

FILED
At Albuquerque NM

DEC 16 2010 *WJ*

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JOSEPH MARVIN HERRERA,)
)
Defendant.)

Cr. No. 10-3384 MV

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **JOSEPH MARVIN HERRERA**, and the Defendant's counsel, Alonzo J. Padilla:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

- 2. The Defendant further understands the Defendant's rights:
 - a. to be prosecuted by indictment;
 - b. to plead not guilty, or having already so pleaded, to persist in that plea;
 - c. to have a trial by jury; and
 - d. at a trial:
 - 1) to confront and cross-examine adverse witnesses,
 - 2) to be protected from compelled self-incrimination,

- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to the information, charging a violation of 18 U.S.C. § 1163, that being Embezzlement and Theft from Indian Tribal Organizations.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose is:
 - a. imprisonment for a period of not more than 5 years;
 - b. a fine not to exceed \$250,000;
 - c. a mandatory term of supervised release of up to 3 years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and
 - e. restitution as may be ordered by the Court.

5. The parties are aware that the Court may accept or reject this plea agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to

consider the presentence report. Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the defendant shall have the right to withdraw his guilty plea.

6. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. The Defendant agrees and acknowledges that, as part of the Defendant's sentence, the Court is not limited to ordering restitution only for the amount involved in the particular offense or offenses to which the Defendant is entering a plea of guilty, but may and should order restitution resulting from all of the Defendant's criminal conduct related to this case. In this case, the Defendant agrees to pay restitution in the total principal amount of \$242,560.

7. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

- a. From June 23, 2008, through August 15, 2008, using my Wells Fargo ATM card 4323712009714405, I made the following twenty-four (24) ATM transactions at the following ATM locations:
- 1 On 6/23/08 I transferred \$2,000 into my account at an ATM in Santa Fe, NM.
 - 2 On 6/24/08 I transferred \$1,000 into my account at an ATM in Santa Fe, NM.
 - 3 On 6/28/08 I transferred \$1,000 into my account at an ATM in Pojoaque, NM.
 - 4 On 6/29/08 I transferred \$500 into my account at an ATM in Santa Fe, NM.
 - 5 On 7/1/08 I transferred \$1,000 into my account at an ATM in Santa Fe, NM.
 - 6 On 7/2/08 I transferred \$1,000 into my account at an ATM in Santa Fe, NM.
 - 7 On 7/4/08 I transferred \$500 into my account at an ATM in Ignacio, CO.
 - 8 On 7/25/08 I withdrew \$60 from account that was not my personal account at an ATM in Santa Fe, NM.
 - 9 On 7/25/08 I transferred \$400 into my account at an ATM in Santa Fe, NM.
 - 10 On 7/27/08 I transferred \$500 into my account at an ATM in Santa Fe, NM.
 - 11 On 7/28/08 I transferred \$2,000 into my account at an ATM in Santa Fe, NM.
 - 12 On 7/30/08 I transferred \$1,000 into my account at an ATM in Pojoaque, NM.
 - 13 On 7/30/08 I transferred \$2,000 into my account at an ATM in Pojoaque, NM.
 - 14 On 7/31/08 I transferred \$5,000 into my account at an ATM in Santa Fe, NM.
 - 15 On 8/2/08 I transferred \$5,000 into my account at an ATM in Santa Fe, NM.
 - 16 On 8/3/08 I transferred \$5,000 into my account at an ATM in Santa Fe, NM.
 - 17 On 8/6/08 I transferred \$5,000 into my account at an ATM in Santa Fe, NM.
 - 18 On 8/7/08 I transferred \$10,000 into my account at an ATM in Santa Fe, NM.
 - 19 On 8/8/08 I transferred \$20,000 into my account at an ATM in Pojoaque, NM.
 - 20 On 8/9/08 I transferred \$10,000 into my account at an ATM in Santa Fe, NM.
 - 21 On 8/11/08 I transferred \$40,000 into my account at an ATM in Pojoaque, NM.
 - 22 On 8/12/08 I transferred \$90,000 into my account at an ATM in Pojoaque, NM.
 - 23 On 8/13/08 I transferred \$20,000 into my account at an ATM in Santa Fe, NM.
 - 24 On 8/15/08 I transferred \$20,000 into my account at an ATM in Santa Fe, NM.
- b. At the time I transferred these funds into my Wells Fargo account (number 0849836457), I knew the funds were not mine.
- c. I understand the United States can prove the funds that I transferred and withdrew were from a Tesuque Pueblo account at Wells Fargo, number 5737224104. I was an authorized signer on this account as a former governor of Tesuque Pueblo.
- d. On August 8, 2008, I wrote a check to a car dealership for \$30,000 for a 2008 Toyota Tacoma.
- e. On August 12, 2008, I wrote fourteen (14) checks for \$5,000 each to various relatives.

