

U.S. Department of Justice

Matthew M. Graves United States Attorney

District of Columbia

Patrick Henry Building 601 D Street, N.W. Washington, D.C. 20530

June 5, 2024

Michael Lawlor, Esq. BRENNAN McKENNA & LAWLOR, CHTD. 6305 Ivy Lane, Suite 700 Greenbelt. MD 20770

Brian K. McDaniel THE COCHRAN FIRM 1666 K Street, NW, Suite 1150 Washington, D.C. 20006

Re: U.S. v. Pearce Then

Criminal Case No. 2019 CF1 8007

Dear Messrs. Lawlor and McDaniel:

This agreement sets forth the full and complete plea offer for your client, from the Office of the United States Attorney for the District of Columbia (hereinafter also referred to as "the Government" or "this Office"). This plea offer will remain open until COB on Thursday, June 6, 2024, that is, the plea must be entered by then. However, the Government reserves the right to revoke this plea offer at any time before your client enters a guilty plea in this case. If your client accepts the terms and conditions set forth below, please have your client execute this document in the space provided below. Upon receipt of the executed document, this agreement will become the plea agreement between your client andthe Government. The terms of the offer are as follows:

1. Your client agrees to admit guilt and enter a plea of guilty to the following offense: one count of Attempted First-Degree Sexual Abuse of a Patient or Client, in violation of 22 D.C. Code § 3015(a)(4) and 3018, and as a lesser-included offense of Count One of the Indictment. Your client understands that the offense of Attempted First-Degree Sexual Abuse of a Patient or Client carries a potential maximum penalty of five (5) years imprisonment and/or a \$12,500.00 fine. Your client further understands that the Court shall impose a term of supervised release of up to ten (10) years. Your client understands that, pursuant to 16 D.C. Code § 711, the Court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require your client to make reasonable restitution or reparation, pursuant to the factors set forth therein.

Your client understands that as a result of his conviction for Attempted First-Degree Sexual Abuse of a Patient or Client, he will be required to register in the District of Columbia as a sex offender for a period to be determined by the Court, pursuant to 22 D.C. Code §§ 4001 et seq. Your client further understands that he must abide by federal and state sex offender registration laws in any jurisdiction where he lives, works or attends school or job training.

- 2. Your client understands that the Government will waive stepback pending sentencing, will waive any sentencing enhancement papers, and will reserve allocution at sentencing, subject to the terms set forth in Paragraph 5 of this agreement.
- 3. Your client further understands that the government will dismiss the remaining and greater counts of the Indictment in this case at the conclusion of the sentencing hearing.
- 4. The parties further agree that your client, after taking an oath to tell the truth, shall agree to the attached factual proffer in open court on the date of the plea and acknowledge under oath that the statements in the factual proffer are true.
- 5. Your client understands that the Court may utilize the District of Columbia Sentencing Commission's Voluntary Sentencing Guidelines in imposing the sentence in this case. The Government and your client agree that neither party will seek an upward or downward departure outside of your client's applicable guidelines range, unless the specific basis for such a departure is identified and is set forth in this agreement. Your client understands that the government will agree to a probation-only sentence, i.e., the government will not seek a sentence involving any incarceration. Your client further understands that the applicable guidelines range will not be determined by the Court until the time of sentencing.
- 6. Your client agrees that this agreement is binding on the Government and the defendant, but not binding on the Court, and that your client cannot withdraw this plea at a later date because of the harshness of any sentence imposed by the Court. The Government understands that your client is not bound by the Government's allocution, and may request a lesser sentence, subject to the terms set forth in Paragraph 5, above.
- 7. Your client acknowledges and has been made aware that pursuant to the Innocence Protection Act, that there may be physical evidence which was seized from the victim, crime scene or from your client or from some other source that can be tied to your client and that could contain probative biological material. Your client understands and agrees that in order to plead guilty in this case, your client must waive and give up DNA testing in this case and must execute the attached written waiver of DNA testing. Your client further understands that should your client waive and give DNA testing now, it is not expected that your client that your client will have another opportunity to have DNA tested in this case.
- 8. In entering this plea of guilty, your client understands and agrees to waive certain rights afforded to your client by the Constitution of the United States and/or by statute. Your client knowingly and voluntarily waives or gives up his right against self-incrimination with respect to the offense(s) to which your client is pleading guilty before the Court which accepts your client's plea. Your client also understands that by pleading guilty your client is waiving or giving up your client's right to be tried by a jury or by a judge sitting without a jury, the right to be assisted by an

attorney at trial and the right to confront and cross-examine witnesses.

- 9. Your client agrees to waive, insofar as such waiver is permitted by law, the right to direct appeal the conviction in this case, including but not limited to claim(s) that (1) the statute(s) to which your client is pleading guilty is unconstitutional, and (2) the admitted conduct does not fall within the scope of the statute(s). Your client also agrees to waive the right to appeal the sentence in this case, including but not limited to any term of imprisonment, fine, forfeiture, award of restitution, term or condition of supervised release, authority of the Court to set conditions of release, except to the extent the Court imposes an illegal sentence, or imposes the sentence in an illegal manner. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement. Notwithstanding the above agreement to waive the right to appeal theconviction and sentence, your client retains the right to appeal on the basis of ineffective assistanceof counsel or the imposition of an illegal sentence, or a sentence imposed in an illegal manner, butnot to raise on appeal other issues regarding the conviction or sentence.
- 10. This agreement sets forth the entire understanding between the parties and constitutes the complete plea agreement between your client and the United States Attorney's Office for the District of Columbia. This agreement supersedes all prior understandings, promises, agreements, or conditions, if any, between this Office and your client.

Respectfully,

MATTHEW M. GRAVES UNITED STATES ATTORNEY

By:

PETER V. TAYLOR
LaVATER MASSIE-BANKS
ASSISTANT U.S. ATTORNEYS

## **DEFENDANT'S ACCEPTANCE**

I have read this plea agreement and factual proffer and have discussed it with my attorney. I fully understand this agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound, and no threats have been made to me. I am not under the influence of anything that could impede my ability to understand this agreement fully. I am pleading guilty because I am in fact guilty of the offenses set forth herein.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this plea agreement. I am satisfied with the legal services provided by my attorney in connection with this plea agreement and matters related to it.

Date: 6/6/24

PEARCE THEN

Defendant

## ATTORNEYS' ACKNOWLEDGMENT

I have read each of the pages constituting this plea agreement, reviewed them with my client, and discussed the provisions of the agreement with my client, fully. These pages accurately and completely set forth the entire plea agreement.

Date: 6 6 24

MICHAEL LAWLOR, ESQ. BRIAN K. McDANIEL, ESQ. Attorneys for Defendant