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FILED 7/10/17 UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
SEP 18 2017
D. MARK JONES, CLERK
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHRISTOPHER JASON SWINDLE,

Defendant.

Case No. 2:16-cr-389 RJS

STATEMENT BY DEFENDANT IN
ADVANCE OF PLEA OF GUILTY
AND PLEA AGREEMENT PURSUANT
TO FED. R. CRIM. P. 11(c)(1)(C)

[U-ACT Track I]

Judge Robert J. Shelby

I hereby acknowledge and certify that I have been advised of, and that I understand, the following facts and rights, and that I have had the assistance of counsel in reviewing, explaining, and entering into this agreement:

1. I understand that I am entering this plea agreement in anticipation of participating in the Utah Alternatives to Conviction Track Program ("U-ACT"), and that I will be allowed to withdraw my guilty plea as explained in paragraph 13(c)(ii) if I successfully complete U-ACT. I also understand that if I am unsuccessfully terminated from U-ACT, whether voluntarily or involuntarily, I will not be able to withdraw my guilty plea and I will be sentenced as explained in paragraph 13(c)(iii) and also in accordance with the terms in this statement in advance of my plea of guilty. I have had an opportunity to discuss U-ACT with my attorney and I am entering U-ACT voluntarily. I have signed a U-ACT Participant Contract and I understand the terms and conditions contained in that contract.

2. As part of this agreement with the United States, I intend to plead guilty to Count 1 of the Indictment. My attorney has explained the nature of the charge against me, and I have had an opportunity to discuss the nature of the charge with my attorney. I

understand the charge and what the United States is required to prove in order to convict me. The elements of Count 1, Possession of Ecstasy with Intent to Distribute, are:

First: the defendant knowingly or intentionally possessed a controlled substance as charged;

Second: the substance was in fact 3, 4-Methylenedioxyamphetamine (“MDMA” or “Ecstasy”); and

Third: the defendant possessed the substance with the intent to distribute it.

3. I know that the maximum possible penalty provided by law for Count 1 of the Indictment, a violation of 21 U.S.C. § 841(a)(1), is a term of imprisonment of up to twenty years, a fine of one million dollars, a term of supervised release of up to three years, and any applicable forfeiture. I understand that if I violate a term or condition of supervised release, I can be returned to prison for the length of time provided in 18 U.S.C. § 3583(e)(3).

a. Additionally, I know the Court is required to impose an assessment in the amount of \$100 for each offense of conviction, pursuant to 18 U.S.C. § 3013.

b. I understand that, if I am not a United States citizen, I may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. I know that the sentencing procedures in this case and the ultimate sentence will be determined pursuant to 18 U.S.C. § 3553(a), and that the Court must consider, but is not bound by, the United States Sentencing Guidelines, in determining my sentence. I have discussed these procedures with my attorney. I also know that the final calculation of my sentence by the Court may differ from any calculation the United States, my attorney, or I may have made, and I will not be able to withdraw my plea if this occurs. However, because my plea of guilty is being entered pursuant to Rule 11(c)(1)(C), as explained below, I know that I will be able to withdraw my plea if the Court does not accept the terms of this agreement.

5. I know that I can be represented by an attorney at every stage of the proceeding, and I know that if I cannot afford an attorney, one will be appointed to represent me.

6. I know that I have a right to plead “Not Guilty” or maintain my earlier plea of “Not Guilty” and can have a trial on the charges against me.

7. I know that I have a right to a trial by jury, and I know that if I stand trial by a jury:

- a. I have a right to the assistance of counsel at every stage of the proceeding.
- b. I have a right to see and observe the witnesses who testify against me.
- c. My attorney can cross-examine all witnesses who testify against me.
- d. I can call witnesses to testify at trial, and I can obtain subpoenas to require the attendance and testimony of those witnesses. If I cannot afford to pay for the appearance of a witness and mileage fees, the government will pay them.
- e. I cannot be forced to incriminate myself, and I do not have to testify at any trial.
- f. If I do not want to testify, the jury will be told that no inference adverse to me may be drawn from my election not to testify.
- g. The United States must prove each and every element of the offense charged against me beyond a reasonable doubt.
- h. It requires a unanimous verdict of a jury to convict me.
- i. If I were to be convicted, I could appeal, and if I could not afford to appeal, the government would pay the costs of the appeal, including the services of appointed counsel.

