

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA : CRIMINAL NO. CR-3-03-118  
 :  
 v. : JUDGE THOMAS M. ROSE  
 :  
 : PLEA AGREEMENT  
 C. MICHAEL VENCILL :  
 :  
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The United States Attorney for the Southern District of Ohio and the defendant C. MICHAEL VENCILL, also called the parties herein, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, agree as follows:

1. The defendant, C. MICHAEL VENCILL, will enter a plea of guilty to one felony count of embezzling funds from the American Federation of Musicians, AFL-CIO Local 101-473, that being Count 28 of the Indictment, and two misdemeanor counts of submitting false reports to the Department of Labor, those being Counts 60 and 61 of the Indictment.
2. The maximum statutory penalties that can be imposed for the felony offense are five years imprisonment, three years supervised release, and a fine of \$250,000. There is also a mandatory special assessment of \$100 for the felony offense pursuant to 18 U.S.C. § 3013. The maximum statutory penalties that can be imposed for each misdemeanor offense are one year imprisonment, one year supervised release, and a fine of \$100,000. There is also a mandatory special assessment of \$25 for each misdemeanor offense pursuant to 18 U.S.C. § 3013.
3. The mandatory special assessments totaling \$150 will be paid by the defendant on or before the date of sentencing and defendant will furnish a receipt the day of sentencing. The payments shall be made to the United States District Court, at the Clerk's Office in the Federal Building at 200 West Second Street, Dayton, Ohio 45402.

*[Handwritten signature]*

4. The defendant and the United States further agree that for sentencing purposes, the total amount of relevant conduct pursuant to U.S.S.G. §§ 1B1.3 and 2B1.1 is \$11,487.92. Both parties understand that this agreement as to relevant conduct, although binding on the parties, is not binding on the Court or the Probation Department and that the defendant will not be permitted to withdraw the guilty pleas if the Court determines that the amount of relevant conduct is different than that agreed to herein.

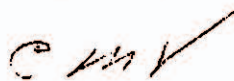
5. The defendant agrees that the defendant has had an opportunity to review the attached Statement of Facts and to discuss it with defendant's attorney prior to the plea proceeding. Defendant agrees that the content of the Statement of Facts is accurate and true.

6. The parties hereby state, pursuant to Sentencing Guideline § 6B1.2(a), that the charges to which the defendant is pleading guilty adequately reflects the seriousness of the readily provable actual offense behavior as outlined in the attached Statement of Facts, and the acceptance of the Agreement by the Court will not undermine the statutory purpose of sentencing.

7. The defendant understands that the Stipulation below constitutes a non-binding calculation as provided in Sentencing Guideline § 6B1.4(d) and the Court may impose a sentence greater than that stated in the Stipulation.

8. STIPULATION:

The parties have not stipulated any Criminal History Category for the defendant. With respect to Offense Level, the United States and counsel for the defendant have reviewed the Sentencing Guidelines Manual effective November 1, 1999 and have both calculated the following:



- a) The Base Offense Level is 4 under Sentencing Guideline § 2B1.1(a);
- b) Increase that by 5 levels under Sentencing Guideline § 2B1.1(b) for a loss of more than \$10,000 but less than \$20,000;
- c) Increase that by 2 more levels under Sentencing Guideline § 3B1.3 for abuse of trust;
- d) Resulting in a Net Offense Level of 11; then
- e) Decrease by 2 for acceptance of responsibility under Sentencing Guideline § 3E1.1(a);
- f) Resulting in a Final Offense Level of 9.

9. Subject to all of the following conditions being met to the discretionary satisfaction of the United States Attorney's Office, the United States agrees to recommend to the Court that the defendant receive the minimum sentence available under the Guidelines. If his final offense level is outside of Zone A, this includes recommending the use of the least restrictive means available under Sentencing Guideline §§ 5B1.1 and 5C1.1. The conditions are as follows:

- a) The defendant is found to be in Criminal History Category I,
- b) The defendant is ordered to make restitution in an amount of at least \$11,487.92 (which is consistent with the amount of relevant conduct agreed upon by the parties),
- c) The United States Attorney's Office continues to be of the opinion that defendant has been completely forthcoming and truthful both directly and indirectly in his representations to the United States,
- d) The defendant has not committed and does not commit any other bad acts whether they result(ed) in any criminal charges or convictions or not, and
- e) The defendant continues to merit such treatment under the United States Attorney's interpretation of the Sentencing Guidelines and the pursuit of justice.

*EMV*

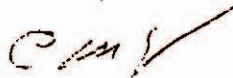
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10. In accordance with the last sentence of paragraph (A)(4)(d) of Chapter 1, the Introduction of the Sentencing Guidelines, and subject to the same conditions found in paragraph nine above, as well as the additional condition stated herein, the United States will consider taking a position that does not oppose a motion by the defendant for downward departure in an effort to bring the sentencing range into Zone A. The additional condition is that nothing appears to exist which, in the discretionary opinion of the United States, calls into question whether the behavior forming the basis of this case was a course of aberrant behavior reasonably viewed as something singular in nature.

