

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:14CR66-4  
(Judge Keeley)

BRIAN MICHAEL BARNES,

Defendant.

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S  
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF  
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING

On November 19, 2014, defendant, Brian Michael Barnes ("Barnes"), appeared before United States Magistrate Judge John S. Kaul and moved for permission to enter a plea of GUILTY to Count Six of the Indictment. Barnes stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Barnes' statements during the plea hearing and the government's proffer to establish an independent basis in fact, the magistrate judge found that he was competent to enter a plea, that the plea was freely and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea,

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and that a factual basis existed for the tendered plea. On November 21, 2014, the magistrate judge entered an Opinion/Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 134) finding a factual basis for the plea, and recommending that this Court accept the plea of guilty to Count Six of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the report and recommendation. On November 21, 2014, the government, by Assistant United States Attorney Shawn A. Morgan ("Morgan"), responded to the R&R stating the government had no objection (dkt. no. 143). Barnes did not file any objections.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Barnes' guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in Count Six of the Indictment.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it

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has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** that:

1. The Probation Officer undertake a presentence investigation of **BRIAN MICHAEL BARNES**, and prepare a presentence report for the Court;

2. The Government and Barnes are to provide their versions of the offense to the probation officer by **December 19, 2014**;

3. The presentence report is to be disclosed to Barnes, defense counsel, and the United States on or before **February 4, 2015**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **February 18, 2015**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **March 3, 2015**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the

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factual basis from the statements or motions, on or before **March 18, 2015.**

The magistrate judge continued Barnes on bond pursuant to the Order Setting Conditions of Release (dkt. no. 24) entered on September 18, 2014.

The Court will conduct the sentencing hearing for the defendant on **Tuesday, April 7, 2015 at 1:00 P.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: December 4, 2014

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE