

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

APR - 2 2019

at 12 o'clock and 06 min. P M
SUE BEITIA, CLERK *SB*

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Acting Under Authority Conferred by 28 U.S.C. § 515

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 19-00031
)	
)	MEMORANDUM OF PLEA
v.)	AGREEMENT
)	
MASTER HALBERT,)	DATE: April 2, 2019
)	TIME: 11:15 a.m.
Defendant.)	JUDGE: Hon. S. O. Mollway
)	
)	
)	

MEMORANDUM OF PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the UNITED STATES OF AMERICA, by its attorney, the Assistant Attorney General of the Criminal Division, and the Defendant, MASTER HALBERT, and his attorney, Myles Breiner, have agreed upon the following:

THE CHARGES

1. The Defendant acknowledges that he has been charged in an Information with violating Title 18, United States Code, Section 1956(h).

2. The Defendant has read the charge against him contained in the Information, and that charge has been fully explained to him by his attorney.

3. The Defendant fully understands the nature and elements of the crime with which he has been charged.

THE AGREEMENT

4. The Defendant agrees to waive indictment and enter a voluntary plea of guilty to the Information, which charges him with conspiring to launder monetary instruments in violation of Title 18, United States Code, Section 1956(h). The Defendant is aware that he has the right to have this felony asserted against him by way of grand jury indictment. The Defendant hereby waives this right and consents that this offense may be charged against him by way of the Information. In return, the government agrees not to file additional charges against the Defendant relating to (a) any of the conduct described in the Factual Stipulations, or (b) information made known to the government prior to the date of this Agreement.

5. The Defendant agrees that this Memorandum of Plea Agreement shall be filed and become part of the record in this case.

6. The Defendant enters this plea because he is in fact guilty of conspiring to launder monetary instruments as charged in the Information, and he agrees that this plea is voluntary and not the result of force or threats.

PENALTIES

7. The Defendant understands that the penalties for the offense to which he is pleading guilty include:

a. A term of imprisonment of up to 20 years and a fine of up to the greater of \$500,000, or twice the value of the property involved in the transaction for which the Defendant conspired to launder, plus a term of supervised release of up to 5 years.

b. In addition, the Court must impose a \$100 special assessment as to each count to which the Defendant is pleading guilty. The Defendant agrees to pay \$100 for each count to which he is pleading guilty to the District Court's Clerk's Office, to be credited to said special assessments, before the commencement of any portion of sentencing. The Defendant acknowledges that failure to make such full advance payment in a form and manner acceptable to the prosecution will allow, though not require, the prosecution to withdraw from this Agreement at its option.

FACTUAL STIPULATIONS

8. The Defendant admits the following facts and agrees that they are not a detailed recitation, but merely an outline of what happened in relation to the charge to which the Defendant is pleading guilty:

a. The Defendant was a citizen and resident of the Federated States of Micronesia ("FSM"). The Defendant was a government official in the FSM Department of Transportation, Communications and Infrastructure who administered FSM's aviation programs, including the management of its airports.

b. Frank James Lyon, also known as Jim Lyon, was a United States citizen and resident.

c. “Co-Conspirator 1” was a United States citizen and FSM resident.

d. “Engineering Company,” an entity whose identity is known to the United States, was a privately-held United States engineering and consulting company headquartered in Honolulu, Hawaii and organized under the laws of Hawaii. Engineering Company was partially owned and controlled by Lyon. In or around and between 2006 and 2016, Engineering Company obtained contracts valued at approximately \$7.8 million with the FSM government, including for an airport improvement project funded in large part by the United States Federal Aviation Administration (“FAA AIP Contract”) and for project management.

