

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) CR. NO. 2:13-CR-138-WKW
)
 ANTOINE GREEN)
)
 Defendant)

PLEA AGREEMENT

DEFENSE COUNSEL: ROIANNE CONNER

TRIAL ATTORNEYS: CHARLES M. EDGAR, JR.
MICHAEL BOTELER
TODD BROWN

COUNTS AND STATUTES CHARGED:

Count 1 18 U.S.C. § 641
Theft of Public Money

Count 2 18 U.S.C. § 1709
Theft of Mail by a Postal Employee

COUNTS PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1 18 U.S.C. § 641
Theft of Public Money

Count 2 18 U.S.C. § 1709
Theft of Mail by a Postal Employee

PENALTIES BY COUNT - MAXIMUM PENALTY:

Count 1 18 U.S.C. § 641
Theft of Public Money

A term of imprisonment which may not be more than 10 years, a fine not to exceed either \$250,000, or twice the gross gain to the defendant or the gross loss to any person other than the defendant, or both a fine and imprisonment; a term of supervised release of no more than 3 years; restitution; and an assessment fee of \$100.00.

Count 2 18 U.S.C. § 1709
Theft of Mail by a Postal Employee

A term of imprisonment which may not be more than 5 years, a fine not to exceed either \$250,000, or twice the gross gain to the defendant or the gross loss to any person other than the defendant, or both a fine and imprisonment; a term of supervised release of no more than 3 years; restitution; and an assessment fee of \$100.00.

ELEMENTS OF THE OFFENSES:

Count 1 18 U.S.C. § 641
Theft of Public Money

1. the money or property described in the information belonged to the United States;
2. the Defendant stole the money or property to his own use or to someone else's use;
3. the Defendant knowingly and willfully intended to deprive the owner of the use or benefit of the money or property; and
4. the money or property had a value greater than \$1,000.

Count 2 18 U.S.C. § 1709
Theft of Mail by a Postal Employee

1. the Defendant was a Postal Service employee at the time stated in the indictment;
2. the Defendant was entrusted with, or came into possession of, the mail matter described in the information, and that matter was intended to be conveyed by the United States mail; and
3. the Defendant knowingly embezzled the mail matter.

Charles Edgar and Michael Boteler, Trial Attorneys of the U.S. Department of Justice, Todd Brown, Assistant United States Attorney, and Roianne Conner, attorney for the Defendant, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), as amended, have, with the authorization of the undersigned Defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Information herein and a Plea Agreement has been reached by said parties. The plea is being submitted to the Court pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, and the parties understand that, if the terms of the Plea Agreement are not accepted by the Court, the Defendant will not be allowed to withdraw his plea of guilty.

GOVERNMENT'S PROVISIONS

1. For the purpose of calculating the Defendant's sentence under the United States Sentencing Guidelines, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the Government and Defendant agree that the following Guidelines calculations apply:

- a. That the Defendant's criminal liability for sentencing purposes is a fraud loss of between \$120,000 and \$200,000, resulting in a base offense level of 16 under U.S.S.G. §§ 2B1.1(a)(1) and 2B1.1(b)(1)(F).
- b. That a 4-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(2)(B) is warranted because the Defendant's conduct involved 50 or more victims.
- c. That a 2-level enhancement pursuant to U.S.S.G. § 3B1.3 is warranted because the defendant abused a position of public trust in a manner that significantly facilitated the commission of the offense.

2. That the United States agrees that the 2-level reduction in the applicable offense

level pursuant to § 3E1.1(a) for the Defendant's acceptance of responsibility is appropriate, and if the Defendant's offense level is sixteen or more and should the Government find that the Defendant assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, the Government agrees to move at sentencing for a further reduction of one level, pursuant to § 3E1.1(b). Determination of whether the defendant met his obligations to qualify for the reduction pursuant to § 3E1.1(b) is at the sole discretion of the United States. The Government's obligation under this sub-paragraph will become null and void if, between the date of this agreement and the date of sentencing, the Defendant obstructs justice, commits any new federal or state offenses, or otherwise fails to accept responsibility for the offense.

3. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the Government agrees to recommend a sentence at the bottom of the Guidelines Range. The Defendant reserves the right to argue for a variance from the Guidelines. The United States reserves the right to object should the Defendant elect to argue for a variance from the Guidelines.

