

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA

v.

RONALD MILEY

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Criminal Case No.  
3:03 CR 14 (SRU)

**RULING ON MOTION TO VACATE SENTENCE  
AND FOR LEAVE TO WITHDRAW GUILTY PLEA**

Ronald Miley has moved, apparently pursuant to Rule 35 of the Federal Rules of Criminal Procedure, to vacate his sentence and for leave to withdraw his guilty plea. Miley argues, in essence, that he pleaded guilty in reliance on: (1) the Assistant United States Attorney’s promise that the government would not object to Miley’s sentence on the federal conviction running concurrently with the sentence he was then serving on a state conviction, and (2) my alleged statement that I would be inclined to depart downward at sentencing. For the reasons set forth below, the motion is denied.

**Background**

In January 2003, Miley was charged in a two-count indictment with being a felon in possession of a firearm (count one) and ammunition (count two), in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The matter proceeded to jury selection and trial was scheduled to begin the morning of January 5, 2004. On that day, without the jury being brought into court or ever being sworn, counsel discussed the possibility of a guilty plea. An extended recess was held to permit counsel to negotiate a plea.

During that recess, counsel requested to speak with me in chambers. That conference was extremely brief – indeed, everyone remained standing throughout – and was not on the record.

Counsel reported that they were close to reaching an agreement, but that the defendant was concerned about whether his federal sentence would run consecutively or concurrently with his state sentence. The AUSA reported that the government would defer to the court on that issue. Defense counsel questioned whether the government would also agree that Miley should receive credit toward his federal sentence for time served on his state sentence. The AUSA expressed reluctance to agree that Miley should receive such credit. In what I believe was the only statement I made during the conference, I noted that I had in a prior case departed downward in order to reach a fair sentence when similar issues had arisen and that I would be open to doing so if the circumstances warranted. The AUSA stated that the government would oppose any downward departure. Counsel left chambers and soon thereafter reported that the defendant had agreed to plead guilty pursuant to a written plea agreement.

The written plea agreement set forth a stipulation of criminal conduct, in which Miley admitted the elements of count two of the indictment.<sup>1</sup> The plea agreement also included a Sentencing Guideline stipulation that Miley's applicable Sentencing Guidelines imprisonment range was 33 to 41 months. Neither in the Sentencing Guidelines stipulation nor elsewhere in the plea agreement did the parties address whether Miley's federal sentence would be consecutive or concurrent to his state sentence, nor did they address whether Miley should receive any credit toward his federal sentence for time served on his state sentence. The plea agreement acknowledged Miley's awareness that the court is not bound by the parties' Sentencing Guidelines stipulation. Finally, in the written plea agreement Miley

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<sup>1</sup> The stipulation regarding criminal conduct, which is set forth at page 3 of the plea agreement, incorrectly states that the defendant was willing to plead guilty to "Count One of the Information."

“acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all parties.” Plea Agreement at 8.

Before discharging the jury on January 5, 2004, I conducted a Rule 11 canvass of Miley. Regarding the parties’ Sentencing Guidelines stipulation, I advised Miley as follows: “I want to make sure you understand that the agreement is between yourself and the government and that I’m not agreeing to this. I’m not saying that I won’t agree with it at some point, but I haven’t had a chance to review all the information that I’ll have available to me at the time of sentencing so I don’t know today that I can agree to the guideline stipulation.” Jan. 5, 2004 Tr. at 40. Miley acknowledged that the written plea agreement was complete and that “no one’s made any promises to [him] that did not find their way into this [plea agreement] letter.” Id. at 41-42. Miley also acknowledged that “whatever discussions [his] lawyer and the prosecutor may have had in the past don’t count for anything unless they are in this [plea agreement] letter.” Id. at 42. Miley understood that he would not be allowed to withdraw his guilty plea if he received a sentence that he thought was unfair or mistaken. Id. at 44. Finally, Miley acknowledged that the court was not bound by “any advice or recommendation or argument that [defense counsel] might make about how [Miley] ought to be sentenced.” Id. at 45. Following this canvass, Miley entered a plea of guilty, which I accepted.

The matter proceeded to sentencing on March 25, 2004. Miley argued for a downward departure due to diminished capacity and in order to account for the time spent serving his state sentence. The government sought an upward departure on the ground that Miley’s criminal history category significantly understated the seriousness of his past criminal conduct. I noted that the current

edition of the Sentencing Guidelines, specifically application note 3(c) to U.S.S.G. section 5G1.3, recommends that when the offense of conviction is the same as the offense of revocation of probation, the sentence imposed for the conviction should be consecutive to any sentence imposed on the revocation of probation. March 25, 2004 Tr. at 13. The government deferred to the court on this question<sup>2</sup> and the defendant argued in favor of a concurrent sentence. The government also argued that 18 U.S.C. § 3585(b) prohibited Miley from earning credit toward his federal sentence for any time spent in official detention prior to the date of sentencing because that time was credited against another sentence, i.e., his state sentence. *Id.* at 18. Ultimately, I rejected all motions for departure from the Sentencing Guideline imprisonment range and sentenced Miley principally to 41 months' incarceration, to run concurrently with the remainder of his state sentence, but without credit for time served prior to the sentencing hearing.

Judgment entered on March 26, 2004. Four days later, on March 30, 2004, Miley filed the present motion to vacate his sentence and withdraw his guilty plea.