11. In accordance with Sentencing Guidelines §5E1.2, and subject to the conditions found in paragraph nine above, as well as the additional condition stated herein, the United States is not opposed to a sentence devoid of a fine. The additional condition is that nothing appears to exist which in the discretionary opinion of the United States calls into question the defendant's present and future inability to pay a fine in addition to the restitution.

12. Once the guilty pleas to Counts 28, 60, and 61 are all entered, accepted, and not withdrawn or vacated for any reason, and so long as the defendant is ordered to make restitution in an amount of at least \$11,487.92 (which is consistent with the amount of relevant conduct agreed upon by the parties), United States Attorney agrees to move for dismissal of the remaining counts in the Indictment.

13. By virtue of this Agreement, the defendant understands that the defendant is not a prevailing party as defined by 18 U.S.C. § 3006A and hereby expressly waives any right which might exist to sue the United States for any reason.



14. If the defendant fails to fulfill defendant's obligations under this Agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that the defendant's statements pursuant to this Agreement or in pursuit of any sort of sentence reduction or leads derived therefrom, should be suppressed or are inadmissible.

15. The defendant understands that the terms of this Agreement are not binding on the Probation Department or the Court. The defendant understands that the Probation Department will independently determine its own recommended sentence in this case, including a recommendation as to whether the defendant has accepted responsibility or not. The defendant understands that the Probation Department will do this after conducting a pre-sentence investigation and will recommend to the Court a sentencing guideline range. The defendant also understands that neither the terms of this Agreement nor the recommendation of the Probation Department are binding on the Court. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum and may make an upward departure outside of the range established by the applicable Sentencing Guidelines. The defendant is aware that the Court has not yet determined a sentence. The United States makes no promise concerning what sentence the defendant will receive. This includes but is not limited to the Stipulation above. The defendant understands that the guilty plea cannot be withdrawn based upon the actual sentence. This is true even if the Court does not follow the recommendations of this Agreement and/or those of the Probation Department.

16. Nothing herein is intended to waive the right of the United States to object to any adjustment(s) that the United States believes is not supported by both facts and law.

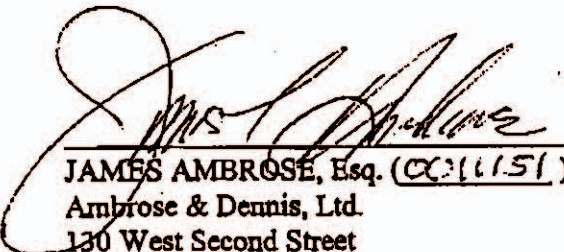
17. This written Agreement embodies all of the agreements and understandings between the United States and the defendant. The United States has made no promises or representations except as set forth in writing in this Agreement. Any modifications of this Agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

GREGORY D. LOCKHART  
United States Attorney

  
ANNE H. FEHRMAN (0063511)  
Assistant United States Attorney  
Federal Building, Room 602  
200 West Second Street  
Dayton, Ohio 45402

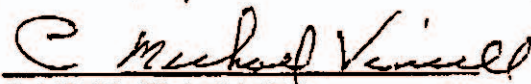
Date

3/26/2004

  
JAMES AMBROSE, Esq. (0011151)  
Ambrose & Dennis, Ltd.  
130 West Second Street  
Suite 999  
Dayton, Ohio 45402  
Attorney for Defendant

Date

3/26/04

  
C. MICHAEL VENCILL  
Defendant *cmv*

Date

3/26/2004

*JK*

*cmv*

## STATEMENT OF FACTS

From late 1997 until June 2000, the defendant, C. MICHAEL VENCILL, was the secretary-treasurer of the American Federation of Musicians, Local 101-473, (hereinafter the "Union"), which was a labor organization engaged in an industry affecting commerce and located in the Southern District of Ohio. The Union represented approximately 250 members in and around the greater Dayton, Ohio area. Local musicians were employed to perform at social and civic events within the Union's jurisdiction. The largest employer under contract with the Union was the Dayton Philharmonic Orchestra.

During his tenure as secretary-treasurer for the Union, the defendant knowingly embezzled funds from the Union for the benefit of himself and others. Specifically, the defendant prepared and negotiated unauthorized checks from the Union's bank account to himself, his family members, and various companies with which he had non-Union related accounts and dealings. The companies included First USA Bank, Ameritech, Dayton Power & Light, Photo Sports Center, and O.C.M.A. The unauthorized checks included Check Number 14565 which was dated May 8, 2000 and used by the defendant to make a payment toward his personal credit card account balance in the amount of \$600.00. The Union had no credit card account, and the \$600 debt on defendant's personal credit card account which the defendant paid with Union money was not related to Union business.

