

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

TOMMY HAIRE

No. 15CR648

Michael T. Mason
Magistrate Judge

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant TOMMY HAIRE, and his attorney, ERICA ZUNKEL, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The information in this case charges defendant with conversion of government property, in violation of Title 18, United States Code, Section 641.

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

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

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with conversion of government property, in violation of Title 18, United States Code, Section 641.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

Beginning in or about February 2013, and continuing until at least July 27, 2013, at Chicago, in the Northern District of Illinois, Eastern Division, defendant TOMMY HAIRE knowingly stole and converted to his use and the use of another, namely, Inmate A, and without authority, conveyed a record and thing of value of an agency of the United States, namely, information of the United States Bureau of Prisons and the Federal Bureau of Investigation, which information included the following: (a) information obtained from a search of SENTRY on or about July 3, 2013, specifically information concerning the area of the correctional facility in which Inmates B and C were assigned; (b) information obtained from a search of SENTRY on or about May 10, 2013, concerning the location of Inmate D in the Bureau of Prisons system; and (c) information obtained from a search of NCIC on or about July 26, 2013, concerning Inmate E, in violation of Title 18, United States Code, Section 641.

Specifically, defendant TOMMY HAIRE was employed as a Religious Services Assistant at the Metropolitan Correctional Center in Chicago. As a religious services assistant, HAIRE had computer access to NCIC and SENTRY records, and he was authorized to obtain and use NCIC and SENTRY information solely in the performance of his official duties.

HAIRE acknowledges that government can prove that the Federal Bureau of Investigation (“FBI”) of the United States Department of Justice was an agency of the United States which was primarily responsible for investigating violations of federal criminal law and, in connection therewith, was responsible for acquiring, collecting, classifying and preserving on a computer database criminal records, including criminal history and outstanding warrants. The FBI’s computerized criminal records system was known as the National Crime Information Center (“NCIC”) system. The FBI was authorized to exchange NCIC records and information with, and solely for the official use of, authorized officials of the federal government and state and local governments. A lawful function of the FBI was to maintain the integrity and confidentiality of the NCIC system.

The Bureau of Prisons (“BOP”) of the United States Department of Justice was an agency of the United States which was primarily responsible for incarcerating federal inmates and, in connection therewith, was responsible for acquiring, collecting, classifying and preserving on a computer database information relating to the care, classification, subsistence, protection, discipline, and programs of federal inmates, including but not limited to the following data

regarding inmates: name, personal identifying information, home address, institution designation and housing assignments, prison conduct records, information concerning present offense, criminal background, sentence and parole, physical and mental health data, and investigatory information. The BOP's computerized records system was known as the SENTRY system. The BOP was authorized to exchange SENTRY records and information with, and solely for the official use of, authorized officials of the federal government. A lawful function of the BOP was to maintain the integrity and confidentiality of the SENTRY system.

HAIRE knew that access to information contained in the NCIC and SENTRY databases was restricted to official use only. HAIRE also knew that Bureau of Prisons policy was that official information, including personal data concerning inmates, may only be disclosed as required in the performance of an employee's duties or upon specific authorization, and that access of information for personal or private purposes was strictly prohibited.

HAIRE used his position as Religious Services Assistant to "call out" Inmates A and G from their cell blocks to his office for 3-4 hours, several days a week. HAIRE permitted Inmates A, F, and G to socialize in his office, and, among other privileges, permitted Inmates A, F, and G to benefit from use his computer, including, with respect to Inmate A, the unauthorized use of the computer to obtain information from SENTRY and NCIC, with respect to Inmate F, the unauthorized use of the computer to obtain information from SENTRY, and with respect to

Inmates A and G, the unauthorized use of his computer to access other websites which HAIRE knew that both he and inmates were not authorized to access.

As charged in Count One, on or about July 2, 2013, at the request of Inmate A, HAIRE used his access to SENTRY to conduct an unauthorized search for information concerning Inmates B and C. The search run by HAIRE revealed the location of Inmates B and C, as well as detailed information concerning Inmate B's psychological and medical conditions, and concerning Inmate C's criminal charges and ultimate BOP facility designation. HAIRE provided, at minimum, information concerning Inmate B and C's locations to Inmate A.

