

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

DONALD DONAGHER, JR.

No. 19 CR 240

Judge John Z. Lee

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant DONALD DONAGHER, JR., and his attorney, THEODORE POULOS, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with conspiring to commit an offense against the United States, in violation of Title 18, United States Code, Section 371 (Count One); and corruptly giving something of value to influence and reward a public official, in violation of Title 18, United States Code, Section 666(a)(2) (Counts Four and Five).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

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

Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the indictment: Count Four, insofar as it charges defendant with corruptly giving something of value to reward a public official, in violation of Title 18, United States Code, Section 666(a)(2).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Four of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

On or about March 20, 2014, at Chicago and Morton Grove, in the Northern District of Illinois, Eastern Division, DONALD DONAGHER, JR. corruptly gave, offered, and agreed to give anything of value, namely a payment of \$869 to a trophy company located in Morton Grove, Illinois, which payment was made for the benefit of Clerk A, intending to reward Clerk A in connection with any business, transaction, and series of transactions of such government involving anything of value of \$5,000 or more, that is, the referral of traffic debt placements from the Clerk's Office to Penn Credit Corporation pursuant to its contract with Cook County, in violation of Title 18, United States Code, Section 666(a)(2).

Specifically, in 2014, the Office of the Clerk of the Circuit Court of Cook County was run by Clerk A, who was an agent of Cook County. Defendant acknowledges that Cook County was a local government that received in excess of \$10,000 in federal

benefits in calendar year 2014. Defendant was an owner and the Chief Executive Officer of Penn Credit Corporation (“Penn Credit”), a debt collection company. In 2011, Penn Credit was awarded a contract to perform debt collection work for Cook County, Illinois by a committee representing multiple Cook County offices and agencies pursuant to a competitive bidding process.

Penn Credit did not have an exclusive contract with Cook County; instead, it was one of two vendors who had a contract to perform debt collection work on behalf of the County. A significant portion of the Cook County contract was the opportunity to collect fines owed on unpaid traffic tickets. The Circuit Court of Cook County Clerk’s Office was the government agency responsible for apportioning the traffic debt collection work amongst Penn Credit and its competitor. Under the prior contract, the competitor had been allocated all of the traffic debt collection work, while another vendor had been allocated the non-traffic debt collection work. The traffic debt collection work placed with Penn Credit at the perceived direction of Clerk A constituted business of the Cook County government worth more than \$5,000.

In or around March 2014, Clerk A hosted the Circuit Court of Cook County’s Women’s History Month Celebration which honored the women serving as Justices and Judges of the Illinois Supreme Court, Appellate Court, and the Circuit Court of Cook County. In order to reward Clerk A for her perceived role in apportioning 50% of the debt collection work to Penn Credit, defendant corruptly agreed to underwrite certain expenses of the event. After he agreed to cover these expenses, defendant

forwarded an email from a member of Clerk A's staff to certain employees and lobbyists and stated, "Can you guys go to this on our behalf? We are sponsoring the entire thing. I told her [Clerk A's staff member] we are fans of [Clerk A]. We gotta stay ahead of [the competing debt collection company]."

On or about March 20, 2014, defendant caused a payment of \$869 to be made to a company providing plaques that were presented to the Justices and Judges attending the Clerk of the Circuit Court of Cook County's Women's History Month Celebration. In causing this \$869 payment to be made, defendant corruptly intended to reward Clerk A for her perceived favorable treatment with respect to the award, allocation, and retention of traffic debt placements from the Circuit Court of Cook County Clerk's Office to Penn Credit pursuant to Penn Credit's contract with Cook County.

7. Defendant also acknowledges that for the purpose of computing his sentence under the Sentencing Guidelines, the following conduct to which he stipulates, constitutes relevant conduct under Guideline § 1B1.3.

As noted earlier, in order to reward Clerk A for her perceived role in apportioning debt collection work to Penn Credit, defendant corruptly agreed to underwrite certain expenses of the Clerk of the Circuit Court of Cook County's Women's History Month Celebration. On or about March 25, 2014, defendant caused a payment of \$1,000 to be made to a food services company providing catering for the Women's History Month Celebration event. As with the payment to the trophy

company, Defendant caused this payment to be made for the benefit of Clerk A, and, in doing so, corruptly intended to reward Clerk A for her perceived favorable treatment with respect to the award, allocation, and retention of traffic debt placements from the Circuit Court of Cook County Clerk's Office to Penn Credit pursuant to Penn Credit's contract with Cook County.

The government does not contend that the other allegations contained in the indictment constitute relevant conduct as defined in U.S.S.G. § 1B1.3. The government reserves the right to argue that this conduct as well as any other conduct should be considered by the Court as an aggravating factor pursuant to 18 U.S.C. § 3553(a).

Maximum Statutory Penalties

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

a. Count Four carries a maximum sentence of 10 years' imprisonment. Count Four also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count Four the judge also may impose a term of supervised release of not more than three years.

b. Pursuant to Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

10. 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 currently in effect, namely the November 2018 Guidelines Manual.

b. Offense Level Calculations.

Count Four (count of conviction)

i. The base offense level is 9, pursuant to Guideline § 2C1.2(a)(2).

ii. Pursuant to Guideline § 2C1.2(b)(3), the offense level is increased by 4 levels because it involved an elected official. Because the resulting offense level is less than 15, the offense level is increased to 15.

Count Five (stipulated offense)

iii. The base offense level is 9, pursuant to Guideline § 2C1.2(a)(2).

iv. Pursuant to Guideline § 2C1.2(b)(3), the offense level is increased by 4 levels because it involved an elected official. Because the resulting offense level is less than 15, the offense level is increased to 15.

Grouping

v. Pursuant to Guideline §§ 3D1.2(b) and 3D1.3(a), Counts Four and Five are grouped, and the resulting offense level is 15.

Acceptance of Responsibility

vi. 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 13, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 12 to 18 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.

11. 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

12. At the time of sentencing, the government may recommend whatever sentence it deems appropriate, provided that it does not include a term of imprisonment that exceeds the applicable advisory guideline range determined by the Court. The defendant is free to recommend whatever sentence he deems appropriate.

13. 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.

14. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment, as well as the forfeiture allegation as to defendant. The United States Attorney's Office for the Northern District of Illinois agrees not to prosecute defendant for any other offenses based on the conduct alleged in the Indictment as originally filed.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

16. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 19 CR 240.

17. 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

18. 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 charges 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 and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

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, and considering each count separately, 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, and including any order of forfeiture, 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.

19. 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

20. 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 charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

21. 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.

22. 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

23. 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.

24. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

25. 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.

26. 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.

27. 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.

28. 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.

29. 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: _____

Signed by AMARJEET BHACHU
on behalf of
JOHN R. LAUSCH, JR.
United States Attorney

DONALD DONAGHER
Defendant

ANKUR SRIVASTAVA
Assistant United States Attorney

THEODORE POULOS
Attorney for Defendant