Schnader
ATTORNEYS AT LAW

Schnader Harrison Segal & Lewis LLP

CALIFORNIA DELAWARE JAKARTA* NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, D.C.

WHITE COLLAR
CRIMINAL DEFENSE
ALERT

JUNE
2017

CIRCUMVENTING DISCRETION: SETH WILLIAMS' DE FACTO (C) PLEA

By Laurel Brandstetter and Danielle T. Morrison

On June 28, 2017, then Philadelphia District Attorney R. Seth Williams faced a twenty-nine count indictment with a potential term of imprisonment of at least twenty years. By 1:00 a.m. the next day, he ensured that he would serve no more than a five-year prison term.

Williams is scheduled to be sentenced on October 24, 2017, for one count of bribery, knowing he will receive a sentence of no more than five years, which is far less than what he could, and perhaps would, have received otherwise.

Defendants in federal cases facing exposure like Williams often seek to limit or control their sentencing exposure by entering into what is known as a (C) Plea—named after Federal Rule of Criminal Procedure 11(c)(1)(C). Under a (C) Plea, the prosecution and defense reach a binding plea agreement regarding a specific sentence or sentencing range for the defendant. The potential issue, however, is that the agreement does not become binding on the sentencing judge until the court accepts the plea, which it does not have to do. Therefore, a defendant that takes a (C) Plea will still face a significant degree of uncertainty as to whether the court will accept the agreed-upon sentence and what his or her sentence will actually be.

Williams did not enter into a (C) Plea. Rather, he pled guilty to a single federal crime that carries with it a statutory maximum sentence of five years imprisonment, three years of supervised release, and a hefty fine. Because these maximum sentences are established by Congress—as opposed to the United States Sentencing Commission—they bind the sentencing judge and limit his or her discretionary authority to vary upward from that sentence. Thus, while Williams' sentencing judge, Judge Paul S. Diamond of the United States District Court for the Eastern District of Pennsylvania, still has control over the particulars of Williams' sentence, and the government may still make a sentencing recommendation, both must operate within these statutory limitations imposed by Congress.

Moreover, it is well established that a sentencing judge may consider any "relevant conduct" related to the defendant's conviction when imposing a sentence. This includes other pending charges, uncharged criminal conduct, and even acquitted conduct. By pleading guilty to a count with a statutory maximum, rather than presenting Judge Diamond with a negotiated sentence or sentencing range, Williams effectively "capped" his sentence, while avoiding the (C) Plea mechanism altogether, and took the teeth out of the discretion his sentencing judge ordinarily would have been able to exercise in fashioning his sentence. Viewed in that light, the plea agreement Williams entered into early Thursday morning operated as a de facto

(C) Plea, having all of the benefits and none of the detriments of a traditional (C) plea: it allowed Williams to exert a significant degree of control over his ultimate sentence without judicial pre-approval.

Williams may have availed himself of a potential new trend as individuals facing similar exposure seek to curb a sentencing judge's discretion while obtaining a degree of control over, and assurance about, their sentence.◆

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's White Collar Defense and Corporate Investigations Practice Group or to speak with a member of the firm, please contact:

Laurel Brandstetter
White Collar Defense and Corporate Investigations Partner
412-577-5115
lbrandstetter@schnader.com

Danielle T. Morrison
Associate
215-751-2218
dmorrison@schnader.com