4. The United States reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant conduct concerning the charged offenses, as well as all other uncharged related criminal activity. The United States may include information concerning the background, character, and conduct of the Defendant, including the entirety of his criminal activities.

5. If the Defendant pleads guilty and is sentenced on Counts 1 and 2 of the Information, the Government will bring no further charges against the Defendant based on his

participation in the theft of Government money based on the filing of false income tax returns as described in the factual basis section of this agreement.

DEFENDANT'S PROVISIONS

6. The Defendant agrees to plead guilty to Counts 1 and 2 of the Information.
7. The Defendant agrees not to commit any other federal, state, or local offenses while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering or facilitation of any other criminal activity. The Defendant agrees to provide truthful information to the Probation Office and/or the Court. Determination of whether the Defendant's conduct is a violation of this provision is at the complete discretion of the Government.
8. Pursuant to 18 U.S.C. § 3663(a)(3), the Defendant agrees to pay restitution in the amount of \$145,952. The Government will not oppose the liability being joint and several with any others who may be found liable because of their involvement in the commission of the crimes described in the factual basis section of this agreement.
9. The Defendant agrees that, unless the Director of the Administrative Office of the United States Courts directs him otherwise, all payments made pursuant to the Court's restitution order are to be sent only to the Clerk of the Court for the Middle District of Alabama. With each payment to the Clerk of the Court made pursuant to the Court's restitution order, the Defendant will provide the following information:
 - a. The Defendant's name and Social Security number;
 - b. The District Court docket number assigned to this case;
 - c. Tax year(s) or period(s) for which restitution has been ordered; and

d. A statement that the payment is being submitted pursuant to the District Court's restitution order.

10. The Defendant agrees to include a request that the Clerk of the Court send the information, along with the Defendant's payments, to the IRS at the following address:

IRS-RACS
Attention: Mail Stop 6261, Restitution
333 W. Pershing Avenue
Kansas City, MO 64108

The Defendant also agrees to send a notice of any payments made pursuant to this agreement, including the information listed in the previous paragraph, to the IRS at that address.

FACTUAL BASIS

The Defendant, Antoine Green, admits the allegations charged in Counts 1 and 2 of the Information and understands that the nature of the charges to which the plea is offered involves proof as follows:

11. From at least in or about November 2011, and continuing until in or about October 2012, in the Middle District of Alabama, Antoine Green, was employed as a postal carrier with the United States Postal Service and did steal at least sixty-one U.S. Treasury tax refund checks from his mail route, totaling approximately \$145,952.

12. The Defendant knew at the time he stole the U.S. Treasury tax refund checks that the checks were issued from fraudulent tax returns filed in the names of identity theft victims.

13. On or about October 10, 2012, within the Middle District of Alabama, the Defendant did steal, purloin, and knowingly convert to his own use and the use of another, money of the United States, namely funds administered by the Department of the Treasury in the form of one U.S. Treasury check no. 13264510 issued in the name K.F. and in the amount of

\$1,200.

14. On or about the October 10, 2012, within the Middle District of Alabama, the Defendant, who was then a United States Postal Service employee and who had been entrusted with mail matter, mail matter which was in his possession and intended to be forwarded through and delivered from any post office and station thereof and intended to be conveyed by the United States mail, did knowingly embezzle and steal, abstract and remove said mail matter items, to wit: one U.S. Treasury check no. 13264510 issued in the name K.F. and in the amount of \$1,200.

15. The actions of the Defendant with respect to Counts 1 and 2 recounted above were in all respects voluntary, knowing, deliberate, and willful, and were not committed by mistake, accident, or other innocent reason.

DEFENDANT'S WAIVER OF APPEAL AND COLLATERAL ATTACK

16. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the Defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. The Defendant further expressly waives the right to appeal the conviction and sentence on any other ground and waives the right to attack the conviction and sentence in any post-conviction proceeding. This waiver does not include the right to appeal on the ground of ineffective assistance of counsel or prosecutorial misconduct, or the right appeal a sentence above the Guidelines range. In return for the above waiver by the Defendant, the Government does not waive its right to appeal the sentence imposed in the instant case. The Government does not waive its right to appeal any order dismissing the Information, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this agreement shall affect the Government's right

and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the Defendant's sentence pursuant to 18 U.S.C. § 3742(b), the Defendant is released from this waiver.