- f. On August 17, 2008, I wrote two checks totaling \$12,000 to a friend, and in November 2008 I wrote her another \$1,000 check.
- g. On August 20, 2008, I wrote a check for \$15,995 to a car dealership for a 2007 Jeep Liberty.
- h. On August 25, 2008, I wrote a check for \$3,750 to NM Floor System for "laundry room." I wrote two more checks to NM Floor System on October 23, 2008, for \$1,650 and for \$4,350, noting "final payment."
- i. On August 25, 2008, I wrote myself a check for \$50,000 and deposited it in my account at Del Norte Credit Union. On September 8, 2008, I opened a money market account at Del Norte Credit Union with \$41,828.19 from my primary account at Del Norte Credit Union.
- j. On September 11, 2008, I bought a plane ticket to Bakersfield, CA, for \$406.50. I took that trip from November 25 to December 1, 2008.
- k. On September 12, 2008, I bought two plane tickets to Hawaii for \$1,434.82 total plus two baggage fees. I took that trip with a friend from December 8 to 16, 2008.
- ~~l. On February 18, 2009, I bought a plane ticket to Las Vegas, NV, for \$253.90 and took that trip from April 12 to 16, 2009, with a friend. CW~~
- m. On August 13, 2009, I bought a plane ticket to Phoenix for \$285.70 and took that trip from August 17 to 20, 2009.
- n. During this time my income consisted of my social security direct deposit, and my monthly stipend from Tesuque Pueblo, a total of less than \$2,000 per month.
- o. I knew I was embezzling, stealing, or converting to my own use or to the use of another, money that did not belong to me.
- 9. By signing this agreement, the Defendant admits that there is a factual basis for

each element of the crime(s) to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

10. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties stipulate that the appropriate disposition of this case is as follows:

- a. The Defendant will not serve a term of imprisonment due to his medical conditions. The Defendant is 75 years old with advanced rectal cancer and has a colostomy bag and will serve a sentence of probation and/or home confinement.
- b. The Defendant agrees to pay full restitution of \$242,560 to Tesuque Pueblo as the victim of the Defendant's crimes related to this case.

- 1) The Defendant will transfer title of the two vehicles purchased with the embezzled money (2008 Toyota Tacoma, and 2007 Jeep Liberty), and any other vehicles in his possession to the Pueblo. The Pueblo may use any/all of the vehicles and apply the Kelley Blue Book Private Party value as of the date of transfer as a credit towards the Defendant's restitution. The Pueblo can sell any/all of the vehicles and apply the sales proceeds as a credit towards the Defendant's restitution. The Defendant will notify either the Probation Officer (before sentencing) or the Clerk of the Court (after sentencing) in writing of the amount to credit towards his restitution, with supporting documentation (Kelley Blue Book printout for a vehicle the Pueblo is using, or sales receipt for a vehicle the Pueblo sold).

- 2) The Defendant will transfer to the Pueblo all funds in his Del Norte Credit Union money market account, up to the amount of his restitution. The Defendant will inform the Probation Officer (before sentencing) or the Clerk of the Court (after sentencing) in writing of the amount to credit towards his restitution, with supporting documentation (documents evidencing the money market balance transferred to the Pueblo).

Clw
copy
except he may retain the 2000 Toyota MRZ convertible

- c. The Defendant will pay a \$100 special penalty assessment as required by law.
- d. The Defendant recognizes that this plea agreement already has conferred a benefit upon him and that no downward departure or variance from the sentence agreed upon pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) is appropriate. The Defendant further recognizes that if the Court accepts this plea agreement, then the Court is not permitted to depart downward or vary from the sentence agreed upon pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). In return for the benefit conferred upon the Defendant by entering into this plea agreement, the Defendant agrees that he will not seek a downward departure or variance from the sentence agreed upon pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). If the Defendant, in violation of this paragraph, should nevertheless seek a downward departure or variance, the United States reserves the right, in its sole discretion, to withdraw this plea agreement and the Defendant will thereafter be subject to prosecution for any criminal violation including, but not limited to, any crime(s) or offense(s) contained in or related to the Information filed herein, as well as perjury, false statement, and obstruction of justice.

DEFENDANT'S ADDITIONAL OBLIGATIONS

- 11. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information.

The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

12. If requested to do so by the United States Attorney's Office, the Defendant will submit a personal financial statement under oath and/or submit to interviews by the United States Attorney's Office regarding the Defendant's capacity to satisfy any fines and/or restitution.

WAIVER OF APPEAL RIGHTS

13. The Defendant is aware that federal law affords a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal his conviction and any sentence and restitution imposed in this case, except to the extent, if any, that the Court may impose a sentence that differs from that agreed to by the parties under Federal Rule of Criminal Procedure 11(c)(1)(C). Additionally, the Defendant is aware that 28 U.S.C. § 2255 affords a defendant the right to collaterally attack his sentence. Acknowledging that, the Defendant knowingly waives the right to collaterally attack any sentence imposed in this case.

GOVERNMENT'S AGREEMENT

14. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that it will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present information.

15. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

16. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

17. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT


18. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$ 100 in payment of the special penalty assessment described above.

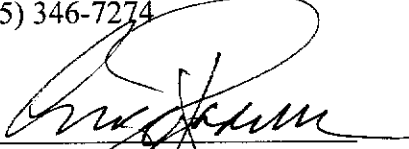
ENTIRETY OF AGREEMENT

19. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 16th day of December, 2010.

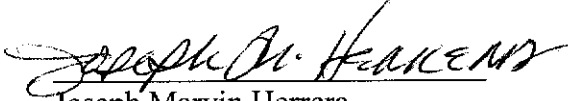
KENNETH J. GONZALES
United States Attorney


CYNTHIA L. WEISMAN
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274


ALONZO J. PADILLA
Federal Public Defender
111 Lomas Blvd. NW #501
Albuquerque, NM 87102-2373
(505) 346-2489
Attorney for Defendant

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.

Date 12/16/10


Joseph Marvin Herrera
Defendant