e. From in or around 2006 to in or around 2016, Lyon entered into an agreement with the Defendant to bribe the Defendant in exchange for the Defendant’s assistance in securing contracts for Engineering Company and Lyon. Lyon and the Defendant agreed that these bribes would be transported from the United States to FSM. In furtherance of, and to promote, the corrupt agreement, Lyon withdrew thousands of dollars in cash from his personal bank account in the District of Hawaii on numerous occasions in order to pay cash bribes to the Defendant in the District of Hawaii, the FSM and elsewhere, and Lyon and the Defendant transported and delivered the cash bribes from the District of Hawaii to the FSM.

f. On or about May 3, 2010, the Defendant sent an email to Lyon and Co-Conspirator 1 regarding an FSM auditor’s concerns about the purchase of a vehicle. The Defendant wrote, “I know I should protect myself and [not] put this in writing or discuss this in e-mail or any form of communication that can provide as a concrete evident [*sic*] and come back and

used against me but its ok, if you want to take me down no problem.” The Defendant wrote and threatened that if Lyon and Co-Conspirator 1 were not willing to back him up in confronting the auditor, then the Defendant did “not think [they] should do business together again.”

g. On or about June 2, 2011, the Defendant sent an email to Co-Conspirator 1, stating, “I am sorry to do this but I really your [*sic*] help again. We came with \$3000 and we have already used half of that in food and shopping. Can you and Jim [Lyon] give me \$1,500.00 and this should last us for the rest of the trip.”

h. On or about June 2, 2011, the Defendant sent an email to Co-Conspirator 1, with the subject line “travel fund,” stating, “Jim [Lyon] is ok. delete this after raeding.” [*sic*]

i. On or about December 1, 2011, the defendant emailed Co-Conspirator 1, “Can you ask Jim for some money? I need \$1000 and if ok, you can give it to me when we get to Hawaii.”

j. In or around 2012, Lyon and his co-conspirators purchased an automobile for the Defendant’s personal use in order to obtain and retain business for Lyon and Engineering Company.

k. Lyon, together with his co-conspirators, purchased the automobile in the United States and Lyon and others caused the automobile to be shipped internationally to the FSM for the Defendant’s personal use.

l. On or about July 8, 2013, the Defendant sent an email to Lyon directing Lyon to go look at a Ford truck in the District of Hawaii to potentially purchase for the defendant.

m. On or about May 7, 2014, the Defendant sent an email to Co-Conspirator 1, with the subject line, "Per dium," [*sic*] stating, "Please bring my money at home. Can you ask Jim if you can add another \$1000.00."

n. In or around June 2015, the Defendant and Lyon instructed Co-Conspirator 1 to draft a request for qualification document seeking bids for an FSM project management contract ("PMU Contract"), including drafting selection criteria to favor Engineering Company in order to obtain an improper business advantage and win the PMU Contract.

o. In or around July 2015, Engineering Company was awarded the PMU Contract by the FSM government.

p. On or about August 27, 2015, the Defendant sent an email to Lyon with the subject line, "2014 Chevy Silverado," stating, "Please get this truck. It is my cash so when I need to pay back anyone, I can sell it or this will be my ride forever. If you can, lift it 6 in and put on black rims."

q. In or around 2015, Lyon and his co-conspirators purchased an additional automobile for the Defendant's personal use in order to obtain and retain business.

r. Lyon, together with his co-conspirators, purchased this additional automobile in the United States and caused the automobile to be shipped internationally to the FSM for the Defendant's personal use.

s. On or about September 1, 2015, the Defendant sent an email to Co-Conspirator 1, asking Co-Conspirator 1 to talk to Lyon about loaning the Defendant \$2,500 to open an account, stating, "We will return it once we get compensation, maybe profit if he is nice."

t. On or about November 15, 2015, the Defendant sent an email to “Engineering Company Executive,” an individual whose identity is known to the United States, requesting that Engineering Company book and pay for a hotel room for the Defendant and members of his family for a trip to Guam. The Engineering Company executive responded that “at this time” Engineering Company was approving “only project reimbursable travel requests.”

