

FILED
MAR 26 2010
[Signature]
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, CR 08-30114
 Plaintiff, PLEA AGREEMENT

vs.

ARCHIE BAUMANN,
 Defendant.

The defendant, the defendant's attorney, and the United States Attorney for the District of South Dakota hereby submit the following Plea Agreement to the United States District Court, which Agreement was reached pursuant to discussions between the United States Attorney and the defendant's attorney.

The Agreement is as follows:

1. ACKNOWLEDGMENT AND WAIVER OF RIGHTS AND

UNDERSTANDING OF MAXIMUM PENALTIES: The defendant agrees that he has been fully advised of his statutory and constitutional rights herein, and that he has been informed of the charges and allegations against him and the penalty therefor, and that he understands same. The defendant further agrees that he understands that by entering a plea of guilty as set forth hereafter, he

will be waiving certain statutory and constitutional rights to which he is otherwise entitled, and that there will be no trial.

2. PLEA AGREEMENT PROCEDURE: The United States and the defendant agree that this Plea Agreement is presented to the Court pursuant to Rule 11(c)(1)(A) and (c)(1)(B) of the Federal Rules of Criminal Procedure, which provides, among other things, that the United States will move for the dismissal of other charges and that the Court may accept or reject this agreement, that the United States will make certain recommendations but that such recommendations are not binding on the Court and that the defendant may not withdraw his plea of guilty if the Court rejects such recommendations.

3. PLEA TO CHARGE: The defendant will plead guilty to count 13 of the second superseding indictment filed in this case, which charges a violation of 18 U.S.C. §§ 666 (a). The charges in count 13 carry a maximum sentence of 10 years in prison, a \$250,000 fine, or both, and a period of supervised release of 3 years; and if the defendant is found by a preponderance of evidence to have violated a condition of supervised release, he may be incarcerated upon any such revocation for an additional term of up to 2 years. There is a \$100 assessment to the victims' assistance fund. Restitution may also be ordered. Upon acceptance of the plea by the Court and the imposition of sentence, this section shall be treated as a Motion to Dismiss the remaining counts of the indictment as against this Defendant pursuant to the terms of this plea agreement.

4. RECOMMENDATIONS REGARDING SENTENCE: The United States agrees that unless there is evidence disclosed in the presentence investigation to the contrary, it will recommend that the Court find that the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct as set forth in U.S.S.G. § 3E1.1(a).

The United States reserves the right to make objections to the presentence report and rebut or clarify matters raised by the Defendant in mitigation of his sentence, if the United States deems same to be misleading.

5. TIMELY ACCEPTANCE OF RESPONSIBILITY: The United States agrees that the Defendant has timely notified authorities of his intention to enter a plea of guilty thereby permitting the United States and the Court to allocate their resources efficiently. Therefore, if the offense level determined prior to the operation of U.S.S.G. § 3E1.1(a) is level 16 or greater and the Defendant qualifies for a two-level decrease under U.S.S.G. § 3E1.1(a), this provision shall be treated at the sentencing hearing as a motion pursuant to U.S.S.G. § 3E1.1(b) to decrease the offense level by one additional level.

6. PAYMENT OF SPECIAL ASSESSMENT: The defendant agrees to remit to the U.S. Clerk of Court, 400 S. Phillips Ave., Sioux Falls, SD 57104, no later than two weeks prior to sentencing, a certified or cashier's check payable to the "U.S. Clerk of Court" in the amount of \$100, in full satisfaction of the statutory costs pursuant to 18 U.S.C. § 3013.

If the defendant does not have the financial resources with which to pay the assessment, the defendant agrees to provide supporting documentation by completing the Financial Statement and signing the releases provided by the United States and submitting the same to the United States Attorney's Office no later than two weeks prior to sentencing. The defendant further agrees to participate in the Bureau of Prison's Inmate Financial Responsibility Program and pay the assessment while incarcerated. If there is no period of incarceration ordered, the defendant agrees that payment of the assessment shall be a condition of probation.

7. VIOLATION OF TERMS AND CONDITIONS: The defendant acknowledges and understands that if he violates any of the sections of this plea agreement, engages in any further criminal activity, or fails to appear for sentencing, this plea agreement shall become voidable at the discretion of the United States, and the defendant will face the following consequences:

(1) All testimony and other information he has provided at any time to attorneys, employees, or law enforcement officers of the United States, to the Court, or to the federal grand jury may and will be used against him in any prosecution or proceeding.

(2) The United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against the defendant, and to use any information obtained directly or indirectly from the defendant in those additional prosecutions.