8. If I plead guilty, I will not have a trial of any kind.

9. I know that 18 U.S.C. § 3742(c)(1) sets forth the circumstances under which I may appeal my sentence. However, fully understanding my right to appeal my sentence, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily and expressly waive my right to appeal as set forth in paragraph 13(h) below.

10. I know that, under 18 U.S.C. § 3742(c)(2), the United States may only appeal my sentence if it is less than the sentence set forth in this agreement.

11. I know that under a plea of guilty the judge may ask me questions under oath about the offense. The questions, if asked on the record and in the presence of counsel, must be answered truthfully and, if I give false answers, I can be prosecuted for perjury.

12. I stipulate and agree that the following facts accurately describe my conduct. These facts provide a basis for the Court to accept my guilty plea:

On July 28, 2016, I accepted delivery of packages containing Ecstasy, which is a term I know to mean 3, 4-Methylenedioxymethamphetamine, or MDMA. I ordered the Ecstasy

from a vendor in Europe. I ordered approximately 900 grams worth of Ecstasy tablets (just over 2000 tablets). It was my intention to distribute the ecstasy tablets on a later date, but I was arrested shortly after accepting delivery of the packages.

13. The only terms and conditions pertaining to this plea agreement between me and the United States are as follows:

a. **Participation in U-ACT Program.** I agree to participate in the Utah Alternatives to Conviction Track Program (“U-ACT”), pursuant to the terms and conditions set forth in the U-ACT Interagency Agreement and the U-ACT Program Contract.

b. **Guilty Plea.** I agree to plead guilty to Count 1 of the Indictment.

c. **Sentencing Agreement.** The sentence in my case, if any, will be imposed pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. The particular sentence, if any, that will be imposed will be contingent upon my performance in U-ACT. I agree that if I successfully complete U-ACT, I will be allowed to withdraw my guilty plea and no sentence will be imposed in my case as explained below. I also agree that if I am unsuccessfully terminated from U-ACT, my guilty plea will remain in place and I will be sentenced as explained in paragraph (iii):

- (i) After entering a plea of guilty, I will participate in U-ACT for a minimum of twelve months but no more than 24 months. The U-ACT Judicial Officer will determine whether and when I have successfully completed U-ACT.
- (ii) If I successfully complete U-ACT, the United States and I will move jointly to allow the withdrawal of my guilty plea, the United States will move to dismiss my case, and no sentence of imprisonment will be imposed in my case.
- (iii) If I am unsuccessfully terminated from U-ACT, either voluntarily or involuntarily, I agree that I will not be allowed to withdraw my guilty plea and I agree that a sentence of imprisonment will be imposed by the U-ACT Judicial Officer. The sentence of imprisonment imposed by the U-ACT Judicial Officer will be thirty-seven months’ imprisonment. I further agree that if a term of supervised release is imposed, the U-ACT Judicial Officer may impose conditions of supervised release in accordance with standard sentencing procedure and discretion. I agree that in the event that I am unsuccessfully terminated from U-ACT, a sentence of thirty-seven months’ imprisonment is a reasonable sentence.

d. **Relevant Conduct.** I understand and agree that the Presentence Report may include descriptions of conduct I engaged in which either was not charged against me, will not be pleaded to by me, or both. I understand and agree that the U-ACT Judicial Officer will take those facts into consideration in determining the reasonableness of the stipulated sentence.

e. **Result of Noncompliance with the U-ACT Program Contract and/or Unsuccessful Termination from the U-ACT Program.** I understand and agree that if I violate a term or condition of the U-ACT Program Contract, such conduct will not constitute grounds for me to withdraw my plea of guilty. I also understand and agree that if I am unsuccessfully terminated from U-ACT, whether voluntarily or involuntarily, such termination will not constitute grounds for me to withdraw my guilty plea. I also understand and agree that if the U-ACT Judicial Officer decides to unsuccessfully terminate me from U-ACT, I will not be able to appeal that decision.

f. **Appeal Waiver.**

(1) Fully understanding my limited right to appeal my sentence, as explained above in paragraph 9, and in consideration of the concessions and/or commitments made by the United States in this plea agreement, I knowingly, voluntarily, and expressly waive my right to appeal any sentence imposed upon me, except that I do not waive the right to appeal as set forth in 18 U.S.C. § 3742(c)(1), which states that I may not file a notice of appeal unless the sentence imposed is greater than the sentence set forth in this agreement.

