

UNITED STATES

V

MAJID SHOUKAT KHAN
ISN 10020

)
)
) U.S. NAVAL STATION
) GUANTANAMO BAY, CUBA
)
) FEBRUARY 13, 2012

OFFER FOR PRETRIAL AGREEMENT

I, MAJID SHOUKAT KHAN, ISN 10020, am presently the accused under military commission charges, dated February 13, 2012. I read the charges and specifications alleged against me, and they have been explained to me by my defense counsel, Mr. J. Wells Dixon, Ms. Katya Jestin, and LTC Jon Jackson, USAR. I understand the charges and specifications, and I am aware I have a legal and moral right to plead not guilty and to leave the Government with the burden of proving my guilt beyond a reasonable doubt by legal and competent evidence.

Understanding the above, and under the conditions set forth below, and in consideration of agreement by the Convening Authority to approve a sentence in accord with the limitations set forth in Appendix A, I offer to plead guilty to all charges and specifications. The term "Convening Authority" as used throughout this agreement includes any current or future official so designated by the Secretary of Defense.

I understand that this Offer, if accepted by the Convening Authority, constitutes a binding agreement. I assert that I am, in fact, guilty of the offenses to which I am offering to plead guilty. I understand that this agreement permits the Government to avoid presentation in a military commission of sufficient evidence to prove my guilt. I offer to plead guilty because it will be in my best interest that the Convening Authority grant me the relief set forth above and in Appendix A. I understand that I waive my right to a trial of the facts and to be confronted by the witnesses against me, and my right to avoid self-incrimination insofar as a plea of guilty will incriminate me. In making this offer, I state that:

1. I am satisfied with the defense counsel, who advised me with respect to this Offer, and consider them competent to represent me in this Military Commission.
2. No person or persons made any attempt to force or coerce me into making this Offer or to plead guilty.
3. My counsel fully advised me of the nature of the charges against me, my right to defend against them, any defense which might apply, and the effect of the guilty plea that I am offering to make. I fully understand their advice and the meaning, effect, and consequences of this plea.

4. I understand that the signature of the Convening Authority to this Offer and to Appendix A will transform this offer into an agreement binding upon me and the Government.

5. I understand that I may withdraw my plea of guilty at any time before sentence is announced by the Military Commission but not after and that, if I do withdraw my plea of guilty, the agreement that may result from this Offer is canceled. Any such agreement will also be canceled if any of the following occurs:

- a. Refusal of the court to accept my plea of guilty, as set forth above, or modification of the plea during the trial to not guilty or to a lesser degree of guilt.
- b. Withdrawal by either party to the agreement before my guilty plea is accepted by the Military Judge.
- c. My failure to agree with the Government on a stipulation of facts as discussed in paragraph 15 below.
- d. Failure or refusal by the Military Judge to delay the sentencing proceedings in this case until 4 years from the date the Military Judge accepts my guilty plea as set forth in paragraph 18 below.
- e. Failure or refusal of the Military Judge to instruct the members that the sentence to confinement adjudged for me shall be no less than 25 years and no more than 40 years as discussed in paragraph 8 below.

6. I understand the Convening Authority's obligation to approve a range of punishment as provided in Appendix A to this agreement may be canceled if I commit any offense chargeable under the M.C.A. between the announcement of sentence and the Convening Authority's approval of any sentence, or if I engage in any conduct, which if committed by a member of the U.S. armed forces, would be an offense under Sections 877 through 934 of Title 10 of the United States Code.

7. I understand that the Convening Authority has no power to affect my status as an alien unprivileged enemy belligerent, and does not purport to do so by the terms of this agreement.

8. To effect my agreement to a range of confinement, and after full and satisfactory consultation with my defense counsel, I agree that, in accordance with RMC 705(b)(1), 705(b)(2)(f) and 1005(e)(1), the Government and I shall jointly request the Military Judge to instruct the members, prior to deliberation, that the sentence to confinement must be at least 25 years and may not exceed 40 years, as reflected in Appendix A. The period of any ~~adjudged~~ sentence to confinement shall run from the date that the Military Judge accepts my guilty plea.

9. I have been informed by my counsel of my post-trial and appellate rights and fully understand those rights. I knowingly, voluntarily and expressly waive all rights to appeal my conviction

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sentence, or confinement except as provided in this agreement. In particular, and without limitation, I may bring a post conviction claim if any sentence is imposed in violation of the sentencing limitation provisions contained in this Offer and Appendix A. I shall execute whatever documents may be necessary to implement this paragraph and any other provision of this Offer or the Appendix, including Military Commissions Form 2330 and any appellate rights statements, as provided in R.M.C. 1110.

10. I also understand that I may have a right to attack the conviction and/or sentence imposed collaterally on the grounds that it was imposed in violation of the Constitution or laws of the United States, that I received ineffective assistance from my counsel that the Court was without proper jurisdiction, or that the conviction and/or sentence was otherwise subject to collateral attack. I understand such an attack is usually brought through a motion pursuant to Title 28, United States Code, Section 2255. I have reviewed Section 2255 with my counsel, and understand my rights under the statute. Understanding those rights, and having thoroughly discussed those rights with my counsel, I knowingly and voluntarily waive my right to collaterally attack my conviction and/or sentence, except as provided in this agreement.

