



U.S. Department of Justice

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District of Maryland

KOG
5/11/14

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May 1, 2015

Martin S. Himeles
Zuckerman Spaeder LLP
100 East Pratt Street
Suite 2440
Baltimore, MD 21202

Re: United States v. Mark Nixon
Crim. No. MSJ-15-0262

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2015 JUN 15 PM 4:14
CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

Dear Mr. Himeles:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by May 5, 2015, it will be deemed withdrawn. The terms of the agreement are as follows:

Offenses of Conviction

1. The defendant agrees to waive Indictment and plead guilty to a two count Information, which will charge the defendant with Conspiracy to Defraud the United States and Acts Affecting A Personal Financial Interest, in violation of Title 18 U.S.C. §§ 371 and 208(a), respectively. The defendant admits that he is, in fact, guilty of these offenses and will so advise the Court.

Elements of the Offenses

2. The elements of Count One of the Information, Conspiracy to Defraud the United States, 18 U.S.C. § 371, to which the defendant has agreed to plead guilty, and which the Government would prove if the case went to trial are as follows:

First, beginning at least in or about October 2007 and continuing at least until on or about December 31, 2010, in the District of Maryland, and elsewhere, the defendant knowingly

and willfully combined, conspired, confederated, and agreed with Sandra Nixon, Kenneth Dawson, or another person to defraud the United States;

Second, the defendant knew of the unlawful purpose of the agreement;

Third, the defendant joined in the agreement willfully, that is, with the intent to further its unlawful purpose; and

Fourth, that a member of the conspiracy engaged in an overt act for the purpose of advancing or helping the conspiracy.

The elements of Count Two of the Information, Acts Affecting A Personal Financial Interest, to which the defendant has agreed to plead guilty, and which the Government would prove if the case went to trial are as follows:

First, that at the time of the events alleged in the Information, the defendant was an officer or employee of the Executive Branch of the United States Government;

Second, that in the defendant's role as an officer or employee of the Government, the defendant participated personally and substantially in the "particular matter" alleged in the Information;

Third, that the defendant did so knowing that the defendant, his spouse, his child, or an organization in which he is serving as an officer, director, trustee, general partner, or employee, as specified in the Information, had a financial interest in that matter; and

Fourth, that the defendant acted willfully.

Penalties

3. The maximum sentences provided by statute for the offenses to which the defendant is pleading guilty are as follows: As to each count of the Information, a maximum sentence of five (5) years imprisonment, a fine of not more than \$250,000 or twice the amount of the gain or loss caused by the offenses, whichever is greater, and a term of supervised release of up to three (3) years. In addition, the defendant must pay \$100 per count of conviction as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The defendant understands that if he serves a term of imprisonment, is released on supervised release, and then

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the defendant, this Office, and the Court all agreed.

b. If the defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the defendant could be found guilty of any count. The jury would be instructed that the defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the defendant went to trial, the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The defendant would have the right to confront and cross-examine the government's witnesses. The defendant would not have to present any defense witnesses or evidence whatsoever. If the defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the defendant understands that he

may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including his/her attorney or the Court, can predict with certainty the effect of a conviction on immigration status. The defendant nevertheless affirms that he wants to plead guilty regardless of any potential immigration consequences.

Advisory Sentencing Guidelines Apply

5. The defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A, which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors and adjustments:

Guideline Stipulation

a. As to Count One, the parties stipulate and agree that U.S.S.G. §§ 2C1.1 and 2C1.3 apply to the defendant's offense because it involves a conspiracy to defraud that interfered with governmental functions, resulting in a base offense level of fourteen (14) (because the defendant was a public official at the time of the offense) *and* a fourteen (14) level increase pursuant to U.S.S.G. § 2B1.1 because the value of the benefit received by the defendant, Sandra Nixon, and Kenneth Dawson (the public official and others acting with the public official), and/or the loss to the government, was \$750,000. The parties stipulate and agree that this results in an adjusted offense level of twenty-eight (28).

b. As to Count Two, the parties stipulate and agree that U.S.S.G. § 2C1.3 applies to the defendant's offense, resulting in a base offense level of six (6). This base offense level is increased by four (4) levels pursuant to U.S.S.G. § 2C1.3(b)(1). The parties stipulate and agree that this results in an adjusted offense level of ten (10).