u. On or about November 16, 2015, the Defendant emailed three Engineering Company employees, “This is to inform you that I am closing your office starting tomorrow until further notice. You can email [another Engineering Company executive] and [Co-Conspirator 1] and inform him of this direction.”

v. On or about November 17, 2015, the Defendant sent an email to Engineering Company Executive, stating, “I’m greatly offended and hope this is the last time you will contact me. You have no business talking as you don’t understand and appreciate how Lyon got this job. . . . You’re very disrespectful and insulting. For this, Lyon will never get another job in the FSM. I can make that happen.”

w. In or around December 2015, the Defendant entered into a Deferred Prosecution Agreement (“DPA”) with the FSM for falsifying his educational credentials, which allowed him to receive a higher salary from the FSM government. The DPA required the defendant to pay restitution to the FSM government.

x. Leading up to the DPA, on or about October 10, 2015, the Defendant sent an email to Lyon asking Lyon to “still help me with \$40k.”

y. On or about December 22, 2015, the Defendant sent an email to Co-Conspirator 1 with the subject line, "Restitution," stating, "Please ask Jim if he can give me the whole and I will put it down in full to lower the monthly."

z. On or about December 22, 2015, Co-Conspirator 1 sent a response email to the Defendant, informing the Defendant that he had asked, but "they don't have money now. They are short of money all the time."

aa. On or about December 22, 2015, the Defendant sent a response email to Co-Conspirator 1, stating, "I'm shocked...really thought they committed to help. Now I just lost all my confidence."

bb. On or about December 22, 2015, Co-Conspirator 1 sent a response email to the Defendant, stating, "They will help you by monthly."

cc. On or about March 21, 2016, the Defendant sent an email to Lyon, "You don't think people in the Government questions why I have a long term contract with Lyon? You don't understand how hard I work from my side to protect you and your contract."

dd. On or about March 31, 2016, the Defendant sent an email to Lyon, stating, "I'm helping you already and you paying me in some ways when I ask. I'm effective this way right?"

ee. On or about April 19, 2016, the Defendant sent an email to Lyon, stating, "So I will start getting paid by the Government under my contract in two weeks and I might get hired on permanently in 1 month. I want to return the whole amount of my checks and every one of them until my restitution is fully paid off. Can you put me on your payroll so I have some money every month? Let me know your thought."

ff. On or about May 6, 2016, the Defendant sent an email to Co-Conspirator 1 with the subject line "Car in Guam," stating, "Maybe not now but keep in mind until end of the month and ask Jim to buy this vehicle. I want to sell and put the money to my restitution with the Government."

9. Pursuant to CrimLR 32.1(a) of the Local Rules of the United States District Court for the District of Hawaii, the parties agree that the charge to which the Defendant is pleading guilty adequately reflects the seriousness of the actual offense behavior and that accepting this Agreement will not undermine the statutory purposes of sentencing.

SENTENCING STIPULATIONS

10. Pursuant to CrimLR 32.1(b) of the Local Rules of the United States District Court for the District of Hawaii and Section 6B1.4 of the Sentencing Guidelines, the parties stipulate to the following for the purpose of the sentencing of the Defendant in connection with this matter:

a. Base offense level: Pursuant to U.S.S.G. § 2S1.1(a)(2), that the base offense level for purposes of sentencing guideline calculations for the charged offense is 8 plus the number of offense levels from the table in U.S.S.G. § 2B1.1 corresponding to the value of the laundered funds (more than \$95,000), adding 8 total levels, for a total base offense level of 16.

b. Offense of conviction; That a two-level enhancement of the guideline offense level applies under U.S.S.G. § 2S1.1(b)(2)(B) for a conviction Title 18, United States Code, Section 1956.

c. As of the date of this agreement, it is expected that Defendant will enter a plea of guilty prior to the commencement of trial, will truthfully admit his involvement in the offense and related conduct, and will not engage in conduct that is inconsistent with such

acceptance of responsibility. If all of these events occur, and Defendant's acceptance of responsibility continues through the date of sentencing, a downward adjustment of 2 levels for acceptance of responsibility will be appropriate. See U.S.S.G. § 3E1.1(a) and Application Note 3.