11. Once my guilty plea is accepted, I will not initiate any legal claims against the United States Government, any United States Government Agency or official, or any civilian or civilian agency regarding my capture, detention, or confinement conditions prior to my plea. I further agree to withdraw or dismiss without prejudice any pending litigation regarding my capture, detention, confinement conditions, or alien unlawful enemy combatant or alien unlawful enemy belligerent status. Notwithstanding the foregoing or any other provision of this Offer or Appendix A, after I have served any unsuspended portion of an approved sentence to confinement, I retain the right to seek release from the appropriate United States authorities by challenging my continued detention, if any, through a petition for a writ of habeas corpus or other available remedies.

12. I waive my right to any discovery beyond what the Government is obligated to provide pursuant to R.M.C. 701(b)(1) and 701(d). I additionally waive any request for forensic or scientific testing of any physical evidence in the Government's possession. The Government may dispose of any physical evidence upon completion of any appellate processes not waived by this agreement or otherwise available to me.

13. I agree to cooperate fully and truthfully with the Government. This cooperation includes, but is not limited to, providing complete and accurate information in interviews, depositions, and testimony wherever and whenever requested by prosecutors from the Office of Military Commissions, the United States Department of Justice, United States law enforcement, military, or intelligence authorities while in United States custody. I agree that the Government may interview me without the presence of my counsel. However, the Government will provide my counsel with reasonable notice of and the opportunity to be present for any testimony by me under oath.

14. Should I commit any additional offense, before or after the acceptance of my guilty plea, I will be subject to prosecution for those offenses before any court having jurisdiction over me.

15. I have entered into a stipulation of fact with the Government (Attachment A). I understand that I have an absolute right to refuse to enter into this stipulation of fact; however, I knowingly and voluntarily agree to enter into this stipulation of fact. I understand that I may not ordinarily attack, contradict, or otherwise challenge the stipulation of fact. If I do so, on my own or through counsel, the Convening Authority may withdraw from this agreement. I have discussed this decision with my counsel and believe it is in my best interest to enter into this stipulation of fact.

16. I agree that the stipulation of fact will be used to determine my guilt and to assist in the determination of my sentence. I have read and fully understand the stipulation of fact and have discussed it with my counsel. This stipulation of fact is a fair and accurate summary of the facts supporting all charges and specifications to which I am pleading guilty. The facts to which I am stipulating, but was not a direct party, are a fair and accurate summary of those facts, to the best of my knowledge, and I acknowledge that the Government could prove those facts beyond a reasonable doubt. The Military Commission may rely on this document to determine my guilt and to determine an appropriate sentence along with all matters presented during the sentencing hearing in this case. The Government and I (through counsel) will offer the stipulation of fact, unopposed, to the Military Commission.

17. I knowingly and voluntarily waive the time periods enumerated in R.M.C. 707(a)(2).

18. I shall join the Government in requesting that the Military Judge delay the sentencing proceedings in my case until four (4) years from the date the Military Judge accepts my guilty plea, in order to allow me to cooperate with the Government.

19. The Government, in its discretion, may request that the Military Judge schedule my sentencing proceedings before the expiration of four (4) years from the date the Military Judge accepts my guilty plea. Should the Government seek to accelerate the date of my sentencing proceedings in this manner, the Government will provide 90 days notice before the proposed date of the proceedings to my counsel.

20. I understand the panel of members of the Military Commission will determine the sentence, not the Convening Authority. I also understand that the offenses to which I am pleading guilty would carry the following maximum penalties in my case in the absence of this agreement:

Charge I:	Confinement for life;
Charge II:	Confinement for life;
Charge III:	Confinement for life;
Charge IV:	Confinement for life;
Charge V:	Confinement for life.

21. The Government and defense may call live witnesses and present evidence, subject to any rulings by the Military Judge, regarding matters in aggravation and mitigation for sentencing consideration.

22. I will not offer live testimony of any detainee held at United States Naval Station Guantanamo Bay.

23. I will not retain or present at a sentencing hearing more than two expert consultants or witnesses at Government expense, the Convening Authority will consider my request for an expert witness in accordance with the Rules for Military Commissions.

24. I may submit written sworn or unsworn statements during the sentencing hearing.

25. Should I or the Government seek to introduce any classified evidence during my sentencing procedures, M.C.R.E. 505 and 506 will apply.