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

17. The Defendant, before entering a plea of guilty to Counts 1 and 2 of the Information as provided for herein by said Plea Agreement, advises the Court that:

a. The discussions between the attorneys for the government and the attorney for the Defendant towards reaching an agreed plea in this case have taken place with the Defendant's authorization and consent.

b. The Defendant further understands that, pursuant to Title 18, United States Code, Section 3013, a \$200 assessment fee is to be paid by the Defendant on the date of sentencing. The Defendant will make an honest, good faith effort to pay said fine as directed by the Financial Litigation Section of the United States Attorney's Office. The Defendant further understands that by completing and submitting to the court or the government any financial statements, the Defendant is representing that the statement is true and accurate to the best of his information, knowledge, and belief.

c. The Defendant understands that the Defendant has a right to be represented by an attorney at every stage of the proceedings against the Defendant herein and is represented by the Defendant's undersigned attorney.

d. The Defendant understands that the Defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the Defendant, the right to

call witnesses in the Defendant's own behalf, and the right not to be compelled to incriminate the Defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the Defendant waives the right to a trial by jury or to a trial before the Court.

e. The Defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the Defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the Defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. The Defendant further understands and advises the Court that the Plea Agreement and the Addendum to the Plea Agreement and the plea to be entered by the Defendant as a result thereof is voluntary on the Defendant's part and is not the result of any force or threats or of any promises apart from the Plea Agreement and the Addendum to the Plea Agreement. The Defendant further advises the Court that the Plea Agreement and the Addendum to the Plea Agreement is the result of prior discussions between the attorneys for the government, and the attorney for the Defendant, all conducted with the Defendant's authorization, knowledge, and consent.

g. The Defendant further advises the Court that his understanding of this Plea Agreement and the Addendum to the Plea Agreement is as set forth in these documents.

h. The Defendant further understands that the Government can only make a sentencing recommendation to the Court, which is not binding on the Court.

i. The Defendant further advises the Court that the Defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crimes charged in the Information herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the Defendant. However, the Defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Information herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the Defendant under oath, on the court record, and in the presence of counsel.

j. The Defendant is satisfied that defense counsel has been competent and effective in representing him.

18. The undersigned attorneys for the Government and for the Defendant represent to the Court that the Plea Agreement and the Addendum to the Plea Agreement is the agreement of the parties that has been reached pursuant to the plea agreement procedure provided for in Rule 11, Federal Rules of Criminal Procedure, as amended. The attorney for the Defendant further advises the Court that the Defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the Defendant has been advised of the defendant's right to plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the Defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the Defendant; and that if the Defendant pleads guilty, there will not be a further trial

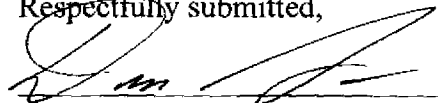
of any kind. Further, the Defendant has been advised that if the Defendant pleads guilty, the Court may ask questions about the offense to which the Defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the Defendant in a civil or criminal proceeding, but that the Defendant's answers may later be used against the Defendant in a prosecution for perjury or false statement if the answers are not truthful.

19. The Defendant understands that the United States Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the Defendant's conduct related to the offense to which the plea is offered, as well as the Defendant's criminal history. The offense level or criminal history category, as calculated by the Probation Officer and determined by the Court, may differ from that projected by the Defendant's counsel or the United States Attorney.

20. This agreement consisting of 20 numbered paragraphs and 12 pages and the contemporaneously filed Addendum constitute the entire agreement and understanding between the Government and the Defendant. There are no other agreements, promises, representations, or understandings.

This 26th day of August, 2013.

Respectfully submitted,



Denise O. Simpson
Todd A. Brown
Assistant United States Attorney

Charles M. Edgar, Jr.
Michael Boteler
Trial Attorneys
U.S. Department of Justice, Tax Division
Southern Criminal Enforcement Section

I have read the foregoing Plea Agreement and Addendum, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement and the Addendum that has been reached.

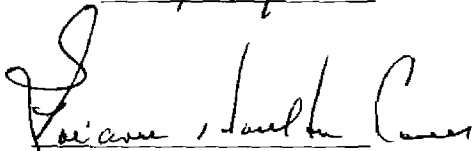
IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL.



Antoine Green

Defendant

Date: 8/26/13



Roianne Conner

Attorneys for the Defendant

Date: Aug. 26, 2013