Between January 9, 1998 and June 10, 2000, the defendant embezzled a total of \$11,487.92 of Union money in the manner described above. This includes \$1,076 in excess salary and/or expense payments to himself, \$3585.45 to family members, \$1,967.47 for his personal credit card bills, \$2,803 for his personal telephone and utility bills, and \$2,056 to various vendor companies for non-Union related expenditures.

For the years 1998 and 1999, the defendant knowingly underreported the allowances and disbursements he received on the annual financial reports known as Form LM-3's, which he prepared, signed, and filed with the United States Department of Labor.

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# United States District Court

## Southern District of Ohio at Dayton

**UNITED STATES OF AMERICA**  
**v.**  
**CLAUDE M. VENCILL**

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)  
 Case Number: CR 3-03-118-(01)

**JAMES T. AMBROSE, ESQ.**  
 Defendant's Attorney

**THE DEFENDANT:**

- pleaded guilty to counts: 28, 60, 61 of the Indictment.
  - pleaded nolo contendere to counts(s) \_\_\_ which was accepted by the court.
  - was found guilty on count(s) \_\_\_ after a plea of not guilty.
- Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
29 U.S.C. § 501(c)	EMBEZZLEMENT OF FUNDS FROM A LABOR UNION	JUNE, 2000	28
29 U.S.C. § 439(b)	SUBMITTING FALSE REPORTS TO THE DEPARTMENT OF LABOR	JUNE, 2000	60
29 U.S.C. § 439(b)	SUBMITTING FALSE REPORTS TO THE DEPARTMENT OF LABOR	JUNE, 2000	61

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on counts(s) \_\_\_ and is discharged as to such count(s).
- Counts 1-27, 29-59, 62 of the Indictment are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.:

Defendant's Date of Birth:

Defendant's USM No.:

Defendant's Residence Address:

Defendant's Mailing Address:

8/6/2004  
 Date of Imposition of Judgment

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s/Thomas M. Rose  
 Signature of Judicial Officer

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**Thomas M. Rose,**  
 United States District Judge  
 Name & Title of Judicial Officer

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8/6/2004  
 Date



CASE NUMBER: CR 3-03-118-(01)  
DEFENDANT: CLAUDE M. VENCILL

## PROBATION

The defendant is hereby placed on probation for a term of 3 years on Count 28; 1 year on Count 60; and 1 year on count 61, concurrent with each other.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)
- The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check if applicable).

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit his or her home or elsewhere at anytime and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CASE NUMBER: CR 3-03-118-(01)  
DEFENDANT: CLAUDE M. VENCILL

### **SPECIAL CONDITIONS OF SUPERVISION**

Defendant shall make restitution to Zurich North America in the amount of \$10,000; and to the American Federation of Musicians in the amount of \$1,487.92, at a rate not less than \$50 per month.

Defendant shall pay a \$100 special assessment in Count 28; \$25 in Counts 60 and 61, respectively, for a total of \$150, which shall be due immediately.

CASE NUMBER: CR 3-03-118-(01)  
 DEFENDANT: CLAUDE M. VENCILL

### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 150.00	\$ waived	\$ 11,487.92

If applicable, restitution amount ordered pursuant to plea agreement ..... \$ \_\_\_\_\_

### FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$ \_\_\_\_.

The defendant shall pay interest on any fine of more than \$2500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- The interest requirement is waived.
- The interest requirement is modified as follows:

### RESTITUTION

The determination of restitution is deferred in a case brought under Chapters 109A, 100, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until up to 60 days. An amended Judgment in a Criminal Case will be entered after such determination.

The court modifies or waives interest on restitution as follows:

The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order of percentage payment column below.

<u>Name of Payee</u>	<u>**Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or % of Pymnt</u>
Zurich North America	\$10,000	\$10,000	
American Federation of Musicians	\$1,487.92	\$1,487.92	
<b>TOTALS:</b>	<b>\$11,487.92</b>	<b>\$11,487.92</b>	

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

CASE NUMBER: CR 3-03-118-(01)  
DEFENDANT: CLAUDE M. VENCILL

## SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A  in full immediately, as to the special assessment amounts;
- B  \$ \_ immediately, balance due (in accordance with C, D, or E); or
- C  not later than \_ ; or
- D  in installments to commence \_ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E  in monthly installments of not less than \$ 50.00, as to the restitution amount.

Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary penalty payments are to be made to the Clerk's Office, United States District Court, 200 West Second Street, Room 712, Dayton, OH 45402.

The defendant shall pay the cost of prosecution.

The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary payments are to be made as directed by the court, the probation officer, or the United States Attorney.