(2) I also knowingly, voluntarily, and expressly waive my right to challenge my sentence, except as set forth in (1) above, in any collateral review motion, writ or other procedure, including but not limited to a motion brought under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

(3) I understand that this waiver of my appeal and collateral review rights concerning my sentence shall not affect the United States' right to appeal my sentence pursuant to 18 U.S.C. § 3742(c)(2) and § 3742(b)(1) and (2).

(4) I further understand and agree that the word "sentence" appearing throughout this waiver provision is being used broadly and applies to all aspects of the Judicial Officer's sentencing authority, including, but not limited to: (1) sentencing determinations; (2) the imposition of imprisonment, fines, supervised release, probation, and any specific terms and conditions thereof; and (3) any orders of restitution.

g. **Presentence Report and Financial Information.** I agree to provide truthful and complete information, including financial information, as requested by the probation office for the preparation of my presentence report and for determination of the conditions of my supervised release. I also consent to allowing the United States

Attorney's Office to run a credit check on me. I consent to being placed on the Treasury Offset Program and State Finder.

14. I understand and agree that this plea agreement is solely between me and the United States Attorney for the District of Utah and does not bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

15. I understand that I have a right to ask the Court any questions I wish to ask concerning my rights about these proceedings and the plea.

* * * *

I make the following representations to the Court:

1. I am 30 years of age. My education consists of High School grad
I can [can/cannot] read and understand English. 2 years Navy
2 years college

2. This Statement in Advance of my Plea contains all terms of the agreements between me and the United States; if there are exceptions, the Court will be specifically advised, on the record, at the time of my guilty plea of the additional terms. I understand the United States and I cannot have terms of this plea agreement that are not disclosed to the Court.

3. No one has made threats, promises, or representations to me that have caused me to plead guilty, other than the provisions set forth in this agreement.

4. Neither my attorney nor the government has promised me that I would receive probation or any other form of leniency because of my plea.

5. I have discussed this case and this plea with my lawyer as much as I wish, and I have no additional questions.

6. I am satisfied with my lawyer.


7. My decision to enter this plea was made after full and careful thought; with the advice of counsel; and with a full understanding of my rights, the facts and circumstances of the case and the consequences of the plea. I was not under the influence of any drugs, medication, or intoxicants when I made the decision to enter the plea, and I am not now under the influence of any drugs, medication, or intoxicants.

8. I have no mental reservations concerning the plea.

//


9. I understand and agree to all of the above. I know that I am free to change or delete anything contained in this statement. I do not wish to make changes to this agreement because I agree with the terms and all of the statements are correct.

DATED this 18 day of Sept, 2017


CHRISTOPHER JASON SWINDLE
Defendant

I certify that I have discussed this plea agreement with the defendant, that I have fully explained his rights to him, and that I have assisted him in completing this written agreement. I believe that he is knowingly and voluntarily entering the plea with full knowledge of his legal rights and that there is a factual basis for the plea.

DATED this 18 day of Sept, 17.


ROBB HUNT
Attorney for Defendant

I represent that all terms of the plea agreement between the defendant and the government have been, or will be at the plea hearing, disclosed to the Court, and there are no undisclosed agreements between the defendant and the United States.

