

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

FILED
U.S. DISTRICT COURT
EVANSVILLE DIVISION
2003 SEP 10 AM 10:40

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

DARVIN COLLINS,)

Defendant.)

Cause No. EV 02-20-CR-01-Y/H

PETITION TO ENTER A PLEA OF GUILTY

REQUEST FOR PRESENTENCE
INVESTIGATION AND REVIEW OF PRESENTENCE
REPORT PRIOR TO ENTRY OF PLEA OF GUILTY

The defendant above-named respectfully represents to the Court as follows:

1. My full true name is DARVIN LEE COLLINS, and I request that all proceedings against me be had in the name which I here declare to be my true name.
2. I was born on , 19 , at Arwaco, in the State of INDIANA, and my social security number is . I have attended school and completed my schooling through the 15th grade; and I have the ability to read, write and understand the English language.
3. I am represented by counsel and my attorney's name is DOUGLAS C. McVAIL.

4. I have received a copy of the Indictment before being called upon to plead. I have read and discussed it with my attorney and believe and feel that I understand every accusation made against me in this case.

5. I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the Indictment, and believe and feel that my attorney is fully informed as to all such matters. My attorney has since informed, counseled and advised me as to the nature and cause of every accusation against me and as to any possible defenses I might have in this case.

6. My attorney has advised me that the punishment which the law provides is as follows:

Counts	Minimum Years of Imprisonment	Maximum Years of Imprisonment	Maximum fine ¹ for each of the Counts is:
1 and 3	0	5	\$10,000

My attorney has also advised me that my sentence will fall within the minimum and maximum after a determination of the applicable Sentencing Guidelines. I understand that restitution may also be imposed. Also that probation may or may not be granted; that if I plead "Guilty" to more than one offense (Count), the Court may order the sentences to be served consecutively one after another and the Court may order restitution. In addition, I understand that the Court may impose one or more terms of supervised release of up to three (3) years for Counts one and three.

¹18 U.S.C. § 3571

7. I understand that I will have to pay a Special Assessment of \$100.00 for each felony count and \$50.00 for each misdemeanor count to which I have plead guilty pursuant to Title 18, United States Code, Section 3013.

8. I understand that I am entitled to have all of my rights which may be involved in this matter explained to me, and that I have the right to have any questions I may have answered for me.

9. I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I choose to plead "Not Guilty" the Constitution guarantees me: (a) the right to a speedy and public trial by jury in the District in which I am charged; (b) the right to be considered for release until my trial occurs²; (c) the right to see and hear all the witnesses against me at my trial; (d) the right to use the power and the process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor, at my trial; (e) the right to the assistance of counsel at every stage of the proceedings, including an appeal if need be; and (f) that in the event that I should be found guilty of the charge against me, I would have a right to appeal my conviction on such charge to a higher court.

10. I understand also, that if I plead "Guilty", the Court may impose the same punishment as if I had plead "Not Guilty", had stood trial and been convicted by a jury.

11. Except for the provisions of the Plea Agreement, I declare that no officer or agent of any branch of government (federal, state or local), nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency, if I would plead "Guilty". I hope to receive

²Title 18, U.S.C. §§ 3141-3156, Release and Detention Pending Judicial Proceedings.

probation, but am prepared to accept any punishment permitted by law which the Court may see fit to impose. However, I respectfully request that the Court consider in mitigation of punishment at the time of sentencing the fact that by voluntarily pleading "Guilty" I have saved the Government and the Court the expense and inconvenience of a trial. I understand that before it imposes sentence, the Court will address me personally and ask me if I wish to make a statement on my behalf and to present any information in mitigation of punishment.

12. I believe and feel that my attorney has done all that anyone could do to counsel and assist me and that I now understand the proceedings in this case against me.

13. I know the Court will not accept a plea of "Guilty" from anyone who claims to be innocent and, with that in mind and because I make no claim of innocence, I wish to plead "Guilty", and respectfully request the Court to accept my plea as follows: "Guilty" as charged to Counts one and three of the Indictment.

14. I declare that I offer my plea of "Guilty" freely and voluntarily and of my own accord; also that my attorney has explained to me, and I believe and feel I understand, the statements set forth in the Indictment and in this petition, and in the "Certificate of Counsel" which is attached to this petition.

15. I further state that I wish the Court to omit and consider as waived by me all readings of the Indictment in open Court, and all further proceedings regarding my arraignment, and I pray the Court to accept and enter now my plea of "Guilty" as set forth above in paragraph 13 of this petition.

