

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 05 CR 446
)
MICHAEL TRISTANO) Hon. Charles R. Norgle

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, MICHAEL TRISTANO, and his attorney, JEFFREY STEINBACK, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C) as more fully set forth in paragraph 19, below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant’s criminal liability in case 05 CR 446.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is 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.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, MICHAEL TRISTANO, and his attorney, JEFFREY STEINBACK, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the indictment with mail fraud, in violation of Title 18, United States Code, Sections 1341, 1346, and 2 (Counts One through

Seven); theft and conversion, in violation of Title 18, United States Code, Sections 666(a)(1)(A) and 2 (Count Eight); and conspiracy to commit extortion, in violation of Title 18, United States Code, Section 1951 and 2 (Count Nine).

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

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

4. Defendant will enter a voluntary plea of guilty to Count One of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt, and establish relevant conduct under Section 1B1.3 of the Sentencing Guidelines:

Beginning on or about January 3, 1998, and continuing thereafter to in or about December 2001, in the Northern District of Illinois, Eastern Division, and elsewhere, MICHAEL TRISTANO, defendant herein, together with others known and unknown, knowingly devised and participated in a scheme to defraud the State of Illinois and its citizens of money, property and the intangible right to the honest services of defendant and other employees of the Illinois House Minority Leader's Office, and to obtain money and property by materially false and fraudulent pretenses and representations and material omissions. On or about June 8, 2000, defendant caused the use of the United States Mail for the purpose of executing the scheme and attempting to do so.

Specifically, from in or about 1998 through in or about 2001, defendant was Chief of Staff to Illinois House Minority Leader Lee A. Daniels. The Minority Leader's Office was a unit of State government that employed over 85 staff members and paid its employees an annual salary. The State provided public funds to the Minority Leader's Office to employ staff, maintain physical premises, purchase equipment and reimburse travel expenses incurred on official State business. As Chief of Staff, defendant directed assignments and awarded compensatory leave time to certain Leader's Office employees. Separate and distinct from his responsibilities as Chief of Staff, defendant also served as Executive Director of the House Republican Campaign Committee ("HRCC"). HRCC was a campaign committee organized under the laws of the Illinois State Board of Elections to provide financial support to Illinois House Republican Candidates. In both his capacities as Chief of Staff and Executive Director, defendant reported to and took direction from Lee Daniels.

In order to conserve campaign expenditures from the HRCC, defendant participated in a scheme by which State resources were used to subsidize political campaigns. In particular, defendant assigned Minority Leader's Office staff to perform campaign work while being paid by the State. Defendant, along with other participants in the scheme, identified candidates for whom campaign work would be supplied by Minority Leader's Office staff. Defendant supervised the campaign activity, which included preparation of campaign strategy documents, weekly reports summarizing campaign activity, management of campaigns, design of campaign literature, solicitation of voters, and analysis of polling data. Defendant knew and it was reasonably foreseeable to him that the State was paying employees to do campaign work. Defendant also knew and it was reasonably foreseeable to him that State facilities, such as the Minority Leader's Offices

in Springfield and Chicago, were used to store campaign documents and that State property including computers were used to conduct campaign work.

In order to conceal the expenditure and conversion of State resources for the benefit of political campaigns, defendant implemented a procedure by which employee salaries were paid in part by HRCC and by the use of compensatory leave. Defendant awarded compensatory leave to certain Minority Leader's Office staff in order for those staff members to work on political campaigns while on paid absences from the State. Those employees were not authorized to use such compensatory leave for purposes other than campaign work. Defendant knew that the partial HRCC payments and the compensatory leave did not fully account for the campaign work performed by State employees.

Defendant also knew and it was reasonably foreseeable to him that State employees, supervised by defendant, submitted travel vouchers to the State in which the employees falsely claimed travel expenses accrued as official State business, when in truth and in fact, the employees' travel was related to political campaigns. Defendant signed, and thereby approved, such travel vouchers, including a voucher that caused the State to mail payment to a State employee on or about June 8, 2000.

Defendant agrees that the value of State funds and resources diverted to subsidize political campaigns throughout the scheme was more than \$120,000 but less than \$200,000.

On or about June 8, 2000, in the Northern District of Illinois, Eastern Division, for the purpose of executing the scheme and attempting to do so, defendant did knowingly cause to be delivered by the United States Mail, according to the direction thereon, an envelope containing a State of Illinois warrant addressed to a State employee of the Minority Leader's Office, at a Chicago,

Illinois address, which warrant constituted payment on a State Travel Voucher; in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

The preceding statement of facts is offered solely for the purpose of establishing a factual basis for the defendant's plea of guilty to Count One of the indictment. This statement does not contain all of the information known by the defendant concerning the events underlying this matter.