(3) The United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

8. **BASIS FOR PLEA OF GUILTY:** The defendant agrees that the Factual Basis Statement constituting the basis for his guilty plea in this case, appended hereto and incorporated herein by this reference, is a true and accurate statement of his actions or omissions with regard to the charges to which he is entering a plea, and that the Court may rely thereon in determining the basis for his plea of guilty as provided for in this plea agreement.

9. **AGREEMENT TO FORFEIT PROPERTY:** The Defendant agrees to forfeit all interest in the following money

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CB51124005E	CI02636038A	DE26079385A
FL85172630B	AB69782704J	AB36460656I
AB72416728N	AE75992188B	AL57261090C
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DF45410379A		
[REDACTED]		
AD14180333B	AB28778149G	CJ13038317A
FJ49242038A	DB71897911C	FB02328006C
FB58349786C	FJ44436880A	FG98313852A
FB67558558B		

hereinafter referred to as "the property". The Defendant warrants that he is the sole owner of all of the property. The Defendant agrees to hold the United States, its agents, and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of the property.

The Defendant further agrees to waive all interest in the property in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The Defendant agrees to consent to the entry of orders of forfeiture for the property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The Defendant acknowledges that he understands that the forfeiture of the property is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

The Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The Defendant agrees to take all steps necessary to pass clear title to the property to the United States, including, but not limited to, surrender of title, the signing of a consent decree, stipulating to facts regarding the transfer and basis for the forfeiture, executing deed or title transfers, and signing any other documents necessary to effectuate such transfers.

10. NO FURTHER PROSECUTION: The United States agrees that there will be no further federal criminal prosecution of the Defendant in the District of South Dakota based on the information and evidence now available to the United States regarding the Defendant's involvement with the theft or bribery concerning the Crow Creek Tribal Schools and Crow Creek Sioux Tribe.

11. WAIVER OF SPEEDY TRIAL: The defendant agrees to waive any rights he may assert under the Speedy Trial Act. This waiver is necessary so the Court will have the benefit of all relevant information at sentencing.

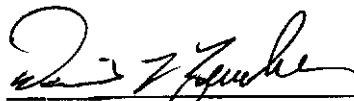
12. PARTIES BOUND: It is further understood and agreed that this agreement is limited to the United States Attorney's Office for the District of South Dakota, and that this agreement cannot and does not bind other federal, state, or local prosecuting authorities.

13. SCOPE OF AGREEMENT: It is further understood and agreed that no additional promises, agreements, or conditions have been entered into other than those set forth in this agreement, and that this agreement supersedes any earlier or other understanding or agreement.

14. WAIVER OF DEFENSES AND APPEAL RIGHTS: Defendant hereby waives any right to appeal any and all motions, defenses, probable cause determinations, and objections which he has asserted or could assert to this prosecution, and to the Court's entry of judgment against him and imposition of sentence, including sentence appeals under 18 U.S.C. § 3742. The parties agree that expressly excluded from this waiver of defenses and appeal rights is the defendant's right to appeal the sentence for a determination of "reasonableness" should the Court impose a sentence above the advisory guideline range established by the Court for the offense.

15. PLEA AGREEMENT SUPPLEMENT: The United States will file a Plea Agreement Supplement which is required to be file in every case in compliance with the Court's Standing Order.

BRENDAN V. JOHNSON
UNITED STATES ATTORNEY



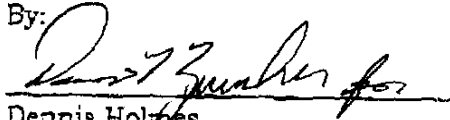
DAVID L. ZUERCHER
Assistant United States Attorney
PO Box 7240
Pierre, SD 57501-7240
605-224-5402 ext 2201

3-26-10
Date


APPROVED:

BRENDAN V. JOHNSON
UNITED STATES ATTORNEY

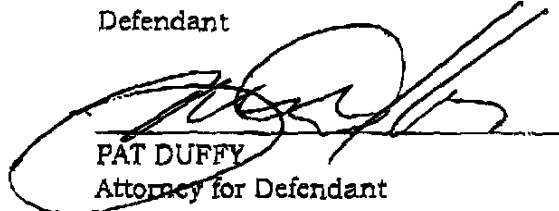
By:


Dennis Holmes,
Criminal Chief, District of South Dakota

26 Mar 10
Date


ARCHIE BAUMANN
Defendant

26 Mar 10
Date


PAT DUFFY
Attorney for Defendant