

FILED
JAN 23 2012
U.S. PATRICK MURPHY
DISTRICT JUDGE
SOUTHERN DISTRICT OF ILLINOIS
ST. LOUIS, ILLINOIS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES R. PRIESTLEY,)
)
 Defendant.)

No. 10-cr-30180-GPM

PLEA AGREEMENT

The attorneys for the United States and the attorney for the Defendant have engaged in discussions and have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. As a result of that agreement, the Defendant intends to plead guilty in this case pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The full and complete Plea Agreement is as follows:

I.

1. The Defendant acknowledges that he has been advised and does fully understand the following:

- (a) the nature of the charges to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;
- (b) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself;
- (c) that if he pleads guilty, there will not be a further trial of any kind, so that by pleading guilty, he waives the right to a trial;
- (d) that if he pleads guilty, the Court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel,

his answers may later be used against him in a prosecution for perjury or false statement;

(e) that if he pleads guilty, he will waive his right to persist in his plea of not guilty, to be tried by a jury, to have assistance of counsel at the trial, and to confront and cross-examine witnesses against him at trial; and

(f) that if he pleads guilty, he is pleading guilty to a felony *punishable* by a term of imprisonment exceeding one (1) year. Therefore, he will be forbidden by federal firearms laws from possessing any type of firearm in his lifetime, unless he obtains relief pursuant to Title 18, United States Code, Section 925, or other appropriate *federal* statute.

2. The Defendant acknowledges that this Plea Agreement and Stipulation of Facts constitutes the entire agreement between him and the United States, and that no promises, inducements or representations, other than those specifically set forth in this Plea Agreement and Stipulation of Facts, were made to induce him to enter into this Plea Agreement and Stipulation of Facts.

3. It is further understood that this agreement is limited to the Southern District of Illinois, and cannot bind other federal, state or local prosecuting authorities. **It is further understood that this Plea Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving the Defendant.**

4. The Defendant understands that this offense is subject to Title 28, United States Code, Section 994(a). The Defendant has been advised and understands that the Sentencing Guidelines are advisory and that the Court will consider the applicable Sentencing Guidelines in conjunction with Title 18, United States Code, Section 3553(a), in determining the appropriate sentence.

5. The Defendant understands that pursuant to Title 18, United States Code, Section 3013 and U.S.S.G. § 5E1.3, the Court will assess a “Special Assessment” of \$100 per felony count. *See* 18 U.S.C. § 3013(a)(2)(A); U.S.S.G. § 5E1.3. **For the one count, the Defendant will be assessed \$100.00. The Defendant agrees that he will pay the full amount of the special assessment prior to or at the time of sentencing.**

6. The Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision and that **the United States will recommend the imposition of a fine at the low end of the guideline range.** The estimated costs of such incarceration or community confinement or supervision, pursuant to an advisory notice from the Administrative Office of the United States Courts are the following: for imprisonment: \$2,357.01 per month; for community correction center: \$2,153.22 per month; and for supervision: \$328.20 per month. *See* Memorandum of Administrative Office of the United States Courts, re: Costs of Incarceration and Supervision, May 2011. The Defendant agrees to make complete financial disclosure by truthfully filling out, at the request of the United States Attorney, a Financial Statement (OMB-500).

7. The Defendant understands that the Court may order restitution in any criminal case and as agreed upon by the parties. *See* 18 U.S.C. § 3663(a)(3). **The parties agree to restitution to the United States in the amount of \$300,000.00.** The Defendant agrees to pay restitution in an amount of not less than ten percent (10%) of gross income, or \$200.00 per month, whichever is greater.

8. The Defendant understands that the United States may move for an order pursuant to Title 18, United States Code, Section 6003 requiring the Defendant to give testimony or provide

other information and that if such order is granted and the Defendant refuses to give such testimony or other information he may be subject to punishment for contempt.

9. The Defendant states that he has read this agreement and has discussed it with his attorney, and understands it.

II.