6. The defendant, for purposes of computing his sentence under the Federal Sentencing Guidelines, stipulates to the following additional conduct pursuant to U.S.S.G. § 1B1.2(c):

In or about 2000, in the Northern District of Illinois and elsewhere, defendant did knowingly conspire with Roger Stanley and others known and unknown to commit extortion affecting commerce, namely to obtain money from a Real Estate Partnership, with the partnership's consent, having induced said consent under color of official right.

The Real Estate Partnership was involved in a multi-phase development project in the Village of Willow Springs that included the construction of business, residential and government buildings. The Village sought State grants in order to assist the funding of the Real Estate Partnership's development projects in the Village.

Roger Stanley, a partner of the Real Estate Partnership, agreed to provide, and did provide, a consulting job paid by the Partnership to an individual campaigning as a Republican candidate for a Illinois House seat in downstate Illinois (Candidate A). The purpose of the consulting job was to generate necessary income for Candidate A while Candidate A was campaigning for office. In connection with the campaign assistance to Candidate A, defendant TRISTANO agreed to assist the Village's efforts to obtain the State grants, and did in fact recommend, as Chief of Staff to the

Minority Leader, that discretionary grant funds be awarded to the Village. The State awarded to the Village approximately \$1.3 million in grants funding the real estate development in or about 2000.

7. For purposes of calculating the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) The Guidelines are calculated pursuant to the November 1998 edition of the Guidelines Manual.

(b) The following calculation applies to the offense of conviction:

(i) Pursuant to Guideline § 2C1.7(a), the base offense level is 10.

(ii) Pursuant to Guideline § 2C1.7(b)(1)(B), the offense involved an official holding an elected official or an official holding a high-level decision-making or sensitive position, therefore the offense level is increased by 8 levels.

(iii) Pursuant to Guideline § 3B1.1(a), the defendant was an organizer and leader of a criminal activity that involved five or more participants or was otherwise extensive, therefore the offense level is increased by 4 levels.

(c) The following calculation applies to the stipulated offense:

(i) Pursuant to Guideline § 2C1.1(a), the base offense level is 10.

(ii) Pursuant to Guideline § 2C1.1(b)(2)(B), the offense involved a payment for the purpose of influencing an elected official or any official holding a high-level decisionmaking or sensitive position, therefore the offense level is increased by 8 levels.

(d) Pursuant to Guideline §§ 3D1.2(b) and 3D1.3, the count of conviction and the stipulated offense are grouped together, and the combined offense level equals 22.

(e) 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 the defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a two-level reduction in the offense level is appropriate.

(f) Defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, within the meaning of Guideline § 3E1.1(b). Accordingly, the offense level is reduced by one level, provided the Court determines the offense level to be 16 or greater prior to the operation of Guideline § 3E1.1(a).

(g) Based on the information presently known to the government, defendant's criminal history category is I.

(h) The defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that the Probation Department 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 Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

8. Errors in calculations or interpretation of any of the Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as

to the correct Guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

9. Defendant understands that the crime to which he is pleading guilty carries the following penalties: a maximum penalty of 5 years imprisonment; a maximum fine of the greatest of (a) \$250,000, (b) twice the gross gain to defendant, or (c) twice the gross loss to the victims; any restitution ordered by the Court; and a term of supervised release of not more than three years.

10. Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on each count of conviction, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U.S. District Court.

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

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the

trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, and considering each count separately, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) 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 of defendant's guilt beyond a reasonable doubt.

(d) 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. In turn, 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.

(e) 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.

13. Defendant understands that by pleading guilty he is waiving all the rights set forth in paragraph 12. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

14. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. The defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, 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, which relates directly to this waiver or to its negotiation.

15. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

16. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from the defendant.

17. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

18. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate. Defendant further agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any federal grand jury and United States District Court proceeding, and any related civil administrative or court proceeding.

19. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Guideline § 5K1.1 and 18 U.S.C. § 3553(e), to depart from the applicable sentencing guidelines range and the statutory minimum sentence, and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range and applicable statutory minimum sentence rests solely with the Court. However, this Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of no less than twelve months and one day and no more than two-thirds of the low-end of the applicable sentencing guidelines range. The defendant is free to argue at sentencing for a specific term within the agreed-upon range. Other than the agreed range of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes a term of incarceration within the agreed upon range set forth above, the defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d). If, however, the Court refuses to impose the agreed term of incarceration set forth herein, thereby rejecting the Plea

Agreement, or otherwise refuses to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

20. The defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which any restitution is to be paid in this case. The defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances in order to determine the proper fine and restitution schedule according to which the defendant may be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

21. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the 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 the 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.

22. 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.

23. 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: _____

PATRICK J. FITZGERALD
United States Attorney

MICHAEL TRISTANO
Defendant

MANISH S. SHAH
Assistant United States Attorney

JEFFREY STEINBACK
Attorney for Defendant