c. The parties stipulate and agree that Counts One and Two should group pursuant to U.S.S.G. § 3D1.2, resulting in a combined adjusted offense level of twenty-eight (28). See U.S.S.G. § 3D1.3.

d. This Office does not oppose a two-level reduction in the defendant's combined adjusted offense level based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the defendant's timely notification of his intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

e. The parties stipulate and agree pursuant to Fed. R. Crim. P. 11(c)(1)(C) that the following sentence is the appropriate disposition of this case: **a sentence of 42 months' incarceration**, followed by a term of supervised release of three (3) years. The defendant shall also pay a special assessment of \$200.

f. In the event that the Court rejects this plea agreement, either party may elect to declare the agreement null and void. Should the defendant so elect, he will be afforded the opportunity to withdraw his plea pursuant to the provisions of Federal Rules of Criminal Procedure Rule 11(c)(5), (d)(2)(A).

7. This Office and the defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute.

All Relevant Information May Be Brought To The Court's Attention

8. At the time of sentencing, the parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the defendant's background, character and conduct.

Forfeiture

9. The defendant understands that the Court will, upon acceptance of his guilty plea, enter an order of forfeiture as part of his sentence, and that the order of forfeiture may include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offenses. Specifically, the court will order the forfeiture of all property constituting, derived from, or traceable to the gross proceeds obtained directly or indirectly as a result of these offenses, including but not limited to \$750,000. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant and the Government agree that it may be necessary for the Court to make a factual determination regarding the amount of the money judgment and/or the forfeiture of certain assets. To the extent that it is not possible for the Court to make that determination prior to the date of sentencing, the defendant agrees to waive any right he may have to have the forfeiture determined at that time, and agrees that the Court may make any necessary factual determination in a post-sentencing proceeding, and may amend the order of forfeiture and the judgment to include the forfeited property at that time.

Assisting the Government with Regard to the Forfeiture

10. The defendant agrees to assist fully in the forfeiture of the foregoing assets. The defendant agrees to disclose all of his assets and sources of income to the United States, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The defendant further agrees that he will not assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding and that he will testify truthfully in any such proceeding.

Waiver of Further Review of Forfeiture

11. The defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenges or review or with regard to the filing of a petition for remission of forfeiture.

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The Court may determine when the defendant shall begin payment of restitution, and the terms of payment, pursuant to 18 U.S.C. § 3572(d). *(16)* *(17)*

Restitution

12. The defendant agrees to the entry of a restitution order for the full amount of the victims' actual losses with regard to the conspiracy, which is at least \$750,000, and that restitution shall be due and payable immediately upon sentencing. The defendant shall be entitled to a credit against this restitution amount for any money returned to the United States and/or provided by the date of sentencing. The defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court may order restitution of the full amount of the actual, total loss caused by the offense conduct set forth in the factual stipulation. The defendant further agrees that he will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement.

Collection of Financial Obligations

13. The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The defendant will promptly submit a completed financial statement to the United States Attorney's Office, in a form this Office prescribes and as it directs. The defendant promises that the financial statement and disclosures will be complete, accurate and truthful, and understands that any willful falsehood on the financial statement will be a separate crime and may be punished under 18 U.S.C. § 1001 by an additional five years' incarceration and fine.

Waiver of Appeal

14. In exchange for the concessions made by this Office and the defendant in this plea agreement, this Office and the defendant waive their rights to appeal as follows:

a. The defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291, or otherwise, to appeal the defendant's conviction;

b. The defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the

decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release).

c. Nothing in this agreement shall be construed to prevent the defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. The defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

15. The defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

16. The defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above.

Entire Agreement

17. This letter supersedes any prior understandings, promises, or conditions between this Office and the defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the defendant fully accepts each and every term and condition of this letter, please sign and have the defendant sign the original and return it to me promptly.

Rod J. Rosenstein
United States Attorney

By: _____ /s/ _____
Harry M. Gruber
P. Michael Cunningham
Assistant United States Attorneys



I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the factual and advisory guidelines stipulation with my attorney, and I do not wish to change any part of it. I understand this plea agreement, and I voluntarily agree to it. I am completely satisfied with the representation of my attorney.

7 MAY 2015
Date

Mark Nixon Mark Nixon
Mark Nixon

I am Mr. Nixon's attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

May 7, 2015
Date

Martin S. Himeles Martin S. Himeles
Martin Himeles