

A DEAL’S A DEAL: PLEA AGREEMENTS MAY NOT BE  
ACCEPTED OR REJECTED ON A PIECEMEAL BASIS  
*UNITED STATES V. SELF* , 596 F.3D 245 (5TH CIR. FEB. 3, 2010)

Highlight

*Sarah Heep*

Appellant Rocky Self was indicted in the Eastern District of Texas for bank robbery (Count I), aiding and abetting bank robbery (Count III), carrying a firearm during a crime of violence (Count II), and aiding and abetting the carrying of a firearm during a crime of violence (Count IV).<sup>1</sup> In exchange for the appellant’s cooperation, the Government agreed to drop Counts I and II, and the appellant pleaded guilty to Counts III and IV.<sup>2</sup> Pursuant to Federal Rule of Criminal Procedure 11, the parties entered a plea agreement setting forth a total of 171 months imprisonment, 87 months for Count III and 84 months for Count IV.<sup>3</sup> In addition, the appellant reserved the right to withdraw his guilty plea if the district court declined to accept the sentence agreed to by the parties.<sup>4</sup> Lastly, the appellant waived his right to appeal “on all grounds” unless the district court failed to impose a sentence in accordance with the plea agreement.<sup>5</sup>

After entering the plea agreement with the appellant, the Government, respondent in this case, submitted a presentence report to the district court, which stated that the appellant was a career offender and recommended an increased sentencing range of 188 to 235 months for Count III.<sup>6</sup> At sentencing, the district court agreed to the majority of the terms of the plea agreement; however, the court did not except the 84 month sentence for Count III.<sup>7</sup> The court gave the appellant an opportunity to withdraw his guilty plea, which he declined.<sup>8</sup> Accepting part of the plea agreement and replacing Count III with the lengthier sentence, the district court sentenced the appellant to a total of 272

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<sup>1</sup> United States v. Self, 596 F.3d 245, 246-47 (5th Cir. Feb. 3, 2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

months imprisonment, 188 months for Count III, and 84 months for Count IV.<sup>9</sup>

On appeal, the Fifth Circuit was presented with three primary issues.<sup>10</sup> First, whether the district court accepted or rejected the plea agreement by altering the sentence under Count III.<sup>11</sup> Secondly, whether based on the terms of the plea agreement, the appellant waived his right to appeal his sentence.<sup>12</sup> Finally, whether the court abused its discretion by altering the terms of the plea agreement constituting reversible error.<sup>13</sup> The Fifth Circuit reviewed whether the district court abused its discretion under the plain error standard.<sup>14</sup> Upon a finding of plain error, the court has the discretion to cure the error if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.”<sup>15</sup>

The Fifth Circuit interpreted Rule 11 to require the court to accept or reject the plea agreement in its totality, thereby refusing to allow the district court to enforce the plea agreement on a “piecemeal basis.”<sup>16</sup> The court found that by rejecting the agreed-to sentence for Count III, the district court “constructively rejected the plea agreement *in toto*.”<sup>17</sup> Secondly, by holding that the district court rejected the agreement *in toto*, the Fifth Circuit determined that the appellant did have the right to appeal his sentence.<sup>18</sup> Because the district court constructively rejected the entire plea agreement, the court held the appellant’s waiver of his right to appeal was unenforceable.<sup>19</sup> Furthermore, the court stated that the appellant would still have the right to appeal his sentence under the terms of the plea agreement if it had remained in force.<sup>20</sup> The appellant waived his right to appeal on all grounds; however, the appellant reserved the right to appeal if the district court did not impose a sentence in accordance with the plea agreement.<sup>21</sup> Defining “in accordance” narrowly, the court held that by rejecting the agreed-to sentence for Count III, the district court did not

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 247-50.

<sup>11</sup> *Id.* at 248.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 249-50.

<sup>14</sup> *Id.* at 248. The appellant was required to establish a clear or obvious error that was not affirmatively waived and affected his substantial rights. *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 248-49.

<sup>17</sup> *Id.* at 249.

<sup>18</sup> *Id.* at 247.

<sup>19</sup> *Id.* at 249.

<sup>20</sup> *Id.* at 247.

<sup>21</sup> *Id.*

act “in accordance” with the agreement.<sup>22</sup> Therefore, the appellant had the right to appeal his sentence.<sup>23</sup>

Finally, the court held that the district court’s error required reversal because it substantially affected the appellant’s rights constituting plain error.<sup>24</sup> The appellant bargained for a sentence of less than 15 years and received over 22 years imprisonment.<sup>25</sup> Additionally, a court may not “reject [a] plea agreement and then re-impose it on the parties with terms that it found acceptable.”<sup>26</sup> Furthermore, the court held that reversal was required as the lower court’s piecemeal approach “seriously affects the fairness, integrity or public reputation of judicial proceedings.”<sup>27</sup> The court upholds the basic need for fairness in negotiations, even for criminals.

The Fifth Circuit’s holding will likely increase the fairness of federal proceedings. The court’s all-or-nothing approach to plea agreements will encourage open negotiations between prosecutors and defendants. Criminal defendants will have more confidence in their plea agreements with federal prosecutors as prosecutors will not be able to alter the deal to impose a harsher sentence. This will encourage future defendants to enter plea agreements because they will have a greater certainty in the outcome of their sentencing proceedings.

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<sup>22</sup> *Id.* at 248.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 250.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 249.

<sup>27</sup> *Id.* at 248.