

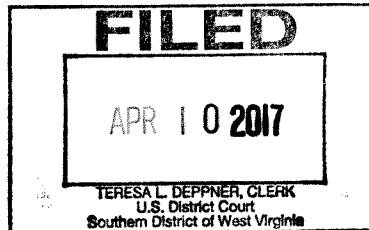


United States Department of Justice

*United States Attorney
Southern District of West Virginia*

*Robert C. Byrd United States Courthouse
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Charleston, WV 25301
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Charleston, WV 25326
304-345-2200
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February 24, 2017

Christian M. Capece, Esquire
Office of the Federal Public Defender
300 Virginia Street, East, Room 3400
Charleston, WV 25301

Re: United States v. Jeffrey Phelix
Criminal No. 2:17-cr-00004 (USDC SDWV)

Dear Mr. Capece:

This will confirm our conversations with regard to your client, Jeffrey Phelix (hereinafter "Mr. Phelix"). As a result of these conversations, it is agreed by and between the United States and Mr. Phelix as follows:

1. **PENDING CHARGES.** Mr. Phelix is charged in a single-count indictment with a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (felon in possession of a firearm).

2. **RESOLUTION OF CHARGES.** Mr. Phelix will plead guilty to a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (felon in possession of a firearm) as charged in said indictment.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Phelix will be exposed by virtue of this guilty plea is as follows:

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- (a) Imprisonment for a period of up to 10 years;
- (b) A fine of \$250.00, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 3 years;
- (d) A mandatory special assessment of \$100.00 pursuant to 18 U.S.C. § 3013.

4. **SPECIAL ASSESSMENT.** Mr. Phelix has submitted certified financial statements to the United States reflecting that he is without sufficient funds to pay the special assessment due upon conviction in this case. Mr. Phelix agrees that, if incarcerated, will join the Inmate Financial Responsibility Program, earnings from which will be applied toward payment of the special assessment.

5. **COOPERATION.** Mr. Phelix will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Phelix may have counsel present except when appearing before a grand jury. Further, Mr. Phelix agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in subsequent indictments or informations.

6. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Phelix, and except as expressly provided for in paragraph 8 below, nothing contained in any statement or testimony provided by him pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

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7. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Phelix for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Phelix for perjury or false statement if such a situation should occur pursuant to this agreement.

8. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Phelix stipulate and agree that the facts comprising the offense of conviction, and relevant conduct for that offense, include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit A."

Mr. Phelix agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by him, and he is subsequently tried for his conduct alleged in the indictment and other relevant conduct, as more specifically described in the Stipulation of Facts, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Phelix or of any of his witnesses, or in rebuttal of any testimony introduced by him or on his behalf. Mr. Phelix knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Phelix understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the

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Court, the parties will not have the right to withdraw from the plea agreement.

9. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Phelix knowingly and voluntarily waives his right to seek appellate review of his conviction and of any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742(a), except that the defendant may appeal any sentence that exceeds the maximum penalty prescribed by statute. The United States also agrees to waive its right to appeal any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever, including any ground set forth in 18 U.S.C. § 3742(b), except that the United States may appeal any sentence that is below the minimum penalty, if any, prescribed by statute.

Mr. Phelix also knowingly and voluntarily waives the right to challenge his guilty plea and conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

10. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Phelix knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

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11. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Phelix;
- (f) Advise the Court concerning the nature and extent of Mr. Phelix's cooperation; and
- (g) Address the Court regarding the issue of Mr. Phelix's acceptance of responsibility.

12. **VOIDING OF AGREEMENT.** If either the United States or Mr. Phelix violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

13. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Phelix in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Phelix in any Court other than the United States District Court for the Southern District of West Virginia.