d. The Government agrees that the Defendant's agreement herein to enter into a guilty plea constitutes notice of intent to plead guilty in a timely manner, so as to permit the government to avoid preparing for trial as to the Defendant. Accordingly, the Government anticipates moving in the Government's Sentencing Statement for a one-level reduction in sentencing offense level pursuant to Guideline § 3E1.1(b)(2), if the Defendant is otherwise eligible. The Defendant understands that notwithstanding its present intentions, and still within the Agreement, the prosecution reserves the rights (1) to argue to the contrary in the event of receipt of new information relating to those issues, and (2) to call and examine witnesses on those issues in the event that either the United States Probation Office finds to the contrary of the prosecution's intentions or the Court requests that evidence be presented on those issues.

e. The Defendant has a Criminal History Category of I.

f. Although not binding on the probation office or the Court, the parties agree that the Defendant's total offense level is likely to be 15, which corresponds to a guidelines range of 18-24 months.

11. The parties agree that notwithstanding the parties' Agreement herein, the Court is not bound by any stipulation entered into by the parties but may, with the aid of the presentence report, determine the facts relevant to sentencing. The parties understand that the Court's

rejection of any stipulation between the parties does not constitute a refusal to accept this Agreement since the Court is expressly not bound by stipulations between the parties.

12. The parties represent that as of the date of this agreement there are no material facts in dispute.

APPEAL/COLLATERAL REVIEW

13. The defendant is aware that he has the right to appeal his conviction and the sentence imposed. The defendant knowingly and voluntarily waives the right to appeal, except as indicated in subparagraph “b” below, his conviction and any sentence within the Guidelines range as determined by the Court at the time of sentencing, and any lawful restitution order imposed, or the manner in which the sentence or restitution order was determined, on any ground whatsoever, in exchange for the concessions made by the prosecution in this Agreement. The defendant understands that this waiver includes the right to assert any and all legally waivable claims.

a. The Defendant also waives the right to challenge his conviction or sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, United States Code, Section 2255, except that the Defendant may make such a challenge (1) as indicated in subparagraph “b” below, or (2) based on a claim of ineffective assistance of counsel.

b. If the Court imposes a sentence greater than specified in the guideline range determined by the Court to be applicable to the Defendant, the Defendant retains the right to appeal the portion of his sentence greater than specified in that guideline range and the manner in which that portion was determined and to challenge that portion of his sentence in a collateral attack.

c. The prosecution retains its right to appeal the sentence and the manner in which it was determined on any of the grounds stated in Title 18, United States Code, Section 3742(b).

FINANCIAL DISCLOSURE

14. In connection with the collection of restitution or other financial obligations that may be imposed upon him, the Defendant agrees as follows:

a. The Defendant agrees to fully disclose all assets in which he has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or third party. The Defendant agrees to truthfully complete the financial statement form provided to the Defendant in connection with this Agreement by the earlier of 45 days from the Defendant's signature on this Agreement or the date of the Defendant's entry of a guilty plea, sign it under penalty of perjury, and provide it to both the Department of Justice and the United States Probation Office. The Defendant agrees to provide updates with any material changes in circumstances, as described in Title 18, United States Code, Section 3664(k), which occur prior to sentencing, within seven days of the event giving rise to the changed circumstances. The Defendant's failure to timely and accurately complete and sign the financial statement, and any update thereto, may, in addition to any other penalty or remedy, constitute the Defendant's failure to accept responsibility under U.S.S.G § 3E1.1.

b. The Defendant expressly authorizes the Department of Justice to obtain a credit report on him. The Defendant also authorizes the Department of Justice to inspect and copy all financial documents and information held by the United States Probation Office.

c. Prior to sentencing, the Defendant agrees to notify the U.S. Department of Justice, Criminal Division, Fraud Section before making any transfer of an interest in property with a value exceeding \$1,000 owned directly or indirectly, individually or jointly, by the Defendant, including any interest held or owned under any name, including trusts, partnerships and corporations.

