

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA

CASE No: 1:18cr26-MW

v.

WILLIAM LARRY JOHNS
_____ /

FACTUAL BASIS FOR GUILTY PLEA

Defendant admits that, if this case were to proceed to trial, the Government could prove the following facts beyond a reasonable doubt:

On November 29, 2012, an anonymous complainant contacted the Veterans Affairs (VA) Office of Inspector General (OIG) Hotline indicating that William “Larry” Johns (hereinafter “Defendant”) had been actively working as a plumber since 1999 while in receipt of VA Disability Pension. Disability Pension is a benefit paid to wartime veterans with limited income who are no longer able to work. DEFENDANT first qualified for the VA Disability Pension in 1994.

On January 10, 1994, DEFENDANT submitted to the Veterans Benefits Administration (VBA) Pension Management Center (PMC) a “Veteran’s Application for Compensation or Pension.” Pages 9 and 10 of the form required DEFENDANT to report his net worth and sources of income. On February 15, 1994, DEFENDANT submitted to VBA a “Statement in Support of Claim” form,

requesting a non-service connected pension due to his inability to work. On July 25, 1994, VBA rated DEFENDANT' claim as being entitled to nonservice-connected pension benefits for "Borderline Schizophrenia, Paranoid, Competent", later re-categorized as Bi-Polar Disorder. On November 28, 1994, DEFENDANT submitted to VBA an "Income-Net Worth and Employment Statement" form as part of his application for a pension. DEFENDANT was required to report employment history, net worth, and "income received and expected from all sources". The VBA letter sent to DEFENDANT states, "VA pays a pension the difference between countable annual income and a maximum annual rate" and "We based this award on countable annual income of \$0 from February 1, 1994. To determine the countable income, we included the following sources of income you reported:".

On January 23, 1995, DEFENDANT was approved by VBA for pension benefits, including a 50% non-service connected disability of "Unspecified Schizophrenia" (reclassified as Bipolar Disorder on August 23, 1998), starting February 1, 1994. DEFENDANT served in the US Marine Corps from July 1967 to February 1968 and was not deployed during his six months of service.

On December 2, 2002, VA notified DEFENDANT that his pension award amount was amended. The letter stated, "It is based on the cost of living adjustment effective December 1, 2002, and our determination that your net countable income is \$0. If the income information show above is not correct, please furnish an accurate



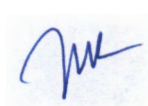
statement of your income from all sources. If, at a later date, there is anychange in income....., you should notify us immediately.”

On January 20, 2004, DEFENDANT opened a joint business account with First National Bank of Alachua under the name of “Drains International, Inc.; dba A Super Rooter.” DEFENDANT was listed as a general partner, with Thelma Cooley as President, who passed away on August 4, 2006. The Florida State Attorney’s Office (FSAO), in Gainesville, FL had opened a case against DEFENDANT in 2011 for operating as a plumber without a license. A related investigation started in 2010 was conducted by the Florida Department of Business and Professional Regulation. On February 11, 2004, DEFENDANT filed Articles of Incorporation for “Drains International, Inc.” with the Florida Division of Corporations.

On April 14, 2004, DEFENDANT was seen by Meta Banville, Registered Nurse (RN), Malcolm Randall VA Medical Center in Gainesville, FL. The progress notes state, “Occupation: Plumber. Retired YES”.

On September 27, 2006, DEFENDANT opened a “Special Account” with Capitol City Bank. DEFENDANT made deposits into this account showing that it was regularly used for business purposes.

On November 16, 2007, DEFENDANT filed a fraud report with the Union County Sheriff’s Office. In the report, DEFENDANT claimed to be the owner of “A Super Rooter, a privately run plumbing business located within Union County”.



DEFENDANT claimed a former employee used his business checking account for the employee's cell phone bill.

On November 26, 2007, VA notified DEFENDANT that his Improved Pension award amount was amended. The letter states, "It is based on the cost of living adjustment effective December 1, 2007, and our determination that your net countable income is \$0. If the income information show above is not correct, please furnish an accurate statement of your income from all sources. If, at a later date, there is anychange in income....., you should notify us immediately." On December 31, 2007, VA notified DEFENDANT of the requirement to report income. This letter states, "You must still tell VA if you or a family member....starts getting income, such as: earnings."

