

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

FILED

APR 19 2006

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DENNIS FOSTER,)
)
Defendant.)

CRIMINAL NO. 06-CR-30024-DRH

DEFENDANT'S AGREEMENT TO PLEAD GUILTY

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the attorney for the Government has been informed by the attorney for the Defendant that the Defendant contemplates the entry of an open plea of guilty in this cause.

The terms of this Plea are as follows:

I.

1. Defendant acknowledges that he has been advised of 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; and
- (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; and
- (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; and
- (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; and

(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.

(f) that if he pleads, he is pleading guilty to a felony punishable by a term of imprisonment exceeding one year. Therefore, no matter what sentence the Court imposes (whether probation or any term of imprisonment), he will be forbidden by federal firearms laws from possessing any type of firearm in his lifetime, unless he obtains relief pursuant to 18 U.S.C. § 925, or other appropriate federal statute.

2. Defendant acknowledges that this Agreement to Plead Guilty and Stipulation of Facts constitutes the entire agreement with the Government and that no promises, inducements or representations, other than those specifically set forth in this Agreement to Plead Guilty and Stipulation of Facts, were made to induce him to enter into this Agreement to Plead Guilty.

3. It is further understood that this agreement is limited to the Southern District of Illinois, and nothing herein is intended to bind other federal, state or local prosecuting authorities. It is further understood that this Agreement to Plead Guilty 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. Defendant understands that this offense is subject to Title 28, United States Code, Section 994(a). Defendant has been advised and understands that the Sentencing Guidelines are advisory and that the Court will consider the applicable Guidelines in conjunction with 18 U.S.C. § 3553(a), in determining the appropriate sentence.

5. Defendant understands that pursuant to Title 18, United States Code, Section 3013, the Court will assess a "Special Assessment" of \$100 per felony count. Defendant understands that

he will be ordered to pay the full amount of the special assessment prior to or at the time of sentencing.

6. Defendant understands that the Court must impose a term of "supervised release" to follow incarceration. *See* 18 U.S.C. § 3583; U.S.S.G. § 5D1.1.

7. Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision. 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 dated April 15, 2005, are, for imprisonment: \$1,933.80 per month; for community confinement: \$1,675.23 per month; and for supervision: \$287.73 per month. 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).

8. The Defendant understands that if he commits any offense in violation of federal, state, or local law while on release in this case or violates any other conditions of release, the Government may request revocation of the Defendant's bond and forfeiture of any bail and may file additional charges or sentencing enhancement notices, in addition to any sanctions that may be imposed for violation of the Court's order setting the conditions of release. No action taken or recommendation made by the Government pursuant to this paragraph shall be grounds for the Defendant to withdraw his plea.

9. The Defendant understands that the Government may move for an order pursuant to 18 U.S.C. § 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.

10. 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 of and will enter a plea of guilty to count one of the indictment, charging a violation of Title 29, United States Code, Section 501 (c), Embezzlement of Assets. The maximum penalty that can be imposed for each violation of Embezzlement of Assets is not more than five years' imprisonment and/or a \$250,000 fine, or both, and no more than three years supervised release.

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

FIRST: The Defendant embezzled, stole, or unlawfully and willfully abstracted or converted to his own use any money, funds, or other assets of a labor organization.

SECOND: At the time of the offense, the Defendant was an officer of the labor organization.

The Defendant agrees and admits that his conduct violated these essential elements of the offense.

3. The Defendant understands that he is entering an "open plea" whereby the Government has not agreed to recommend any particular sentence or guideline range and may in fact recommend that the defendant be sentenced to any sentence of incarceration, supervised release, fine, and/or restitution, up to and including the maximum allowed by law.

4. The Government submits to the Court that under the Sentencing Guidelines, after all facts have been considered, Defendant will have an Offense Level of eight (8) and a Criminal History of I, whereby the sentencing range is 0 to 6 months. The Government further submits to the Court that the Defendant's fine range will be \$1000 to \$10,000 according to U.S.S.G. §

5E1.2. The Government and Defendant understand that this provision is not binding on the Court and constitutes the Government's good faith effort to inform the Court of the applicable sentencing range and that the Court ultimately will determine the guideline range after receiving the Presentence Report and giving both parties the opportunity to comment thereon. The Defendant expressly recognizes that, regardless of the guideline range found or the sentence imposed by the Court, he will not be permitted to withdraw his plea. The Government and the Defendant agree that the offense level and the criminal history category calculations submitted by the parties herein 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. The Government specifically reserves the right to argue for and present testimony in support of or in opposition to the Probation Office's or the Court's findings as to Offense Level and Criminal History Category (which may be in excess of the calculations set forth herein). The Defendant understands that the Sentencing Guidelines are advisory only and that the Court has the discretion to sentence the Defendant anywhere up to the statutory maximum sentence after consideration of the Sentencing Guidelines, and the factors set forth in 18 U.S.C. § 3553(a), including the nature and circumstances of the offense(s) and the criminal history and characteristics of the Defendant.

5. The Government anticipates that the Offense Level in this case will be six (6) pursuant to U.S.S.G. § 2B1.1(a)(2) and increased two (2) levels for the amount of loss pursuant to 2B1.1(b)(1)(B).

6. The Government anticipates a two (2) level increase for abuse of position pursuant to 3B1.3.

7. The Government anticipates that the Defendant's role in the offense will be neither increased (under 3B1.1) nor decreased (under 3B1.2).

8. The Government anticipates that there will be no finding that Defendant has obstructed justice in this case and therefore, pursuant to U.S.S.G. § 3C1.1, the Defendant's base offense level will not be increased.

9. The Government anticipates that by pleading guilty the Defendant may be entitled to a reduction of two (2) Levels based upon a finding by the Court that the Defendant has demonstrated an acceptance of personal responsibility for his criminal conduct which would thereby reduce the Offense Level to ten (10) from Offense Level eight (8). *See* U.S.S.G. § 3E1.1.

10. The Government submits to the Court that it appears that the Defendant has amassed one Criminal History point and that his Sentencing Guideline Criminal History Category is I.

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>	<u>Guideline</u>	<u>Score</u>
12/31/94	Theft St. Clair County	guilty plea \$100 fine	4A1.1 (c)	1pt

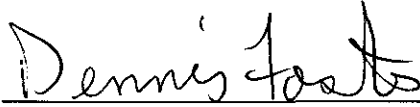
Defendant expressly recognizes that this calculation is not binding on the Government or the Court and that the final calculation will be determined by the Court after considering the Presentence Report, the views of the parties and any evidence submitted prior to sentencing. Defendant recognized that, regardless of the Criminal History found by the Court, he will not be able to withdraw his plea.

III.

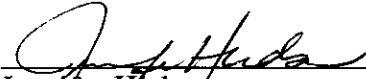
1. The Defendant acknowledges that the Government has provided complete discovery compliance in this case. Defendant states that he has reviewed said discovery compliance with his attorney.

2. The Defendant states that he has been advised of his rights under 18 U.S.C. §§ 3600 and 3600A. Defendant states that he waives those rights and consents to the destruction of all items of physical evidence seized in this case.

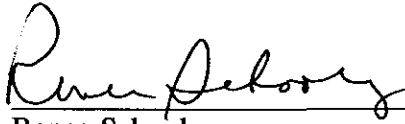
Randy G. Massey,
Acting United States Attorney



Denise Foster
Defendant



Jennifer Hudson
Assistant United States Attorney



Renee Schooley
Attorney for Defendant

Date: 4-19-06

Date: _____