IMPOSITION OF SENTENCE

15. The Defendant understands that the District Court in imposing sentence will consider the provisions of the Sentencing Guidelines. The Defendant agrees that there is no promise or guarantee of the applicability or non-applicability of any Guideline or any portion thereof, notwithstanding any representations or predictions from any source.

16. The Defendant understands that this Agreement will not be accepted or rejected by the Court until there has been an opportunity by the Court to consider a presentence report, unless the Court decides that a presentence report is unnecessary. The Defendant understands that the Court will not accept an agreement unless the Court determines that the remaining charge adequately reflects the seriousness of the actual offense behavior and accepting the Agreement will not undermine the statutory purposes of sentencing.

WAIVER OF TRIAL RIGHTS

17. The Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. If the Defendant persisted in a plea of not guilty to the charges against him, then he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by a judge sitting without a jury. The Defendant has a right to a jury trial. However, in

order that the trial be conducted by the judge sitting without a jury, the Defendant, the prosecution, and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. The Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the Defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt.

c. If the trial is held by a judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he or she was persuaded of the Defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against the Defendant. The Defendant would be able to confront those prosecution witnesses and his attorney would be able to cross-examine them. In turn, the Defendant could present witnesses and other evidence on his own behalf. If the witnesses for the Defendant would not appear voluntarily, the Defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the Defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify.

18. The Defendant understands that by pleading guilty, he is waiving all of the rights set forth in the preceding paragraph. The Defendant's attorney has explained those rights to him, and the consequences of the waiver of those rights.

USE OF PLEA STATEMENTS

19. If, after signing this Agreement, the Defendant decides not to plead guilty as provided herein, or if the Defendant pleads guilty but subsequently makes a motion before the Court to withdraw his guilty plea and the Court grants that motion, the Defendant agrees that any admission of guilt that he makes by signing this Agreement, that he makes while pleading guilty as set forth in this Agreement, or that were made to the Government on or after March 6, 2019 may be used against him in a subsequent trial if the Defendant later proceeds to trial. The Defendant voluntarily, knowingly, and intelligently waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence regarding the use of statements made in this Agreement, during the course of pleading guilty, or that were made to the Government on or after March 6, 2019 when the guilty plea is later withdrawn. The *only* exception to this paragraph is where the Defendant fully complies with this Agreement but the Court nonetheless rejects it. Under those circumstances, the United States may not use those statements of the Defendant for any purpose.

20. The Defendant understands that the prosecution will apprise the Court and the United States Probation Office of the nature, scope and extent of the Defendant's conduct regarding the charges against him, related matters, and any matters in aggravation or mitigation relevant to the issues involved in sentencing.

21. The Defendant and his attorney acknowledge that, apart from any written proffer agreements, if applicable, no threats, promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement, to induce the Defendant to plead guilty. Apart from any written proffer agreements, if applicable, this Agreement supersedes all prior promises, agreements or conditions between the parties.

22. To become effective, this Agreement must be signed by all signatories listed below.

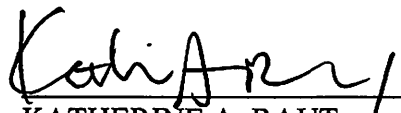
23. Should the Court refuse to accept this Agreement, it is null and void and neither party shall be bound thereto.


DATED: Honolulu, Hawaii, APR 02 2019.

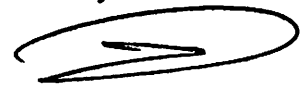
AGREED:

BRIAN A. BENCZKOWSKI
Assistant Attorney General of the Criminal Division
Attorney for the United States,
Acting Under Authority Conferred by 28 U.S.C. § 515


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MASTER HALBERT
Defendant