#### Discussion

Miley's motion does not cite any legal authority. The motion appears to have been filed under Rule 35 of the Federal Rules of Criminal Procedure. Rule 35(a) permits the correction of "arithmetical, technical, or other clear error" in a criminal sentence. Giving the motion the most favorable reading possible, it appears to argue that it was clear error to sentence Miley inconsistently with the

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<sup>2</sup> The government did argue that the commentary to U.S.S.G. section 5G1.3 "seems to indicate that the Sentencing Commission wants this sentence to be consecutive." March 25, 2004 Tr. at 19. This argument was made in the context of the government's opposition to Miley's request for a downward departure from the Guideline sentencing range.

government's statement that it would not object to the federal sentence running concurrently with Miley's state sentence and a statement attributed to me that I "would be inclined to depart downward from the 33 to 41 month sentencing guidelines [range]." Motion at 2.

The government opposed Miley's motion both on the merits and on the ground that the court does not have jurisdiction to hear it, due to the fact that Miley filed an appeal on the same day that he filed the present motion. The government acknowledges that Rule 4(b)(5)<sup>3</sup> of the Federal Rules of Appellate Procedure does not divest a district court of jurisdiction to correct a sentence under Rule 35(a) of the Federal Rules of Criminal Procedure, but asserts that "the defendant's motion was not made pursuant to Rule 35." Opposition at 5. This position appears to stem from the government's understanding that Miley has not "pointed to any technical error in his sentence." *Id.* Because Miley has apparently sought to correct a clear error in his sentence, based on an alleged breach of representations that he claims underlie his guilty plea, I believe that the court has jurisdiction to consider his motion notwithstanding the pending appeal.

Without saying so directly, it seems that Miley is alleging that his sentence should be vacated and his plea withdrawn because the court violated Rule 11 of the Federal Rules of Criminal Procedure by participating in plea negotiations and then renegeing on representations made during those negotiations. Had that in fact occurred, it would be a very serious matter and would warrant the relief sought. See Fama v. United States, 901 F.2d 1175, 1179 (2d Cir. 1990) (holding that district court judges may be involved in plea discussions only in a procedural or supervisory capacity); United States

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<sup>3</sup> The government's memorandum cites to Fed. R. App. P. 4(b)(4), but draws its quotation from Fed. R. App. P. 4(b)(5). Opposition at 5.

v. Werker, 535 F.2d 198, 201 (2d Cir. 1976) (“the sentencing judge should take no part whatever in any discussion or communication regarding the sentence to be imposed prior to the entry of a plea of guilty or conviction, or submission to him of a plea agreement”). Miley’s motion has no merit, however, because the conduct he suggests occurred never did.

Miley’s motion mistakenly recounts what both the AUSA and I said. First, when the issue of concurrent or consecutive sentences initially came up in open court, the AUSA did not reply “that he would be agreeable to the sentence running concurrently,” Motion at 1. Rather, the AUSA stated that “at the end of the day it would be at the court’s discretion and I don’t know that the government could agree one way or the other.” Jan. 5, 2004 Tr. at 20. At sentencing, the government did not deviate from its representation made on the record; it did defer to the court on the issue of consecutive or concurrent sentences.

Second, Miley’s assertion that I said I would be “inclined” to depart downward at sentencing is also mistaken. I am very much aware that Rule 11(c)(1) prohibits the court from becoming involved in plea discussions and I have never violated either the letter or the spirit of that rule. As the government correctly put it, “the Court never indicated, either before or after the entry of the guilty plea, that it would depart from the guideline range to give the defendant credit for time already served.” Opposition at 6. Indeed, I did not ever urge the parties to resolve this case, did not comment in any way on the evidence or the strength of the government’s case, did not discuss with counsel in this case the terms and conditions of the plea agreement prior to the canvass in open court, and did not make any suggestions or representations about what sentence the defendant would receive in this case should he plead guilty or should he go to trial and be convicted.

Third, Miley asserts that the only reason he pleaded guilty, Motion at 2, ¶ 7, was because he relied on his counsel's interpretation of the brief chambers conference: "Counsel for the defendant advised the defendant of this chambers conference and it appeared to counsel for the defendant that there would be, at worse [sic], several months beyond what the defendant was currently serving if he entered a guilty plea." *Id.*, ¶ 6. Miley has offered no affidavit in support of his motion. At the plea colloquy, however, before Miley pleaded guilty and before I accepted his plea, Miley repeatedly represented under oath that no one had made any promises to him that were not set down in writing in the plea agreement and that he understood that whatever advice his lawyer may have given him was not binding on the court at sentencing. Neither Miley nor his counsel made any mention, either in the written plea agreement or orally during the change of plea proceeding, that I had said or done anything that had affected Miley's decision to plead guilty. Similarly, at sentencing, neither Miley nor his counsel suggested that the sentence imposed was inconsistent with anything that I said or did before accepting the plea.

#### Conclusion

Having carefully reviewed the circumstances under which Miley pleaded guilty, I conclude that Miley has failed to demonstrate any clear error in his sentence or in the decision to accept his guilty plea. Because Miley's request to vacate his sentence and his request to withdraw his guilty plea are both premised on statements and conduct that never occurred, the motion (doc. # 36) is without merit and it is hereby denied.

Dated at Bridgeport, Connecticut this 13<sup>th</sup> day of September 2004.

/s/ Stefan R. Underhill

Stefan R. Underhill

United States District Judge