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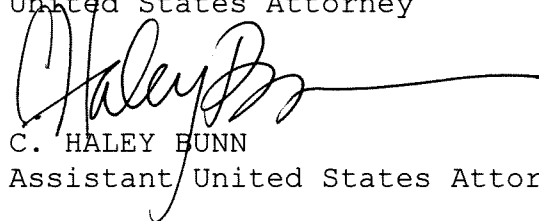
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Acknowledged and agreed to on behalf of the United States:

CAROL A. CASTO
United States Attorney

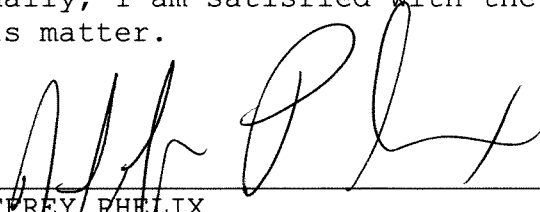
By:



C. HALEY BUNN
Assistant United States Attorney

CHB/ajc

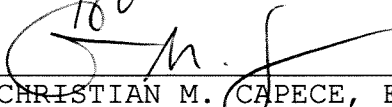
I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this six-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.



JEFFREY PHELIX
Defendant

3/2/17

Date Signed



CHRISTIAN M. CAPECE, ESQUIRE
Counsel for Defendant

3/2/17

Date Signed

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:17-cr-00004

JEFFREY PHELIX

STIPULATION OF FACTS

The United States and JEFFREY PHELIX (hereinafter "defendant") stipulate and agree that the facts comprising the offense of conviction (Count One in the Indictment in the Southern District of West Virginia, Criminal No. 2:17-cr-00004), and the relevant conduct for that offense, include the following:

On October 25, 2016, defendant and another individual (hereinafter "EW") broke into a garage attached to a residence in Charleston, Kanawha County, West Virginia. The owner of the residence was a federally licensed firearms dealer. Defendant and EW stole seven rifles from the garage which are described as follows: 1) a Ruger, model M77/22, .22 caliber rifle; 2) a Norinco, Model SKS, 7.62 x 39 mm caliber rifle; 3) a Russian, Model SKS, 7.62 x 39 mm caliber rifle; 4) a Russian, Model SKS, 7.62 x 39 mm caliber rifle; 5) a Polish, Model M-44, 7.62 x 54 caliber rifle; 6) a Polish, Model M-44, 7.62 x 54 caliber rifle; and 7) a Remington, Model 552, .22 caliber rifle. Attached to one of the rifles was a Jonathan Arthur Ciener, model M77/22 suppressor which is a firearm described in 26 U.S.C. § 5845(a).

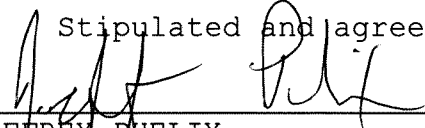
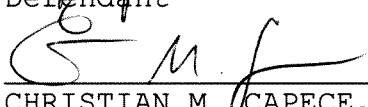

Defendant's fingerprint was recovered from the window of the garage. On November 10, 2016, defendant gave a Mirandized statement admitting his involvement in stealing the firearms described above. Based upon information provided by defendant during the statement, officers were able to recover three of the rifles defendant and EW stole, including the rifle fitted with the suppressor described above.

Each of the rifles and the suppressor described above travelled in or affected interstate commerce because they were manufactured outside the State of West Virginia.

On November 11, 2011, in the Circuit Court of Kanawha County, West Virginia, defendant was convicted of the felony offense of Burglary by Breaking and Entering. On March 12, 2012, in the Circuit Court of Kanawha County, West Virginia, defendant was convicted of the felony offense of Conspiracy. Defendant's rights to possess a firearm have not been restored since these felony convictions.

This Stipulation of Facts does not contain each and every fact known to defendant and to the United States concerning his involvement and the involvement of others in the charges set forth in the Indictment.

Stipulated and agreed to:

| | | |
|---|------|---------------|
|  _____ JEFFREY PHELIX Defendant | Date | <u>3/2/17</u> |
|  _____ CHRISTIAN M. CAPECE, ESQ. Counsel for Defendant | Date | <u>3/2/17</u> |
|  _____ C. HALEY BUNN Assistant United States Attorney | Date | <u>3/2/17</u> |