DATED this 18 day of September, 2017

JOHN W. HUBER
United States Attorney

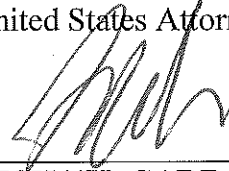

MICHAEL GADD
Special Assistant United States Attorney

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
TRACK ONE
CONTRACT FOR PARTICIPATION UTAH ALTERNATIVES TO
CONVICTION ("U-ACT") PROGRAM
POST-GUILTY PLEA DIVERSION

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

SEP 18 2017

D. MARK JONES, CLERK
DEPUTY CLERK

Name of Participant: Christopher Jason Swindle

Docket number : 2:16cr389

Offense :

Introduction

Congratulations! You have been selected to participate in the Utah Alternatives to Conviction ("U-ACT) program. Participation is entirely voluntary, but will require you to abide by the terms of your plea agreement and this contract. If you successfully complete U-ACT, your guilty plea will be vacated and the criminal case referenced above will be dismissed, as specified in your plea agreement.

U-ACT Program Basics

The U-ACT program will be at least 1 year, with the possibility that it may be extended up to a maximum of 24 months. As part of this program, you agree to participate in a PCRA evaluation, and you agree that a probation officer assigned to U-ACT will develop a treatment plan for you. One of your responsibilities will be to comply with this treatment plan during the time you are participating in U-ACT. The treatment plan may include drug and alcohol evaluations, testing, and treatment. The treatment plan may also include other kinds of treatment designed to address the underlying causes of criminal activity.

The U-ACT team is comprised of a Judicial Officer, a Probation Officer, an Assistant Federal Public Defender ("AFPD"), and an Assistant United States Attorney ("AUSA"). The AFPD will likely not be the same attorney who was appointed to represent you at your initial appearance. Should the need arise, you will be able to consult with the

attorney who was originally appointed to represent you. Both the AFPD and the AUSA will work with the Judicial Officer and the Probation Officer to provide additional support, input, and encouragement for your success in U-ACT.

U-ACT Program Participant Rules

You will be required to comply with the U-ACT Program Participant rules. You will be given a copy of these rules, and asked to sign an acknowledgment that you have read and understand the rules. The U-ACT program rules are designed to help you and other Participants succeed in the program. Violations of the U-ACT program rules may result in involuntary termination from the U-ACT program.

Restitution

If restitution is owed in your case, you will be required to make restitution payments during the program. Your Probation Officer will determine how much you need to pay each month. You will need to pay the restitution in full before you can successfully complete U-ACT, and failure to pay the restitution amount may result in your involuntary termination from the program. If you fail to successfully complete the program or you are terminated voluntarily or involuntarily, you will be ordered to pay any remaining restitution as part of your sentence.

U-ACT Program Appearances

You will be required to attend frequent court hearings as part of U-ACT. These court hearings will be scheduled as deemed needed by the Judicial Officer, but the frequency may be decreased if you are doing well in the program. The Court will make reasonable efforts to ensure that the court appearances do not interfere with your employment, treatment, or other programming, but attending court hearings is part of the requirements of this program. The U-ACT team will be present, as well as treatment and other program providers. The Probation Officer will make reports about you to the U-ACT team prior to court appearances. These reports will report successes as well as failures that you have had. Other U-ACT participants will be present during your court appearances. There will not be a court reporter present, and no transcript of routine U-ACT proceedings will be available. By signing this contract, you waive your right to have a court reporter present and a transcript made of routine U-ACT proceedings. However, a

court reporter will be present to transcribe any contested violation hearings or any contested hearing to determine whether to terminate you from U-ACT.

U-ACT Program Treatment and Counseling Programs

An important part of the U-ACT program will be participation in treatment as indicated in your treatment plan. Your treatment plan may be amended as deemed necessary by the Probation Officer and other members of the U-ACT team. Treatment and other programming providers will be expected to share information regarding your participation and progress with all of the members of the U-ACT team. Treatment and other program providers will also be present at U-ACT program appearances, and they will be expected to discuss your participation and progress with all members of the U-ACT team. To enable treatment and other program providers to freely share information regarding your participation and progress, you will be required to sign a waiver of confidentiality and privilege.

