

sentence for certain drug offenses below the statutory mandatory minimum sentence. The government has objected to the motion on the ground that the defendant has not satisfied the safety valve requirements. See § 3553(f)(1)-(5). The Court held an evidentiary hearing to address the defendant's motion.

The defendant's motion [Document #242] is GRANTED for the following reasons.

I. Background and the Events of November 16, 1999

The defendant's indictment in this case arises from an investigation by the New Haven Drug Task Force³ of a PCP distribution operation in New York and Connecticut. The defendant is an associate of Chawn Battle, a resident of New Haven, Connecticut.⁴ Battle allegedly purchased large quantities of liquid PCP in New York City and transported the drugs to New Haven. Battle and his associates would then process the liquid PCP and package it for sale at various distribution locations throughout New Haven. One of the locations used to distribute PCP was co-conspirator Latoya Roberts's apartment at 21 Hurlburt Street in New Haven.⁵

In November 1999, during its investigation of the PCP distribution operation, the Task Force obtained a federal warrant to search the 21 Hurlburt Street apartment. The defendant and co-conspirator Demetrius Coppage were arrested there on November 16, 1999, during the execution of the warrant by Task Force members and other local, state, and federal law enforcement officers.

³The Task Force is comprised of federal, state, and local law enforcement officers and agents.

⁴Chawn Battle was indicted separately in the Southern District of New York.

⁵Latoya Roberts, a co-defendant in this case, was charged in the superseding indictment that included SirLawrence Jones.

As other officers and agents were attempting to enter the apartment on November 16, 1999 to execute the search warrant, New Haven Police Lieutenant William White, who remained outside the building, observed a black male's arm and hand, wearing a "gray sweater or shirt," throw a bag out a living room window of the apartment and onto an adjacent rooftop. The bag, which was later recovered by the Task Force, contained 9.9 grams of processed PCP.⁶ Lieutenant White entered the apartment approximately three to seven minutes later and observed the defendant sitting on the floor of the living room wearing a gray sweatshirt. By this time, the defendant had already been apprehended near the rear bedroom of the apartment by other members of the Task Force. He had been handcuffed and brought to the living room. The only other occupants of the apartment when the officers and agents entered it were Coppage and Latoya Roberts's son. Coppage was wearing a blue jacket at the time.

The defendant contends he was wearing a bulky green jacket over the sweatshirt when he was apprehended in the apartment, and that the officers removed the jacket just before he was handcuffed. DEA Special Agent Uri Shafir, who entered the apartment through its backdoor, testified that he was among the first officers to enter the apartment during the execution of the search warrant and did not see the person throw the PCP out the window. It had taken some time to gain entry to the apartment because the "ram" used to open the backdoor broke through it and another attempt was needed to force the door.

When Agent Shafir first saw the defendant in the apartment, he was being led by other Task Force members into the common area of the apartment. Agent Shafir also testified that it

⁶During processing for sale, PCP is applied in liquid form to mint leaves that are baked and dried. The leaves are then smoked, typically with marijuana.

would have been a “violation of procedure” to have removed his jacket prior to handcuffing. In addition, Agent Shafir testified that he heard the defendant verbally threaten a police officer after his arrest, which the defendant does not recall.

Following the defendant’s arrest and subsequent indictment in this case, he indicated that he wished to plead guilty to the charge contained in the superseding indictment. On September 20, 2000, the Court held a hearing for the purpose of accepting the defendant’s guilty plea. During the proceeding, the government summarized for the Court the defendant’s involvement in the charged drug conspiracy and the evidence it was prepared to introduce in support of his guilt. The defendant disputed the government’s proffer, however, and the Court terminated the hearing without accepting the defendant’s guilty plea. Eventually, on October 4, 2000, the defendant pled guilty to the charge contained in the superseding indictment pursuant to a written plea agreement with the government. The Court accepted his guilty plea. This dispute concerning the defendant’s safety valve eligibility arose shortly thereafter.

II. Safety Valve Requirements

“Federal law provides mandatory minimum prison terms for defendants convicted of violating federal drug laws with respect to certain quantities of narcotics.” United States v. Conde, 178 F.3d 616, 619-20 (2d Cir. 1999). As indicated, Title 18 of the United States Code also includes a “safety valve” that permits a district court to impose a sentence for certain drug offenses without regard to any statutory mandatory minimum sentence. See 18 U.S.C. § 3553(f).