On September 12, 2008, DEFENDANT was arrested on an unrelated case. The Pretrial Report for DEFENDANT' employment history lists: "1Y or more in cur job, DR. DRAIN. Plumber 8y \$750/week".

On November 18, 2008, VA notified DEFENDANT that his Improved Pension award amount was amended. The letter states, "It is based on the cost of living adjustment effective December 1, 2007, and our determination that your net countable income is \$0. If the income information show above is not correct, please furnish an accurate statement of your income from all sources. If, at a later date, there is anychange in income....., you should notify us immediately."



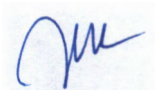
On November 24, 2008, DEFENDANT was seen by Larieta Byer, RN, Malcolm Randall VAMC. The progress notes for that visit state, "Occupation: PLUMBER. Retired YES".

On December 31, 2008, VA notified DEFENDANT of the requirement to report income. This letter states, "You must still tell VA if you or a family member....starts getting income, such as: earnings."

On September 2, 2009, DEFENDANT filed Articles of Incorporation for "W.L.J. & Associates, Inc." with the Florida Division of Corporations. On September 15, 2009, DEFENDANT opened a business checking account with Capitol City Bank under the name "W.L.J. & Associates, Inc., d/b/a Dr. Drain." On the signature card lists the company as a For Profit Corporation, and "drain cleaning" as business type.

On December 21, 2009, VA provided DEFENDANT with a summary of benefits currently received, which also indicated that he was receiving a non-service-connected pension. On December 31, 2009, VA notified DEFENDANT of the requirement to report income. This letter states, "You must still tell VA if you or a family member....starts getting income, such as: earnings."

On December 15, 2010, DEFENDANT was seen by Jeanne Duffin, Advance Registered Nurse Practitioner, Malcolm Randall VAMC. The progress note of the visit states "Employment: last employed 1981 plumber."

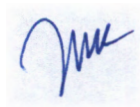


On December 29, 2010, VA notified DEFENDANT of the requirement to report income. This letter states, "You must still tell VA if you or a family member....starts getting income, such as: earnings."

On July 25, 2011, DEFENDANT filed Articles of Incorporation for "E-Hydro-Rooter, Inc." with the Florida Division of Corporation. On November 23, 2011, DEFENDANT opened a business checking account with Capitol City Bank under the name "E-Hydro-Rooter, Inc." The signature card lists the company as a For Profit Corporation and "plumbing" for business type.

On December 30, 2011, VA notified DEFENDANT of the requirement to report income. This letter states, "You must still tell VA if you or a family member....starts getting income, such as: Earnings."

On March 15, 2012, DEFENDANT was seen by Rattana Mount, Physician, Malcolm Randall VAMC. The progress note for the visit states, "Occupation: not working right now. Used to be a plumber." On April 19, 2012, DEFENDANT was seen by Marianne Prince, Registered Nurse, Malcolm Randall VAMC. The progress note for the visit states: "Employment: worked as plumber. Stopped working in '81", and "He had trouble getting out of bed and one medical problem after another to prevent him from returning to work." On April 27, 2012, DEFENDANT was seen by Sheneka Mortley, Physician, Malcolm Randall VAMC. The progress notes state, "Retired plumber, now on disability." On August 9, 2012, DEFENDANT was seen



by Rattana Mount, Physician, Malcolm Randall VAMC. The progress notes state, "Occupation: not working right now. Used to be a plumber."

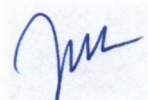
On October 26, 2012, DEFENDANT filed Articles of Incorporation for "Mr. Drain Rooter, Inc." with the Florida Division of Corporations.

On December 1, 2012, VA notified DEFENDANT that his pension award monthly payment was amended. The letter states, "You are responsible to tell us right away, if (1) your income, net worth, or address changes."

On January 7, 2013, SA Lindquist found a web page on the internet for "aNuWay-Hydro-Rooter" (www.drain-cleaning-gainesville.com). The web site lists owner "Larry Defendant" and email address of dr.drainanytime@yahoo.com. The site stated the company provided services to include bathroom remodeling; toilet, sink, shower, and tub installation; and drain and pipe cleaning services. Also located was an internet advertisement on www.localedge.com for "a-NuWay Hydro-Rooter." The ad had the name "Dr. Drain" listed with an email of dr.drainanytime@yahoo.com, and web site of www.drdrainnm.com

On January 14, 2013, VA notified DEFENDANT, "You must still notify VA of any changes in income for you...., such as: earnings."