Limited Use of Statements Made During Program Appearances

An important part of the U-ACT program is your complete candor during your court appearances about your case and your performance in the program. To encourage you to be forthcoming and honest, the USAO has agreed as follows:

- a. Except as otherwise provided in subparagraph (b) below, the USAO will not use any of the statements you make or documents or other information relating to your U-ACT case that you provide during U-ACT program appearances as evidence against you in any criminal prosecution in the USAO's case-in-chief.
- b. Notwithstanding the agreement set forth above in subparagraph (a), the USAO may use information, including statements made by you, about criminal conduct that is not related to your U-ACT case or that is beyond the scope of your U-ACT treatment plan. Before such information can be used, however, the following must take place :
 - The USAO will provide notice of the information it intends to use ;
 - You will have an opportunity to be heard by the Judicial Officer, with the assistance of counsel, representation offered by or on your behalf in connection with that proceeding ;

- The Judicial Officer will determine whether the information can be used by the USAO.

The USAO's agreement in subparagraph (a) above is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities. Moreover, the USAO's agreement in subparagraph (a) above is limited to U-ACT program statements and does not apply to any statements made or documents or other information provided by you at any other time.

U-ACT Program Violations and Sanctions

U-ACT program violations will ordinarily be handled on the regularly scheduled U-ACT program calendar. The U-ACT Judicial Officer, however, can schedule a court appearance at any time. Sanctions and modifications regarding treatment and other programs may also be handled on an expedited basis with the consent of the parties and the U-ACT Judicial Officer.

If a report from the Probation Officer contains an allegation of noncompliance, you may choose to agree that the allegation is true and waive the traditional protections and procedures afforded to those on pretrial supervision when they are accused of violating conditions of supervision. If you so waive, there will be no hearing on whether the allegation is true and the U-ACT Judicial Officer will decide whether a U-ACT program sanction is appropriate. As noted above, noncompliance may be handled on an expedited basis outside the presence of the U-ACT Judicial Officer if all parties agree.

Noncompliant behavior by you, the Participant, will result in sanctions. The range of possible sanctions has been drafted broadly to provide some level of sanction for a wide range of violations. Factors that will influence the type of sanction employed include the seriousness of the violation, the number of violations, and the amount of time you have remained compliant, either before a first violation, or between violations. In addition, an important factor will be whether you voluntarily disclose the violation. Dishonesty on your part will result in enhanced sanctions. Depending on these factors, any of the sanctions below, is available. As a general rule, where there are repeat violations, more serious sanctions will be applied. Sanctions may include, but are not limited to :

- Reprimand by Judicial Officer delivered during program proceedings in front of other Participants

- Order to return to program proceedings to observe for a full session
- Order to submit written assignment (for example, written explanation of violation and plan to avoid similar issues in the future)
- Curfew restriction for up to 30 days
- Increase in frequency of program hearings before the Judicial Officer
- Order to participate in community service
- Order to complete a term of home confinement (with conditions that may include alcohol monitors and/or location monitoring)
- Order to complete a term of up to 30 days at a residential reentry center
- Order to complete a term at a residential drug treatment facility
- Order to spend up to 7 days in jail (“flash incarceration”)
- Termination from the program

If you admit to the violation, you may be able to complete the sanction and remain in the U-ACT program. When expedited action is appropriate and the parties agree, a sanction or adjustment in treatment can be imposed through a modification without an appearance before the Judicial Officer. The Probation Officer’s report at the next U-ACT program appearance will inform the Judicial Officer whether you properly completed the sanction ordered at the last appearance. Failure to complete ordered sanctions may result in additional sanctions, or termination from U-ACT.

If you wish to contest the violation allegation, you may do so. The only permissible contested hearing in U-ACT, however, is a claim of actual innocence of the alleged violation. If you wish to have a contested hearing, your appointed counsel can help you in contesting the allegation. The Judicial Officer will ultimately decide whether the allegation is proven.

It is important to note that the Probation Officer need not wait until your next scheduled court appearance to address problems in supervision. If you fail to abide by the directives of the Probation Officer, or if the Probation Officer believes that you have committed other violations of your supervision, the Probation Officer will have discretion to contact you directly to address the violation; to arrive at a proposed method of addressing the violation through discussion with the Judicial Officer, AFPD, and AUSA; or to request that the Judicial Officer issue a warrant for your arrest.