As charged in Count One, on or about May 10, 2013, at the request of Inmate A, HAIRE conducted an unauthorized search of SENTRY for information concerning Inmate D. That search revealed that Inmate D, who was not incarcerated at the MCC, was no longer assigned to the Special Housing Unit (SHU) at the prison in which Inmate D was incarcerated. HAIRE provided this information concerning Inmate D to Inmate A.

HAIRE conducted searches on NCIC for individuals, which he did not report to his supervisor as required. These searches included the following as charged in Count One: on or about July 26, 2013, after performing an unauthorized SENTRY search for Inmate E, and learning that Inmate E was reported as being in the custody of the U.S. Marshals' Service, HAIRE performed an unauthorized NCIC search for Inmate E, which revealed Inmate E's birthdate, social security number, and birthplace. HAIRE provided the results of the NCIC search to Inmate A and

provided information concerning Inmate E's location, obtained from the SENTRY search, to Inmate A.

HAIRE acknowledges that the information contained in SENTRY and NCIC, including the information he disclosed to inmates, was a thing of value both to the inmates and to the BOP and the FBI. HAIRE acknowledges that the government can prove that inmate information, including inmates' criminal charges, medical and psychological information, status as a sex offender, location within the prison system and personal identifying information, are valuable to inmates both as a means of extorting inmates and a means of committing identity fraud and tax fraud schemes. Further, HAIRE acknowledges that the government can prove that the information contained in NCIC and SENTRY is valuable to the agencies which operate and maintain those systems, because those systems hold sensitive law enforcement data that, if disseminated, could cause individuals both personal and reputational harm. HAIRE acknowledges that the government can prove that the BOP and FBI spend significant sums of money to operate and maintain these systems, as well as to train users of those systems regarding the need to keep the information confidential.

In addition, HAIRE admits that he mailed letters for inmates, including Inmate A, on at least three occasions. HAIRE understood that by mailing letters for inmates, he was permitting those inmates to bypass the mail screening system in place at the MCC. HAIRE knew that inmates were not allowed to send mail out of the MCC except through the mail screening system.

HAIRE further admits that he permitted Inmate F to use HAIRE's personal cellular telephone on at least two occasions to contact friends of Inmate F. HAIRE admits that Inmate F asked HAIRE to use his cellular telephone, and that HAIRE made the calls to Inmate F's friends on behalf of Inmate F while Inmate F was present and listening on speakerphone. HAIRE knew that BOP and MCC regulations prohibited correctional employees from bringing cellular telephones into the MCC and knew that his possession of a cellular telephone was in violation of policy. HAIRE further knew that inmates were not permitted to use cellular telephones and were instead required to use the MCC's monitored telephone system to place calls to friends and family.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 1 year's imprisonment. This offense also carries a maximum fine of \$100,000. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$25 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that

the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual that will be effect at the time of sentencing, namely the November 2015 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 6, pursuant to Guideline § 2B1.1(a).

ii. The base offense level is increased by two levels because the offense involved the unauthorized public dissemination of personal information, pursuant to Guideline § 2B1.1(b)(17)(B).

iii. The base offense level is increased by two levels because defendant abused a position of public trust in a manner that significantly facilitated the commission and concealment of the offense, pursuant to Guideline § 3B1.3.

iv. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of

Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 8, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 0 to 6 months' imprisonment, in addition to any supervised release and fine the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the

probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Defendant agrees to pay the special assessment of \$25 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

14. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 15CR648.

15. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

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

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant.

Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, 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. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, in any collateral attack or future challenge, including but not limited to

a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

17. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

18. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

19. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this

information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

20. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

21. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

22. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

23. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

25. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

26. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

ZACHARY T. FARDON
United States Attorney

TOMMY HAIRE
Defendant

LINDSAY C. JENKINS
Assistant U.S. Attorney

ERICA ZUNKEL
Attorney for Defendant