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[Sentence Vacated Under Plain Error Standard: Government Breached Plea Agreement](#)

United States v. Dawson, No. 08-4000 (4th Cir. Dec. 3, 2009). PDF available [here](#).

Yesterday, the Fourth Circuit issued an opinion vacating a defendant's sentence because, under a plain error standard of review, the government breached its plea agreement with the defendant.

The facts: the defendant's plea agreement stated that the government would argue for a two-level minor participant reduction in the defendant's offense level. (See [U.S.S.G. § 3B1.2](#)). The PSR prepared for the defendant did not discuss this provision of the plea agreement. At sentencing, neither defense counsel nor government counsel argued for the two-level minor participant reduction found in the plea agreement. (It is unclear why the defendant chose not to argue for this reduction).

The interesting turn in the case is that the defendant did not object at the district court level. Because of this, the Fourth Circuit had to review the government's breach of the plea agreement for plain error. Generally, plain error is a high standard of review where the defendant bears the burden of satisfying four elements: an error – that is plain – that affects the defendant's substantial rights – and that seriously affects the fairness, integrity, or public reputation of judicial proceedings.

In *Dawson*, the court found plain error. The court focused its analysis on the last two prongs of the standard. *Dawson* found that the government's breach of the plea agreement violated the defendant's substantial rights because 1) the court below was influenced by the government's argument that the defendant was not a minor participant in determining its sentence, 2) the defendant did nothing after the plea agreement was signed that might have altered any party's view of his role in the offense, and 3) the underlying facts in the PSR indicated that the defendant was a minor participant and an "unreliable" member of the drug conspiracy.

With regard to the last prong, *Dawson* noted that when the government breaches a plea agreement, "the integrity of the system may be called into question," but there may also be countervailing factors that justify the breach. In *Dawson's* case, the court found none. "A government that lives up to its commitments is the essence of liberty under law, [and] the harm generated by allowing the government to forego its plea bargain obligations is one which cannot be tolerated."

Posted by [Brennan Sullivan and McKenna](#)