

COPY

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 3:15-cr-184-J-25MCR

WILLIAM REID PENUEL

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, and the defendant, William Reid Penuel, and the attorney for the defendant, Robert Stuart Willis, Esquire, mutually agree as follows:

**A. Particularized Terms**

1. Count Pleading To

The defendant shall enter a plea of guilty to Count One of the Indictment. Count One charges the defendant with embezzlement from a bankruptcy estate, in violation of 18 U.S.C. § 153.

2. Maximum Penalties

Count One carries a maximum sentence of five years' imprisonment, a fine of \$250,000, a term of supervised release of not more than three years, and a special assessment of \$100 per felony count. A violation of the terms and conditions of supervised release carries a maximum sentence of not more than two years' imprisonment as well as the possibility of an additional

Defendant's Initials WRP

AF Approval Bj

term of supervised release. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense, or to the community, as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

- First: On or about the date charged a bankruptcy case docketed as Case Number 12-40550-KKS was pending in the United States Bankruptcy Court for Northern District of Florida, and Premier Bank Holding Company was the Debtor;
- Second: The property or interest described in the indictment was part of the bankruptcy estate of the Debtor;
- Third: The Defendant had access to the property as a trustee or custodian of the bankruptcy estate; and
- Fourth: The Defendant knowingly and fraudulently embezzled, spent, transferred, or appropriated to the Defendant's own use property belonging to the bankruptcy estate.

4. Counts Dismissed

At the time of sentencing, the remaining count against the defendant, Count Two, will be dismissed pursuant to Fed. R. Crim. P.

11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. § 3663A(a) and (b), defendant agrees to make full restitution to Estate of In Re Premier Bank Holding Company, Case No. 12-40550-KKS, c/o Mary W. Colon, Chapter 7 Trustee, or any successor trustee.

7. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial

affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

**B. Standard Terms and Conditions**

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not

limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P.

32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of

making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.



9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if

defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth in the attached "Factual Basis," which is incorporated herein by reference, are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

13. Certification


The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.


DATED this 11 day of March, 2016.

A. LEE BENTLEY, III  
United States Attorney

  
WILLIAM REID PENUEL  
Defendant

  
DALE R. CAMPION  
Assistant United States Attorney

  
ROBERT STUART WILLIS  
Attorney for Defendant

  
JULIE HACKENBERRY  
Assistant United States Attorney  
Chief, Jacksonville Division

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**PERSONALIZATION OF ELEMENTS**

1. Do you admit that between March 2015 and July 2015, a bankruptcy case, namely, In re Premier Bank Holding Company, Case No. 12-40550-KKS, was pending in the Northern District of Florida, Tallahassee Division?
2. Do you admit that the funds in bank account number xxxxxxxxx2830 at Branch Banking and Trust were property of that bankruptcy estate?
3. Do you admit that you had access to the bank account because you were the Chapter 7 Trustee for the bankruptcy estate?
4. Do you admit that between March 2015 and July 2015, in Duval County, Florida, you knowingly and fraudulently embezzled and appropriated to your own use funds from bank account number xxxxxxxxx2830?

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**FACTUAL BASIS**

On October 15, 2013, William Reid Penuel ("Penuel"), the defendant, was elected as the Chapter 7 Trustee in a bankruptcy case. This was by the vote of unsecured creditors at an initial Meeting of Creditors. This occurred in a Chapter 11 business reorganization bankruptcy case that had been converted to Chapter 7 bankruptcy case. The bankruptcy case was in Tallahassee, Florida, in the Northern District of Florida. It was called In re Premier Bank Holding Company, Case No. 12-40550-KKS. On December 17, 2013, the Bankruptcy Court entered an order that confirmed Penuel's appointment as the Chapter 7 Trustee. On December 24, 2013, Penuel officially became the Chapter 7 Trustee when his trustee bond was issued. As such, he had a fiduciary duty to the bankruptcy estate and held a position of trust with respect to the bankruptcy estate.