16. I request and consent to a presentence investigation by the probation officers of the United States district courts to be commenced at this time and prior to the entry of my formal plea of guilty. I further request and consent to the review of my presentence report by a Judge, by my

attorney and myself and by the government at any time, including the time prior to entry of a formal plea of guilty.

17. I further state that I will contact the United States Probation Office in the United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 (Telephone: (317) 226-6751) within five calendar days of my signing this Petition so that the presentence investigation may be commenced.

18. I understand that this case is currently set for trial on September 22, 2003, and I request a continuance of that trial date as it applies to me.

Signed by me in the presence of my attorney this 27th day of August, 2003.


Darvin Collins
Defendant

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counselor for the defendant, hereby certifies as follows:

1. I have read and fully explained to the Defendant all the accusations against the defendant which are set forth in the Indictment in this case;
2. To the best of my knowledge and belief each statement set forth in the foregoing petition is in all respects accurate and true;
3. The plea of "Guilty" as offered by the defendant in paragraph 13 of the foregoing petition accords with my understanding of the facts as related to me by the defendant and is consistent with my advice to the defendant;
4. In my opinion, the defendant's waiver of all reading of the Indictment in open Court, and in all further proceedings regarding arraignment as provided in Rule 10, is voluntarily and understandingly made; and I recommend to the Court that the waiver be accepted by the Court;
5. In my opinion, the plea of "Guilty" as offered by the defendant in paragraph 13 of the foregoing petition is voluntarily and understandingly made and I recommend to the Court that the plea of "Guilty" be now accepted and entered on behalf of the defendant as requested in paragraph 13 of the foregoing petition.

Signed by me in the presence of the defendant above-named
this 2ND day of SEPTEMBER, 2003.

Douglas C. McNabb
Douglas C. McNabb, Defense Attorney
Attorney Address and Phone Number:
600 TRAVIS ST. 6950
HOUSTON TX 77002
800-870-0828

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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SOUTHERN DISTRICT
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UNITED STATES OF AMERICA,)
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 Plaintiff,)
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 v.)
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 DARVIN COLLINS,)
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 Defendant.)

Cause No. EV 02-20-CR-01-Y/H

PLEA AGREEMENT

Comes now the United States of America, by counsel, Susan W. Brooks, United States Attorney for the Southern District of Indiana, and Todd S. Shellenbarger, Assistant United States Attorney, and the Defendant, DARVIN COLLINS, in person and by counsel, Douglas C. McNabb, and hereby inform the Court that a Plea Agreement has been reached in this cause, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and the following are its terms and conditions:

1. DARVIN COLLINS will enter a plea of guilty to Counts 1 and 3 of the Indictment which charge him with violations of 29 U.S.C. § 501(c) (Embezzlement of Labor Organization Funds). Counts 2 and 4 of the indictment (Falsification of Labor Organization Records, 29 U.S.C. § 439(c)) will be dismissed pursuant to the terms of this agreement.

2. The elements of the offenses of Embezzlement of Labor Organization Funds in Counts 1 and 3 are:

- A. The defendant, while an officer of I.B.E.W. Local 16, a labor organization, did unlawfully and willfully;
- B. embezzle, steal, and convert to his own use or the use of another;
- C. the monies, funds, property and other assets of I.B.E.W. Local 16.

3. The penalties for a violation of 29 U.S.C. § 501(c), Embezzlement of Labor Organization Funds, are not more than 5 years imprisonment, a fine of not more than \$10,000, and a term of supervised release of not more than 3 years.

GENERAL PROVISIONS

4. DARVIN COLLINS understands that, should the Court accept this plea agreement, he will be sentenced pursuant to the Sentencing Guidelines established by the United States Sentencing Commission. DARVIN COLLINS understands that the final determination concerning the applicable guideline calculation, criminal history category, and sentencing guideline range will be made by the Court.

5. DARVIN COLLINS acknowledges that this plea agreement is governed by Federal Rule of Criminal Procedure 11(c)(1)(B) and that the determination of his sentence is within the discretion of the Court. DARVIN COLLINS understands that if the Court decides to impose a sentence higher or lower than any recommendation of either party, or determines a different sentencing guideline range applies in this case, or decides to depart from the otherwise applicable sentencing guideline range pursuant to Title 18, United States Code, Section 3553(b), then he will not be permitted to withdraw his plea of guilty for that reason and will

be bound by his plea of guilty.

SPECIFIC PROVISIONS

6. DARVIN COLLINS will plead guilty to Counts 1 and 3 of the Indictment. Counts 2 and 4 of the Indictment will be dismissed on the date of sentencing pursuant to the terms of this agreement.