26. Once this Offer is accepted, and as a continuing obligation after the Military Judge has accepted my guilty plea, I agree that I will not disclose, in any form, in any manner, or by any means, any classified United States Government information, except to my cleared defense counsel during the course of my representation or to the Military Commission as information in mitigation at sentencing as provided in paragraphs 20 and 24 above. Such classified information includes any information regarding my capture, detention, confinement, locations of my confinement or detention, or identifying information concerning any Government employee, law enforcement officer, or intelligence officer, including any physical description or any other information from which identity could be inferred or otherwise determined. Such classified information also includes any information regarding the capture, detention, confinement, locations of detention or confinement of other detainees currently held at the United States Naval Base at Guantanamo, Bay Cuba, or such information regarding other detainees that I may have learned since my capture. I further understand and acknowledge that if I do make such a disclosure or disclosures, it will constitute a material breach of the conditions of the plea agreement and that the Convening Authority will be free to pursue its remedies for such breach as set forth in this agreement.

27. The Convening Authority has no power to control the location or conditions of my detention or confinement, to release me from military or civilian detention or confinement after taking action on any adjudged sentence against me, or to compel the United States to release me from my detention as an alien unprivileged enemy belligerent. Pursuant to Regulation for Trial by Military Commission Chapter 12, Section 12-7(c), the Convening Authority agrees to make recommendations regarding the conditions of my detention, between now and the time I am sentenced, to JTF-GTMO. The Convening Authority will recommend to JTF-GTMO that, as long as I am fully and truthfully cooperating with the Government as required by this agreement, I should not be detained at Camp 7 and should be detained at a facility consistent with the detention conditions appropriate for law of war detainees and no more austere than my detention conditions at Camp 7. Pursuant to Regulation for Trial by Military Commission Chapter 12, Section 12-7(c), JTF-GTMO's failure to comply with this recommendation does not render the agreement voidable and is not grounds for me to withdraw from this agreement.

28. If this Offer is not accepted by the Convening Authority, if the Convening Authority or I withdraw from this agreement, or if the Convening Authority terminates this agreement, this Offer, Appendix and my providence inquiry cannot be used to establish my guilt concerning any of the offenses with which I have been charged in this case.

29. Before the Military Judge accepts my guilty plea, I may change or withdraw that plea. After the Military Judge accepts my guilty plea, but before an adjudged sentence is announced, I may seek permission from the Military Judge to change or withdraw any portion of my plea, and the Military Judge, in his or her discretion, may permit me to do so. If I change or withdraw my guilty plea, the Convening Authority may terminate this agreement.

30. The statements contained within this Offer and the attached Appendix contain all of the terms, conditions, and other provisions that represent the entire agreement with the Convening Authority. There are no other inducements that are not expressly contained in this agreement that affect my offer to plead guilty. Any modification of this agreement shall be effective only if made in writing and signed by the Convening Authority and me.

31. The Government agrees that after the announcement of my sentence by the Military Commission, no further criminal charges will be brought against me pursuant to the Military Commissions Act of 2009 for my role in the offenses described in the stipulation of fact that I have entered into with the Government (Attachment A).

32. I understand that if any agreement resulting from this Offer is canceled for any reason stated above, this Offer cannot be used against me in any way or at any time to establish my guilt of the offense(s), and the limitations upon disposition of my case set forth in Appendix A will have no effect.

This document and Appendix A include all of the terms of this offer to plead guilty and no other inducements have been made by the Convening Authority or any other person that affect my offer to plead guilty.

FEB-13-2012
Date

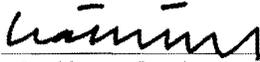

MAJID SHOUKAT KHAN

We certify we gave the accused the advice referred to above, we explained to him the elements of the offense(s) and we witnessed his voluntary signature to this offer for a pretrial agreement.

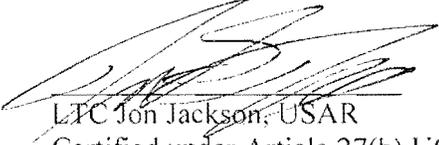
2/13/12
Date


Mr. J. Wells Dixon
Member of the bar of NY

2/13/12
Date

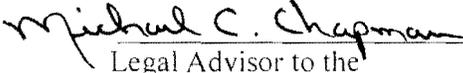

Ms. Katya Jestin
Member of the bar of N.Y.

2/13/12
Date


LTC Jon Jackson, USAR
Certified under Article 27(b) UCMJ 7

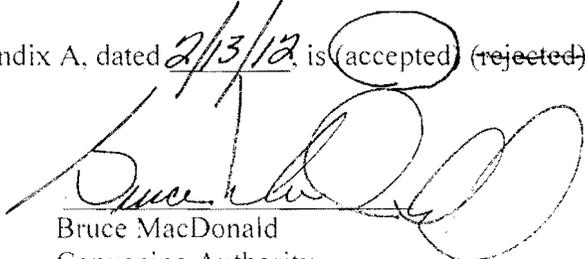
I recommend (acceptance) ~~(rejection)~~ of this offer.
mcc

2/15/12
Date


Legal Advisor to the
Convening Authority

The foregoing instrument, including Appendix A, dated 2/13/12 is (accepted) ~~(rejected)~~.

2/15/12
Date


Bruce MacDonald
Convening Authority