On June 7, 2013, DEFENDANT was seen by Reba Bergeron-Driscoll, RN, Malcolm Randall VAMC. The progress notes state, "Occupation: plumber. Retired YES." On December 1, 2013, VA notified DEFENDANT that his Pension award



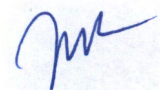
monthly payment was amended. The letter states, “You are responsible to tell us right away, if (1) your net worth or address changes.”

On January 8, 2014, DEFENDANT filed Articles of Incorporation for “Dr. Drain, Inc.”, a for-profit company, with the Florida Division of Corporations. On February 3, 2014, DEFENDANT opened a business checking account with Capitol City Bank under the name “Dr. Drain, Inc.” On the signature card lists the company as a For Profit Corporation, his employer as “Dr. Drain Inc., and “plumbing” for business type.

On April 10, 2014, DEFENDANT was seen by Dr. Mount again. The progress notes state, “Occupation: not working right now. Was a plumber.”

On August 1, 2014, SA Lindquist contacted DEFENDANT on the phone number that he listed on the internet for his plumbing business and I identified himself as “Eric Johnson” and stated that he wished to use his services for rental properties in the Gainesville, FL, area. DEFENDANT stated that he ran the Dr. Drain plumbing company and had done so for 40 years. He stated that had references that he would be able to provide.

On August 22, 2014, DEFENDANT opened a merchant account with Capitol City Bank under the name “Dr. Drain, Inc.” On the signature card lists the company as a For Profit Corporation, his employer as Dr. Drain Inc.”, and “plumbing” for business type.

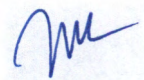


On October 15, 2014, VA notified DEFENDANT that the “amount of money you receive from VA is based on many. Changes in income or dependency are the most important.” “This letter is to remind you to tell us immediately if there is any change to your income or that of your family.” On December 1, 2014, VA notified DEFENDANT that his Pension award monthly payment was amended. The letter states, “You are responsible to tell us right away, if (1) your net worth, or address changes.”

On January 27, 2015, DEFENDANT was seen by Kathy Rivera, Physician, Malcolm Randall VAMC. The progress notes state, “Occupation: not working right now. Was a plumber.” On October 22, 2015, DEFENDANT was seen by Hellen Scott-Okafor, Physician, Malcolm Randall VAMC. The progress notes state, “Retired plumber.”

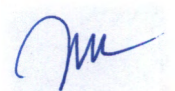
On December 28, 2015, DEFENDANT filed Articles of Incorporation for “Dr. Drain of Florida, Inc.” with the Florida Division of Corporations. On December 22, 2016, DEFENDANT filed Articles of Incorporation for “Dr. Drain, Inc.” with the Florida Division of Corporations.

On three separate dates, VA Eligibility Verification Reports (EVR’s) were mailed to DEFENDANT with the goal of having DEFENDANT state his reported income and employment. None of these forms were returned, including the last one sent on April 26, 2017, by the VBA PMC.



On June 9, 2017, Fred Fernandes, Special Agent (SA), VA Office of Inspector General (OIG), Tallahassee Resident Agency (51TL), Tallahassee, FL, called DEFENDANT posing as a VBA PMC employee to ask the status of the last EVR form mailed out. While the first attempt went to DEFENDANT' voicemail, it was noted that the message on the phone line stated, "You have reached Dr. Drain. Please leave your name, phone number, and we will call you back right away. Thank you and have a great day." Shortly after, DEFENDANT called back and stated that he had not returned the EVR due to being ill for an extended period and receiving significant medical treatment. DEFENDANT admitted to reading the last sent EVR and didn't know how to determine his income back to "1990". When asked if he understood he was required to report income due to being on a pension, DEFENDANT replied, "Yes, somewhat".

When SA Fernandes asked DEFENDANT if he had gone back to work, DEFENDANT replied that he was in the drain cleaning business, but stated, "I had tried to go back to work, it ain't worked out so good." When DEFENDANT was asked how much money he had earned since 1999, he replied, "I've probably brought in about \$5-6,000 since then." "That was income to the business, not to me." DEFENDANT added that this income was earned totally in the past year with nothing earned prior to that. During the call, DEFENDANT confirmed that the post office box on file with the VA, PO Box 120, Worthington Springs, FL, was a good

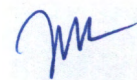


address to receive mailing. The VA mailings sent since December 2002 were mailed to this address.

