

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

ACCESS TO CRIMINAL DOCUMENTS)
AND TRANSCRIPTS) STANDING ORDER 16-04

In order to protect the safety of all federal inmates regardless of their cooperation with the government, as well as the integrity of any ongoing investigations or related prosecutions, it is the intent of this Court to make it impossible to determine from examining the record whether a defendant did or did not cooperate with the government and to limit access to sealed or restricted criminal documents and transcripts. Thus, effective January 1, 2017,

IT IS HEREBY ORDERED:

1. That every plea agreement will include a sealed supplement that either identifies any agreements the defendant has with the government regarding cooperation or states that there is no cooperation.
2. That all sentencing memorandums and motions for departure/variance will be sealed.
3. That every transcript of a change of plea or sentencing hearing will contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed. If a transcript is prepared, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.
 - a. The restricted transcript will include the confidential section. Only the Government and counsel for the defendant will have access to restricted transcripts.
 - b. The public transcript will include the following reference: Pursuant to Standing Order 16-04, portions of all change of plea and sentencing transcripts are restricted.
4. That when an inmate requests copies of any criminal documents and/or transcripts, the copies will be forwarded to the warden of the appropriate institution, along with a copy of this order.

- a. The Chief Probation Officer or Clerk of Court shall also prepare a letter to the inmate advising that the requested documents have been forwarded to the warden and that
 - i. all plea agreements contain a sealed supplement that is either a statement that there is cooperation, including the terms thereof, or a statement that there is no cooperation;
 - ii. all sentencing memorandums and motions for variance/departure are sealed;
 - iii. all change of plea or sentencing transcripts contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed resulting in the preparation of two transcripts: a restricted transcript and a public transcript; and, as a result,
 - iv. it is not possible to determine from examination of docket entries whether a defendant did or did not cooperate with the government.
 - b. Inmates may review their criminal documents and/or transcripts in an area designated by the warden.
 - c. Sealed or restricted documents and/or transcripts may neither be retained by an inmate, nor reviewed in the presence of another inmate, consistent with the institutional policies of the Bureau of Prisons.
5. That when detained or incarcerated persons not in the custody of the Bureau of Prisons request copies of criminal documents and/or transcripts, they are also subject to the restrictions and prohibitions contained in this Order.
 6. Federal court officers or employees (including probation officers and federal public defender staff), retained counsel, appointed CJA panel attorneys, and any other person in an attorney-client relationship with a detained or incarcerated person may, consistent with this order, review any sealed or restricted portions of the file with their client, but may not provide copies to the defendant.

Dated this 9th day of December, 2016.

BY THE COURT:



JEREMY L. VIKEN

CHIEF JUDGE