
December 30, 2017

Press Release - For Immediate Release

Defendant's Name: Marcus Calmer
Age: 49
State of residence: Council Bluffs, IA
Criminal File Number: 16-426
Incident Date: September 2, 2016
Indictment Date: November 30, 2016
Arraignment Hearing: April 11, 2017
Charges Files: Ct. 1: Possession of Schedule 1 or 2 Controlled Substance, SDCL 22-42-5, (F5) 5/10
Ct.2: Ingestion of a Schedule 1 or 2 Controlled Substance, 22-42-5.1, (F5), 5/10
Change of Plea Date: May 22, 2017
Date of Sentencing: June 26, 2017
Convicted of: Ct. 1: Possession of a Schedule 1 or 2 Controlled Substance, SDCL 22-42-5, (F5)
Arresting Officer: Deputy Stephanie Ryan
Defense Attorney: Jeffrey Myers
Prosecution Attorney: Jerry A. Miller

Case Synopsis:

On September 2, 2016, Deputy Stephanie Ryan of the Union County Police Department, completed a traffic stop in North Sioux City around MM 2 on Interstate 29, on a car displaying no front license plate and the rear license plate was not illuminated. The Driver of that vehicle is the Defendant, Marcus Calmer. The Defendant had a suspended driver's license. The Defendant admitted to the Deputy that he had smoked Methamphetamine and Marijuana in the past. Later in their conversation the Defendant admitted that he had smoked Marijuana yesterday and that he had some in the trunk of the vehicle along with Drug Paraphernalia. Then, the Defendant stated there may also be some Drug Paraphernalia in the front of the vehicle as well. When confronting the Passenger, Rebecca Carr, she stated that there was a Marijuana Pipe and a Methamphetamine Pipe as well as a bong in the vehicle. The search conducted by the Deputy also revealed, new baggies used for packaging drugs, a scale, \$200 in one dollar bills, a butane torch, and rolling papers. The Defendant, was subjected to a UA sample after the Deputy obtained a search warrant for his urine. While waiting for those results the Defendant was charged and sentenced in Magistrate Court for Ingestion of Marijuana, Possession of Drug Paraphernalia, and Driving with Suspended (not revoked) Driver's License. Testing of the Meth Pipe and the Defendants UA Sample came back positive for Methamphetamine. The Defendant's UA tested positive for

Methamphetamine with a level of 37,431 ng/ml and tested positive for THC with a level of 112 ng/ml. The Defendant was then Indicted with Possession and Ingestion of Methamphetamine a Schedule I or II Controlled Substance, both class 5 felonies.

Sentencing Synopsis:

IT IS HEREBY ORDERED ADJUDGED AND DECREED that pursuant to SDCL § 22-6-11, the sentencing Court set out orally on the record, the aggravating circumstances that exist at the time of sentencing in which the Defendant poses a significant risk to the public and in which requires a departure from presumptive probation. Furthermore, as required by statute, those aggravating circumstances are further memorialized in this dispositional order as:

- i. The Defendant has been living a transient lifestyle for several months and has refused to attend other programs that might be acceptable instead of prison.
- ii. The Defendant has at least four prior felony convictions and served prison time on two of these after violating probation.
- iii. The Defendant has no place to live that he can effectively be supervised on probation.
- iv. The letter he forwarded to his girlfriend shortly before sentencing suggests he does not intend to take probation seriously and that he is willing to make up an address where he is living for supervision if necessary, therefore.

Due to the above stated issues the Court finds aggravating circumstances exists that causes a significant risk to the public rebutting the presumption of probation.

AS TO THE CHARGE in Count I, Possession of a Schedule I or II Controlled Substance, a violation of SDCL 22-42-5, a class 5 felony; IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Defendant shall serve Three (3) years in the South Dakota State Penitentiary with sentence to begin immediately.

IT IS FURTHER ORDERED that the Defendant shall comply with all conditions of parole and any recommendations and orders made by his/her parole officer.

IT IS FURTHER ORDERED that the Defendant shall pay all monetary obligations as ordered by this Court as at term of satisfying parole.

IT IS FURTHER ORDERED that the Defendant shall pay the following amounts to the Union County Clerk of Courts (209 East Main Street, ~ Suite 230, Elk Point, SD 57025): Court Costs of One Hundred Four (\$104.00) Dollars; Prosecution Costs in the amount of One Hundred and Nine (\$109.00) Dollars; and Costs payable to (South Dakota Drug Control Fund, 1302 East

Highway 14, Suite 5, Pierre, SD 57501) in the amount of One Hundred and Eight (\$108.00) Dollars.

IT IS FURTHER ORDERED that the Defendant shall pay the following amounts Ordered by the Court – To the Union County Auditor (209 East Main Street, ~ Suite 200, Elk Point, SD 57025): Court Appointed Attorneys Fees in the amount of Seven Hundred Twenty-Eight Dollars and Fifty (\$728.50) Cents. It is further ORDERED that Union County is awarded a Judgment for said Court Appointed Attorney Fees in this matter.

IT IS ORDERED, ADJUDGED, AND DECREED that the Defendant shall receive credit for Ninety (90) days that the Defendant spent incarcerated prior to disposition.

IT IS FURTHER ORDERED that the Defendant shall remain in the custody of the Union County Sheriff's Office until he can be transported to the South Dakota State Penitentiary at their earliest opportunity.

Criminal History Synopsis:

Marcus Calmer has a lengthy criminal history which includes a conviction for Criminal Mischief 3rd degree, Possession of Burglary tools, and Possession of Drug Paraphernalia, felony conviction in 2003 in IA, for which he served 2 years in prison. A Burglary, in IA in 2006, felony conviction, for which he served 240 days in prison in IA. A Theft 2nd Degree, in IA in 2007, operate vehicle no consent, a misdemeanor conviction, for which he served 50 days in jail. Calmer was also convicted on a misdemeanor charge of Possession of Burglar Tools in IA in 2010, for which he served 26 days in jail. Another misdemeanor charge for the Possession of Burglar Tools in IA in 2013, for which he served 30 days in jail. Another Possession of Burglary Tools in the state of Florida, in 2009, which was a felony conviction, for which he served 8 months in County Jail. Calmer has a warrant for his arrest for Theft and Eluding in Woodbury, with a \$30,000 bond.

Calmer is also wanted in Omaha Nebraska on another warrant. Calmer also recently assaulted another inmate within the Union County Jail prior to being sentenced on this file.