The criteria for the safety valve are:

- (1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

§ 3553(f)(1)-(5). The Sentencing Guidelines also repeat verbatim these statutory criteria for the safety valve. See U.S.S.G. § 5C1.2; Conde, 178 F.3d at 120.

To take advantage of the safety valve, a defendant must provide truthful information regarding the offense of conviction and all relevant conduct prior to the commencement of the sentencing hearing. See United States v. Schreiber, 191 F.3d 103, 108-09 (2d Cir. 1999); United States v. Gambino, 106 F.3d 1105, 1111 (2d Cir. 1997). The defendant must disclose information concerning his own involvement and the involvement of any co-conspirators, including information beyond the dates of the conspiracy alleged in the indictment. See Conde, 178 F.3d at 622; Gambino, 106 F.3d at 1111. Further, a defendant has the burden of proving by a preponderance of the evidence that he meets all of the criteria of the safety valve provisions. See Conde, 178 F.3d at 120.

III. Discussion

The government agrees in this case that the defendant has satisfied the first four safety valve requirements. The government only disputes whether the defendant has truthfully provided all information and evidence he has concerning the PCP distribution operation in New Haven, Connecticut, in which he was involved.

In particular, the government disputes whether the defendant has provided complete and truthful information concerning his role in the charged conspiracy. The government contends that the defendant lied under oath at the failed guilty plea proceeding on September 20, 2000 when he denied throwing drugs out the window of the 21 Hurlburt Street apartment on November 16, 1999, and when he denied he was involved in selling PCP as part of the charged conspiracy. The government also contends that the defendant lied under oath at the guilty plea proceeding on October 4, 2000 when he repeated those denials, and when he made statements concerning a police officer's "vendetta" against him. In addition, the government contends that the defendant minimized his role in the charged conspiracy at his proffer sessions with the government and in his testimony at the safety valve hearing.

A. Denial of Throwing PCP out the Apartment Window

As indicated, at the failed guilty plea proceeding on September 20, 2000, the defendant denied that he threw drugs out the window of the 21 Hurlburt Street apartment on November 16, 1999. He repeated this denial at the guilty plea proceeding on October 4, 2000, as well as at his proffer sessions with the government and in his testimony at the safety valve hearing.

The Court concludes that the defendant was telling the truth when he made those statements, and that he did not throw drugs out the window of the apartment. In reaching this

conclusion, the Court credits the defendant's testimony. The Court also finds that the testimony of Lieutenant White and Agent Shafir is not inconsistent with this conclusion. Neither officer specifically identified the defendant as the person who threw the drugs out the window. Agent Shafir did not see the person throw the drugs out the window, and Lieutenant White's testimony was limited in that he could only say that the person's arm was clothed in a gray sweater or shirt. Although the defendant was wearing a gray sweatshirt at the time Agent Shafir saw him in the apartment, it is possible that Lieutenant White saw another person throw the PCP out the window.

In addition, Agent Shafir testified concerning statements made to him and to DEA Special Agent Raymond Walczyk by co-conspirator Latoya Roberts. Ms. Roberts apparently told them the defendant had admitted to her he threw the PCP out the window. Although the Court credits the recitation of Ms. Roberts's statements, the Court does not credit the underlying statements. Because Ms. Roberts's prior statements to Agents Shafir and Walczyk were inconsistent and incomplete, and because the Court did not have the benefit of observing Ms. Roberts testify in person about these matters, the Court finds that her statements concerning the defendant's admissions lack sufficient indicia of reliability to contradict the defendant's testimony. The Court also bases this conclusion on its observations of Ms. Roberts in court on other occasions.

Similarly, although the Court credits Agents Shafir's and Walczyk's recitations of wire tap conversations they monitored among third parties concerning the defendant throwing drugs out the window of the 21 Hurlburt Street apartment, the Court also finds that this evidence lacks sufficient indicia of reliability to credit. In particular, some of the statements concerning the defendant were overheard in the background of the phone conversations, and certain intercepted

statements concerning the defendant were made by unidentified participants. Even the statements made by persons who have been identified are based on unreliable hearsay; none of the speakers was present during the events of November 16, 1999.