1. The Defendant states that he is actually guilty and will enter a plea of guilty to the following:

Count	Charge and Statute	Penalties - imprisonment (nmt) - fine (nmt) - supervised release (nmt) - class of felony - special assessment	Authority
1	False, Fictitious and Fraudulent Claim, 18 U.S.C. § 287	5 years \$250,000 or both 3 years class D \$100	18 U.S.C. § 287 18 U.S.C. § 3571(b)(3) 18 U.S.C. § 3583(b)(2) 18 U.S.C. § 3559(a)(4) 18 U.S.C. § 3013(a)(2)(A)

2. The United States and the Defendant agree that the following constitutes the essential elements of the offense:

Count	Charge	Essential Elements
1	False, Fictitious and Fraudulent Claim, 18 U.S.C. § 287	<i>First:</i> that the defendant made a claim against a department of the United States; <i>Second:</i> that the claim was false, fictitious or fraudulent; and, <i>Third:</i> that the defendant knew the claim was false, fictitious or fraudulent.

See Pattern Criminal Federal Jury Instruction for the Seventh Circuit, 18 U.S.C. § 287. The Defendant agrees and admits that his conduct violated these essential elements of the offense.

3. The United States and the Defendant submit to the Court that it appears that under the Sentencing Guidelines, after all factors have been considered, the Defendant will have the following:

Offense Level	15 levels
Criminal History Category	I
Sentencing Range	18-24 months (Zone D)
Fine Range	\$4,000-\$40,000 (U.S.S.G. § 5E1.2 - Fine Table (for offense level of 15))

The United States and the Defendant agree that the offense level and the criminal history category calculations submitted by the parties constitute the parties' good faith efforts to inform the Court of their beliefs as to the applicable sentencing range and acknowledge that it is the Court which is ultimately responsible for determining the applicable Guideline range and determining the sentence which will be imposed. **As discussed below, consistent with the objectives of the Rule 11(c)(1)(C) plea, the United States agrees to recommend a sentence of probation for five (5) years, see 18 U.S.C. § 3561(c)(2), and a fine that is at the low end of the guideline range or \$4,000.00.**

4. The Defendant and the United States agree to the following Guideline Offense

Level calculations:

Levels	Citation to USSG	Basis
6	§ 2B1.1(a)(2)	base offense level
12	§ 2B1.1(b)(1)(G)	loss amount of \$300,000
- 3	§ 3E1.1(b)	affirmative acceptance of personal responsibility
15	---	Total

5. The Defendant and the United States submit to the Court that it appears that the Defendant has amassed zero (0) Criminal History points and that, therefore, his Sentencing Guideline Criminal History Category is I. The Defendant and the United States arrived at this Category based upon the following information: *None known.*

The Defendant expressly recognizes that the final calculation will be determined by the Court after considering the Presentence Report, the views of the parties and any evidence submitted prior to sentencing. The Defendant recognizes that, regardless of the criminal history found by the Court, he will not be able to withdraw his plea.

6. The Defendant understands that the United States will recommend the imposition of a fine. The Defendant understands that the United States' recommendation may be based in part on the Defendant's projected earnings through the Inmate Financial Responsibility Program.

7. The Defendant will cooperate fully with the United States Probation Office in its collection of information and preparation of the Presentence Report in this matter. Said cooperation will include signing all releases, as requested.

8. The United States proposes the following Special Conditions of Supervision:

(a) The Defendant shall pay any financial penalty that is imposed by the judgment and that remains unpaid at the time of probation.

(b) The Defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorney's Office with any requested financial information. The Defendant is advised that the Probation Office may share financial information with the Financial Litigation Unit.

(c) The Defendant shall not incur new credit charges or open additional lines of credit without the approval of the Probation Officer.

(d) The Defendant shall apply all monies received from income tax refunds, lottery winnings, judgments and/or any other anticipated or unexpected financial gains to the outstanding court-ordered financial obligations. The Defendant shall immediately notify the Probation Officer of the receipt of any indicated monies.

(e) The Defendant shall pay restitution in an amount of not less than ten percent (10%) of gross income, or \$200.00 per month, whichever is greater.

III.

1. This plea agreement is submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) and is made to the Court after significant discussion by and between the parties, which separately and together have agreed that the proposed resolution of this case is in the best interest of the parties.

2. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), and in consideration of all factors in Title 18, United States Code, Section 3553(a), both parties agree as follows:

Sentence	probation term of five (5) years
Fine	\$4,000.00
Restitution	\$300,000 to the United States Treasury or its designee
Supervised Release	none
Special Assessment	\$100.00

3. If the Court informs the parties before the time of sentencing that it will reject this agreement or will impose a sentence beyond this agreement, then either party may withdraw from the plea agreement and the Defendant will have an opportunity to withdraw his guilty plea pursuant to Rule 11(c)(5).

IV.

1. The Defendant understands that by pleading guilty, he is waiving all appellate issues that might have been available if he had exercised his right to trial. The Defendant states that he is fully satisfied with the representation he has received from his counsel, that they have discussed the United States' case, possible defenses and have explored all areas which the Defendant has requested relative to the United States' case and his defense.

2. The Defendant is aware that Title 18, Title 28 and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence. Acknowledging all this, and in exchange for the recommendations and concessions made by the United States in this plea agreement, the Defendant knowingly and voluntarily waives his right to contest any aspect of his conviction and sentence that could be contested under Title 18 or Title 28,

or under any other provision of federal law, except that if the sentence imposed is in excess of the Sentencing Guidelines as determined by the Court (or any applicable statutory minimum, whichever is greater), the Defendant reserves the right to appeal the reasonableness of the sentence. The Defendant acknowledges that in the event such an appeal is taken, the United States reserves the right to fully and completely defend the sentence imposed, including any and all factual and legal findings supporting the sentence, even if the sentence imposed is more severe than that recommended by the United States. The Defendant knowingly and voluntarily waives his right to seek a pardon, whether before or after his release from custody.

3. The Defendant's waiver of his right to appeal or bring collateral challenges shall not apply to the following: (a) any subsequent change in the interpretation of the law by the United States Supreme Court or the United States Court of Appeals for the Seventh Circuit, which is declared retroactive by those Courts, and which renders the defendant actually innocent of the charges covered in this case, and (b) appeals based upon Sentencing Guideline amendments which are made retroactive by the United States Sentencing Commission (*see* U.S.S.G. § 1B1.10). The United States reserves the right to oppose such claims for relief.

4. The Defendant's waiver of his appeal and collateral review rights shall not affect the United States' right to appeal Defendant's sentence pursuant to Title 18, United States Code, Section 3742(b). This is because United States Attorneys lack any right to control appeals by the United States, through plea agreements or otherwise; that right belongs to the Solicitor General. 28 C.F.R. § 0.20(b).

5. The Defendant waives all rights, whether asserted directly or by a representative, to request or receive from any Department or Agency of the United States any records pertaining


to the investigation or prosecution of this case, including without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

6. The Defendant waives all claims under the Hyde Amendment, Title 18, United States Code, Section 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

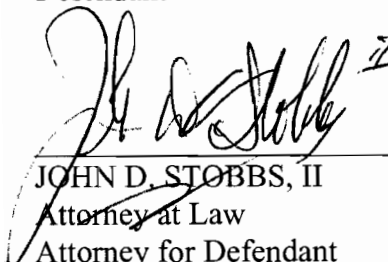
7. The Defendant acknowledges that the United States has provided discovery and access to complete discovery in this case. The Defendant acknowledges that he received such receipt of discovery and access to discovery.

V.

No matters are in dispute.



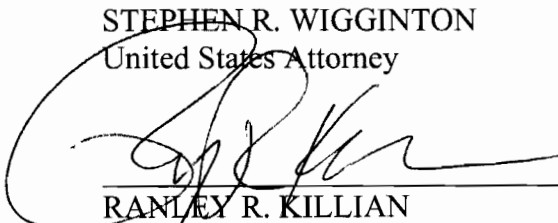
CHARLES R. PRIESTLEY
Defendant



JOHN D. STOBBS, II
Attorney at Law
Attorney for Defendant

Date: January 23, 2012

STEPHEN R. WIGGINTON
United States Attorney



RANLEY R. KILLIAN
WILLIAM E. COONAN
Assistant United States Attorneys

Date: January 23, 2012