At all times material, Penuel was a licensed attorney in the state of Florida. He maintained his law office in Atlantic Beach, Duval County, Florida. He also maintained his business and personal bank accounts at a branch of the Branch Banking and Trust Company ("BB&T") in Atlantic Beach, Florida.

After Penuel was elected and confirmed as the Chapter 7 Trustee, the previously appointed panel trustee transferred to Penuel the property of the bankruptcy estate. This property of the bankruptcy estate included \$909,461.88 in estate funds. On March 14, 2014, Penuel deposited those funds into an account he had opened at BB&T in Duval County. The account was called Estate of Premier Bank Holding Company TTE William Reid Penuel, account number xxxxxxxxx2830. Penuel was the only authorized signer on the account.

As Penuel knew, in order to disburse bankruptcy estate funds from the bank account ending in 2830, he needed to obtain approval from the Bankruptcy Court. Penuel's knowledge was evidenced by the fact he had made application to the Bankruptcy Court for orders authorizing the disbursement of funds. These applications included the request for authorization to pay for the trustee bond he was required to post. Also, on March 12, 2015, Penuel had obtained Bankruptcy Court authorization to pay another expense of the bankruptcy estate, a storage fee of \$1,159.70. But instead of paying the storage company, he converted those funds to his use.

But other than on one or two occasions, Penuel made no effort to obtain Bankruptcy Court approval for funds he subsequently diverted from the bankruptcy estate. Nor did he use a third party to withdraw funds or conceal the true nature of disbursements. In fact, Penuel did not use any sophisticated means in order to commit the embezzlement. Instead, Penuel used his position as Trustee to simply withdraw funds from account number xxxxxxxxx2830 in

person at BB&T, in Atlantic Beach. He would sign the withdrawal slip. Then he would typically re-deposit the funds into one or two of his business accounts (the IOLTA account or the operating account). Then, if funds had been deposited into the IOLTA account, he would transfer the funds into his operating account. Then he would typically withdraw funds in cash from his operating account (although sometimes he would pay personal expenses, such as tuition for his children's school, with his debit card). He was the only authorized signer on the operating account. The embezzlement occurred over the period of March 2015 through July 2015 and involved approximately 20 separate withdrawals from account xxxxxxxxx2830.

After July 31, 2015, the embezzlement was halted because of the actions of the United States ("U.S.") Trustee's Office. On or about July 30, 2015, the Bankruptcy Court held a hearing on the U. S. Trustee's emergency motion to freeze the estate bank account, and thereafter the account at BB&T was frozen, and Penuel was removed as the Chapter 7 Trustee. Previously, the U. S. Trustee's Office was alerted to possible problems when a storage company reported it had not been paid by the bankruptcy estate - despite a court order authorizing payment. After Penuel repeatedly delayed in complying with the U.S. Trustee's Office requests for bank records for account number xxxxxxxxx2830, their office obtained such bank records directly from BB&T and then filed the emergency motion when numerous unauthorized disbursements were

discovered. The U.S. Trustee's Office has oversight responsibilities in bankruptcy cases and over the assets of a bankruptcy estate.

At the time of the emergency motion, the amount of money taken without court authorization was estimated at approximately \$147,500; however, after BB&T records were obtained by grand jury subpoena, an FBI forensic accountant reviewed the records and determined that the embezzlement was approximately \$151,239.

On August 19, 2015, Penuel was interviewed by two FBI agents at his office in Atlantic Beach, Florida. The interview was voluntary. In substance, Penuel, stated that the funds which had been disbursed without Bankruptcy Court authorization had been transferred to a bank account that he had opened or had maintained at Ameris Bank. In fact, Penuel never had an account at Ameris Bank. The interview was eventually stopped at the request of Penuel. Subsequently, FBI agents learned that Penuel had been admitted to a hospital for long- term residential care and treatment.