B. Denial of Involvement in the Conspiracy at the Guilty Plea Proceedings

Following the government's proffer at the failed guilty plea proceeding on September 20, 2000, the defendant denied that he was involved in selling PCP. The Court then asked him: "Were you selling PCP?" and "[W]ere you part of a group that was selling PCP?" See Gov't Sentencing Mem. Ex. B at 41. The defendant again denied he was selling PCP or that he was a part of the conspiracy. However, based on the defendant's testimony at the safety valve hearing, which the Court credits, and given the context in which the Court's questions were asked on September 20, 2000, the Court finds that the defendant believed its questions concerned *only November 16, 2000*, and not his activities on behalf of the conspiracy on other dates.

The defendant's statements at the guilty plea proceeding on October 4, 2000 support this conclusion. At that proceeding, the defendant admitted he was in the 21 Hurlburt Street apartment on November 16, 1999. He also admitted he sold PCP on different occasions as part of the charged conspiracy, including in October 1999.⁷ However, he maintained he did not sell PCP on November 16, 1999. He further indicated to the Court that at the time of the September 20, 2000 proceeding he did not understand that the superseding indictment charged a conspiracy existing over a several month period. He thought the indictment applied only to November 16,

⁷The superseding indictment charged a conspiracy from on or about September 1999 to November 18, 1999. Although the defendant initially contended that he did not sell PCP after September 1999, it is clear from his testimony at the safety valve hearing that he was initially confused. As indicated, however, he subsequently admitted selling PCP in October 1999, around the time of his birthday, October 11.

1999, when he was not selling drugs.

Finally, the parties' written plea agreement and the defendant's written version of the offense, which he provided to the probation officer and to the government at the proffer sessions in November 2000, indicate that he sold between 100 and 400 grams of PCP as part of the charged conspiracy. Accordingly, for these reasons, the Court concludes that the defendant was truthful concerning his involvement in the charged conspiracy.

C. False Statements Concerning a Police Officer's Motivation

The government also contends that the defendant is not eligible for safety valve relief because he made false statements concerning a police officer's "vendetta" against him. The government specifically contends that the defendant lied under oath when he claimed that a particular New Haven Police Officer had a vendetta against him, and that he had been arrested on November 16, 1999 as a result of it. In addition, the government contends that the defendant lied under oath when he testified that he did not threaten that police officer during the events of November 16, 1999.⁸

The Court nevertheless finds that the defendant did not make false statements concerning this topic. The Court initially raised this issue at the October 4, 2000 guilty plea proceeding after learning from a U.S. Probation Officer that the defendant's brother had made the "vendetta" claim. The Court inquired about it in order to determine whether the defendant was pleading guilty voluntarily and whether there was a sufficient factual basis for the plea. While the probation officer and the defendant's attorney addressed the issue in response to the Court's

⁸The defendant testified at the safety valve hearing that the police officer in question was present during the events on November 16, 1999, see infra, which the government does not contest.

inquiry, the defendant did not take a position or otherwise comment on the matter when the Court questioned him about it. See Gov't Sentencing Mem. Ex. C at 19-21, 23-24. Contrary to the government's contentions, the defendant did not claim that his arrest on November 16, 1999 was the result of retaliation by a police officer.

In addition, when questioned about the issue at the safety valve hearing, the defendant testified only that he thought a particular New Haven Police Officer had a vendetta against him arising from an incident that occurred several years earlier. The defendant testified that the officer was present at the 21 Hurlburt Street apartment on November 16, 1999, and perhaps that was why he was arrested. Specifically, when the assistant United States attorney asked if he thought he was arrested because of a vendetta, he testified: "I don't know. Maybe." Tr. Dec. 22, 2000, at 63. Further, when questioned about whether he threatened that officer on November 16, 1999, the defendant testified that he did not remember doing so.

The Court concludes that the defendant testified truthfully when he stated that he did not know whether he was arrested on November 16, 1999 because of the "vendetta," and when he stated he did not remember threatening the police officer. His statements in this regard are also immaterial to the central issue in this case: the defendant's involvement in the charged conspiracy. The defendant has admitted his involvement, but only denies that he was selling PCP on a particular date: November 16, 1999.