The investigation revealed that between January 2008 and November 2015, DEFENDANT had 993 bank deposits into his business checking accounts totaling \$426,752, including 125 cash deposits totaling \$61,591 and 868 checks/merchant (credit card) deposits totaling \$365,161. The majority of the checks were payable to "Dr. Drain". In addition, many checks had notes related to plumbing issues and listed invoice numbers.

On September 1, 2017, SAs Daniel Henson and Lindquist interviewed DEFENDANT. DEFENDANT stated that he understood the purpose of the pension and that he should report any employment. DEFENDANT also confirmed he received his mailings from VA and read the material received. DEFENDANT stated that he did a drain repair the day prior to the interview. DEFENDANT said that he made no money from the work, as the money he received all went to the costs of the businesses. He also said that he never had full time employees, but did occasionally have part time employees. DEFENDANT stated that since he started receiving his VBA pension, he was probably actively running a business about six to eight years total, but denied ever making a profit.

DEFENDANT said his reoccurring costs for his business, not including supplies, were telephone, internet, advertising, and liability insurance. He also

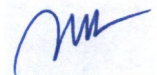


mentioned that in addition to those, he had the cost of purchasing the work vans he used. However, he admitted, when asked for specific costs, that one van was purchased by his former business partner, Thelma Cooley, with Cooley making the payments. When Cooley passed away, the debt was not assumed by DEFENDANT. Also, his current work van was purchased four to five years prior using funds from a friend. When asked about his monthly payments, DEFENDANT stated that he had not made any payments and was not aware of the amount due.

DEFENDANT said that he knew back around 2008 that he should have informed VA of his employment and income, but was afraid to do so due to his belief he would lose his pension. DEFENDANT agreed that it was wrong to keep the employment information from VA and that he would need to repay the pension funds received.

On January 17, 2017, the VBA PMC removed DEFENDANT pension benefits retroactively to 1999 due to his failure to return his EVR. Since 1999, DEFENDANT received an overall total of \$196,297 in VA Disability Pension benefits which he was not eligible to receive. Specifically, between February 1, 2004 and July 1, 2017, DEFENDANT received \$157,949¹ in VA Disability Pension benefits which he was not eligible to receive.

¹ Defendant reserves the right to present evidence at sentencing for the sole purpose of determining any applicable offset to the total restitution figure. The parties agree that sentencing guideline calculations will be based on this figure.

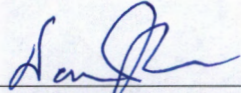


ELEMENTS OF THE OFFENSES

***Count One–9th Circuit Court of Appeals Pattern Jury Instructions § 8.40 (2010)–
Receiving, Concealing, and Retaining Stolen Government Property²***

Elements to be proven beyond a reasonable doubt:

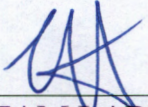
- (1) The defendant knowingly [[received] [concealed] [retained]] [[money] [property of value]];
- (2) The [money] [property] belonged to the United States;
- (3) The defendant knew that the [money] [property] had been [embezzled] [stolen] [converted] from the United States;
- (4) The defendant intended to convert the [money] [property] to [his] [her] own use or gain; and
- (5) For a felony, the aggregate value of all the counts for which the defendant is convicted in a single case exceeds \$1,000.



 DARREN JOHNSON
 Attorney for Defendant

3/22/2019

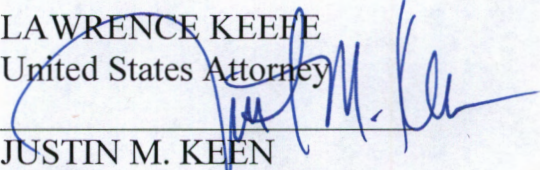
 Date



 WILLIAM LARRY JOHNS
 Defendant

3/22/2019

 Date

LAWRENCE KEEFE
 United States Attorney


 JUSTIN M. KEEN
 Florida Bar No. 021034
 Assistant United States Attorney
 Northern District of Florida
 111 North Adams Street, 4th Floor
 (850) 942-8430
 Justin.Keen@usdoj.gov

3/22/2019

 Date

² There is no pattern jury instruction in the 11th Circuit Court of Appeals for the **second** paragraph of 18 U.S.C. § 641; however, such a pattern instruction exists in the 9th CCA.