process moving.

6 DEPUTY CLERK: It has been signed.

7 THE COURT: The defendant has now waived his right to
8 have a presentence report prepared.

9 Do you believe the defendant understands that he has such a
10 right? That would delay his sentence probably three months.

11 MR. WESTBERRY: That is correct. I do believe he's
12 aware, Your Honor.

13 THE COURT: Okay. The court believes that it has
14 sufficient information upon which to sentence today in the
15 absence of a presentence report, and I gather that neither the
16 defense or the United States objects at this time to such a
17 sentencing.

18 MR. KINNICUTT: That's correct, Your Honor, no
19 objection.

20 THE COURT: The defendant has, of course, waived his
21 right to appeal any issues arising from his plea. And that
22 would extend to -- he is also waiving his right to appeal any
23 issues that come out of his sentencing. Is that understood?

24 MR. WESTBERRY: That is correct, Your Honor.

25 THE COURT: And I might say, the court is sufficiently

1 aware of the circumstances to advise that the intention is to
2 sentence to a period of time served, since that is less than the
3 time period -- which he has already served, for a whole lot of
4 reasons.

5 MR. WESTBERRY: Yes, sir.

6 THE COURT: Okay. Does the counsel or the defendant
7 have any questions as to the proceeding we're about to enter
8 into?

9 MR. WESTBERRY: I do not, but let me ask him.

10 Mr. Lin, do you have any questions for Judge Heyburn?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: All right. I gather then we can proceed
13 at this point to the sentencing hearing. And I gather it is the
14 recommendation of the United States, based on all the factors
15 considered, that the -- they believe that the guideline range,
16 the advisory guideline range in this case is six to 12 months,
17 and that their recommendation would be a sentence at the low end
18 of that range.

19 MR. KINNICUTT: That's correct, Your Honor. And, Your
20 Honor, if I could just -- if the court would indulge me just to
21 put on the record how we arrived at that guideline
22 recommendation.

23 The offense level for this charge puts him at a level 12 and
24 then because it was not done for a commercial advantage or
25 private financial gain, there's a three-level adjustment for

1 deduction from that, which takes it to nine. However, because
2 there is -- there was involved more than six aliens, between six
3 and 23, that adds three additional levels. So it takes us back
4 to 12.

5 From 12, the defendant entered his plea of guilty today. He
6 accepted responsibility. Adjusting that by two levels, he has a
7 total offense level 10. He is at a Criminal History Category I.
8 He has no criminal history that I'm aware of. We've got his A
9 file, alien file. I've talked to the agent on this case. He
10 doesn't have any criminal history.

11 That would put him at a Criminal History Category I. Based
12 on that, he's looking at six to 12 months incarceration.
13 Because he's already served seven, we're recommending six.
14 We're asking the court to impose the bottom end of the range of
15 this case, which we believe would be a fair sentence. And
16 the -- just the last thing I want to share with the court
17 regarding the allocution is that the posture of the defendant
18 was not the individual who was making money off this endeavor.

19 THE COURT: Right, I understand.

20 MR. KINNICUTT: And so in terms of -- the reason I say
21 that is comparing him to his brother or perhaps other defendants
22 in the future, he's going to be separate in that regard and
23 that's why his sentence will be calculated at six to 12, as
24 opposed to being higher. So we are still recommending the
25 bottom end of the range in terms of his involvement with this

1 enterprise.

2 THE COURT: Would the defendant or his counsel wish to
3 address the court?

4 MR. WESTBERRY: I don't have anything else, Your
5 Honor. Thank you.

6 Mr. Lin, do you have anything?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: I think the court believes it can now
9 state the sentence it intends to impose and that is having
10 considered the advisory guideline range and the factors in 18
11 USC -- I got it. Thank you -- Section 3553(a) and the
12 recommendation of the United States, the court finds that the
13 defendant is sentenced to the custody of Bureau of Prisons for
14 time served as to Count 2 of the indictment.

15 In addition, at the conclusion of that -- the time served,
16 defendant shall be placed on supervised release for a term of
17 two years and abide by the conditions of supervised release as
18 set forth in the record, otherwise explained by the United
19 States Probation Office.

20 Once again, the court believes that the time already served
21 is well within the range of the sentence that the court would
22 have imposed specifically had the defendant not already served
23 approximately seven-and-a-half months in custody. So that is
24 one of the primary reasons why the court believes that there's
25 absolutely no doubt that the sentence is consistent with all the

1 ends of justice at this point, meets all of the objectives of
2 3553(a).

3 There will be no fine imposed in this case, no other
4 penalties of any kind. Any objections to the sentence as
5 stated?

6 DEPUTY CLERK: Special assessment.

7 MR. WESTBERRY: We will take care of that.

8 THE COURT: The special assessment of \$100 as to
9 single the count of indictment.

10 MR. WESTBERRY: Sure.

11 MR. KINNICUTT: I forgot, Your Honor -- I'm sorry --
12 the supervised release. We would ask two years of supervised
13 release. In the event he's deported -- we don't know if that's
14 going to happen or not -- that that would become inactive
15 supervised release.

16 THE COURT: Yeah, that would -- I think that would
17 happen as a matter of law so I don't need to take care of that.

18 MR. WESTBERRY: Would you initially find for the
19 record, Judge Heyburn, that Mr. Lin is released from all the
20 terms and conditions of the bond that was set by this court and
21 any other issues surrounding --

22 THE COURT: Also find -- I think that happens. The
23 current sentencing order supersedes any bond. So he is released
24 from the terms of that bond. Anything else?

25 MR. WESTBERRY: No, Your Honor.

1 THE COURT: I'll impose the sentence as stated. And
2 you have waived your right to appeal --

3 MR. WESTBERRY: Yes, sir.

4 THE COURT: -- and any issues related to it?

5 MR. WESTBERRY: Yes, sir.

6 THE COURT: Okay. Thank you for your help. I
7 appreciate it.

8 MR. WESTBERRY: Thank you.

9 DEPUTY CLERK: Your Honor, the remaining counts.

10 THE COURT: Is the United States moving to dismiss the
11 remaining counts?

12 MR. KINNICUTT: Your Honor, as to this defendant only
13 we're moving to dismiss the remaining counts of the indictment.

14 THE COURT: I'll sustain the motion.

15 MR. WESTBERRY: Thank you.

16 THE COURT: Thank you.

17 (Proceedings concluded at 12:09 p.m.)

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C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

s/Dena Legg
Certified Court Reporter No. 20042A157
Official Court Reporter

August 31, 2012
Date