D. Minimized Role in the Offense

Next, the government contends that the defendant has consistently attempted to minimize his role in the charged conspiracy. Specifically, the government contends that the defendant has been untruthful concerning the following: (1) whether the defendant was involved in the charged

drug conspiracy; (2) the length of time he was involved in the conspiracy; (3) the last time he sold PCP; (4) the quantity of PCP he sold; (5) his involvement at the various PCP distribution locations; (6) whether he threw drugs out the window of the 21 Hurlburt Street apartment on November 16, 1999; (7) whether police officers removed his green jacket prior to handcuffing him on November 16, 1999; (8) whether he sold PCP at the 21 Hurlburt Street apartment on November 16, 1999; and (9) his statements concerning the police officer's vendetta against him.

As an initial matter, the Court has already determined that the defendant was truthful concerning whether he sold drugs during the charged conspiracy, the events at the 21 Hurlburt Street apartment on November 16, 1999, and the police officer's "vendetta."

As to the other matters, the defendant's written version of the offense indicates that he was a member of the charged conspiracy and that he remembers specifically selling four "bundles" of PCP. The statement also indicates: "It is quite possible that I sold additional PCP, but do not specifically remember it. But, in addition to my selling activities, I was present on a number of occasions at . . . 21 Hurlburt Street . . . and several other locations while other conspiracy members were selling PCP from those locations." Gov't Sentencing Mem. Ex. A. The statement further indicates that he "believe[s] that this information is accurate. . . . [and] accept[s] responsibility for attribution to me of PCP in the amount of between 100 and 400 grams," which is the same quantity of PCP agreed to in the parties' written plea agreement. Id.

The defendant also testified at the safety valve hearing that, beginning in the spring of 1999, he traveled with co-conspirator Carlos Jones to PCP distribution locations on Winthrop Avenue, Spring Street, and 21 Hurlburt Street in New Haven while Carlos Jones collected proceeds from the sale of drugs at those locations. In addition, the defendant testified that he sold

PCP at the following distribution locations: (1) Whalley Avenue and Ella Grasso Boulevard; (2) Davenport Avenue; and (3) 21 Hurlburt Street. He testified that he sold PCP at these locations during the summer of 1999, but stopped after a robbery at the 21 Hurlburt Street apartment in the late summer of 1999.⁹ The defendant also indicated that he had heard of other PCP distribution locations at Greenwich Avenue and Adeline Street in New Haven, but he had not been to those locations. Further, the defendant testified at the safety valve hearing that he sold a total of approximately five bundles of PCP, for which he earned approximately \$400.

The Court again credits the defendant's testimony in regard to these matters. The Court also concludes that his testimony is not inconsistent with the government's evidence of his involvement in the charged drug conspiracy. In particular, the defendant's testimony is not materially inconsistent with the DEA reports of his proffer sessions in which he recounted his involvement in the conspiracy. Further, to the extent that Latoya Roberts may have told Agents Shafir and Walczyk that the defendant sold PCP extensively from September 1999 to November 16, 1999, for which he earned approximately \$5,000 to \$6,000, the Court does not credit those statements for the reasons previously indicated.

Thus, the Court concludes that the defendant has established by a preponderance of the evidence that he truthfully provided all information and evidence concerning his role in the PCP distribution operation prior to the time of the sentencing hearing. See Schreiber, 191 F.3d at 108-09. Although the defendant's statements may at times have been unclear, which the government would attribute to purposeful deceit, the Court determines that the defendant has provided the government with all relevant information that he has concerning the conspiracy, to the best of his

⁹The defendant also admits that he sold PCP in October 1999. See supra note 7.

ability, and has done so truthfully. The defendant is therefore entitled to the benefit of the safety valve provisions.

IV. Conclusion

For the preceding reasons, the defendant's motion for sentencing relief [Document #242] is GRANTED. The Court finds by a preponderance of the evidence that the defendant is eligible for the safety valve provisions of 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2. See Fed. R. Crim. P. 32(c).

SO ORDERED this 6th day of August 2001, at Hartford, Connecticut.

_____/s/_____
Christopher F. Droney
United States District Judge