Termination from U-ACT

You may be involuntarily terminated from the U-ACT program if you fail to participate in treatment or other programs or if you violate the terms of the U-ACT program or your plea agreement. This includes :

- Failure to make U-ACT court appearances
- Failure to cooperate with program sanctions
- Repeated drug use
- A new violation of the law
- A pattern of failing to cooperate with the Probation Officer
- A pattern of failing to cooperate with treatment or other program providers
- Failure to participate in U-ACT in a meaningful manner
- Failure to pay restitution

Final decisions regarding involuntary termination will be made by the U-ACT Judicial Officer. If you are involuntarily terminated from the program, you will return to regular pretrial supervision and your case will be set for sentencing before the Judicial Officer. You will not be entitled to the benefits contained in paragraph 13(c)(i) of your plea agreement and you will be sentenced as explained in paragraph 13(c)(ii). You will also not be able to appeal a decision by the Judicial Officer to involuntarily terminate you from U-ACT.

You may also voluntarily discontinue participation in U-ACT at any time. However, you will not be entitled to the benefits contained in paragraph 13(c)(i) if you voluntarily withdraw from the program, and you will be sentenced by the Judicial Officer in accordance with paragraph 13(c)(ii) of your plea agreement.

Whether you are terminated voluntarily or involuntarily, the U-ACT Judicial Officer can confer with your sentencing judge and report on your performance during the time that you were participating in U-ACT and make a sentencing recommendation.

Graduation and Benefits

The U-ACT program has 5 phases. In order to successfully complete the U-ACT program, you must complete Phase 5 and have maintained 6 months of sobriety, and you must also pay in full any restitution. The Judicial Officer will determine, in consultation with the U-ACT team, whether you have successfully completed U-ACT. If the Judicial

Officer determines that you have successfully completed the program, you will receive the benefits explained in paragraph 13(c)(i) of your plea agreement, including being permitted to withdraw your guilty plea and having your case dismissed.

AGREEMENT TO PARTICIPATE

Participant :

I, Christopher Swindle, have read, or someone has read to me in the language I best understand, this Contract. I have discussed this Contract and the plea agreement with my attorney and I understand its terms. I have also discussed the U-ACT program with my attorney and I understand the program. I voluntarily agree to participate in U-ACT subject to the terms set forth in this Contract and the plea agreement. I understand I can revoke my voluntary participation in the U-ACT program at any time and that, if I do so, my criminal case will be set for sentencing before the Judicial Officer without any obligation to provide me the benefits set forth in the plea agreement for successful completion of U-ACT. I also understand that if I am involuntarily terminated from the U-ACT program, my criminal case will be set for sentencing before the Judicial Officer without any obligation to provide me the benefits set forth in the plea agreement for successful completion of U-ACT.

Chris Swindle
(Signature of Participant)

SEPT 18, 2017
(Date)

Attorney representing the U-ACT Participant


I, Robert Hunt, the attorney representing the Participant in connection with the U-ACT program, have discussed the U-ACT program, and this Contract with the Participant and the Participant's attorney in the underlying criminal matter. I believe that the Participant understands the U-ACT program, the terms of the plea agreement, and the terms of this Contract, and that the Participant's agreement to participate in the U-ACT program subject to the terms of this Contract and plea agreement is knowingly and voluntarily made.

Robert Hunt
(Signature of Attorney representing the U-ACT Participant)

Sept 18, 2017
(Date)

U-ACT Program Assistant United States Attorney:


I, Andy Choate, the Assistant United States Attorney representing the United States Attorney's Office for the District of Utah (the "USAO") in the U-ACT program, agree to the terms of this Contract on behalf of the USAO and accept the above-named Participant into the U-ACT program subject to the terms of this Contract and the plea agreement.


(Signature of Assistant United States Attorney)

9/18/17
(Date)

U-ACT Program United States Probation Officer:


I, _____, the United States Probation Officer assigned to the U-ACT program, accept the above-named Participant into the U-ACT program subject to the terms of this Contract and the plea agreement.


(Signature of U-ACT Program U.S. Probation Officer)

9/18/17
(Date)

U-ACT Program Judicial Officer:

Subject to the Court's acceptance of the Participant's guilty plea and plea agreement, the Court hereby accepts the above named Participant into the U-ACT program subject to the terms of this Contract and the plea agreement.


(Signature of Judicial Officer)

18 Sept. 17
(DATE)