7. DARVIN COLLINS will pay a total of \$200.00 on the date of sentencing, or as ordered by the Court, to the Clerk, United States District Court, which amount represents the mandatory special assessment fee imposed pursuant to Title 18, United States Code, Section 3013.

8. DARVIN COLLINS will provide all requested financial information to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana for use in the collection of any fines or restitution imposed by the Court.

9. DARVIN COLLINS will pay a total of \$26,804 in restitution to I.B.E.W. Local 16 as ordered by the Court.

10. DARVIN COLLINS acknowledges and agrees that nothing in this agreement shall protect him in any way from prosecution for any offense not specifically covered by this agreement.

11. The government agrees not to oppose any request made by DARVIN COLLINS for a recommendation by the Court that he serve any period of imprisonment in a specific facility. DARVIN COLLINS acknowledges and understands that any recommendation by the Court does not bind the United States Bureau of Prisons.

12. The parties agree that the amount of any fine and the term of any supervised

release that may be imposed will be argued to the Court by the parties at the time of sentencing.

13. At the time of sentencing, the government will recommend the imposition of a sentence within the guideline range which the Court finds applicable to DARVIN COLLINS. The government agrees not to seek any upward departure. DARVIN COLLINS agrees that there exists no basis for a downward departure, and agrees not to seek such a departure.

14. The defendant is free to argue for any sentence which is not inconsistent with the stipulations set forth below.

15. DARVIN COLLINS understands that he has a statutory right to appeal the conviction and sentence imposed and the manner in which the sentence was determined. Acknowledging this right and in exchange for the concessions made by the United States in this Plea Agreement, DARVIN COLLINS expressly waives his right to appeal the conviction and sentence imposed in this case on any ground, including the right to appeal conferred by Title 18, United States Code, Section 3742. Additionally, DARVIN COLLINS expressly agrees not to contest his sentence or the manner in which it was determined in any collateral attack, including, but not limited to, an action brought under Title 28, United States Code, Section 2255.

SENTENCING GUIDELINES STIPULATIONS

16. Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties agree to the Stipulations below. The parties understand and agree that these Stipulations are binding on the parties but are only a recommendation to the Court and that the Court will determine the sentencing guidelines applicable in this case. The parties agree that no stipulation regarding

any factors in Chapter 4, Criminal History Category, of the Sentencing Guidelines has been made, and that such determination will be made by the Court. The 2002 version of the Sentencing Guidelines Manual has been used by the parties to make the Stipulations specified below.

- A. Pursuant to USSG § 2B1.1(a) of the Sentencing Guidelines the base offense level is 6.
- B. Pursuant to USSG § 2B1.1(b)(1)(C), a 4 level increase shall be imposed for a loss amount of between \$10,000 and \$30,000 and the parties will stipulate that the loss amount for purposes of guideline calculations is \$26,804.
- C. Pursuant to USSG § 3B1.3, a 2 level increase shall be imposed for abuse of a position of trust during the commission of the offense.
- D. No other specific offense characteristics are applicable.
- E. Pursuant to USSG § 3E1.1(a) the defendant shall be entitled a 2 level reduction for acceptance of responsibility provided he continues to demonstrate acceptance of responsibility throughout the time of sentencing.
- F. No other Chapter 3 adjustments or Chapter 5 departures are applicable.

FINAL PROVISIONS

17. DARVIN COLLINS acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce DARVIN COLLINS to plead guilty. This document is the complete and only plea agreement between DARVIN COLLINS and the United States Attorney for the Southern District of Indiana and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing,

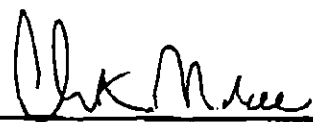
signed by all parties and filed with the Court, or on the record in open court.

18. The terms of this agreement shall not be binding on the Office of the United States Attorney for the Southern District of Indiana, or upon DARVIN COLLINS, until signed by DARVIN COLLINS and his counsel and by counsel for the United States of America.

Respectfully submitted,

SUSAN W. BROOKS
UNITED STATES ATTORNEY

9/15/03
DATE


Christina McKee
Chief, Criminal Division


9-3-03
DATE


Todd S. Shellenbarger
Assistant United States Attorney

8-29-03
DATE


Darvin Collins
Defendant

9-2-03
DATE


Douglas C. McNabb
Attorney for Defendant

STATEMENT OF THE DEFENDANT

I have read the entire Plea Agreement and discussed it with my attorney.

I understand all the terms of the Plea Agreement and those terms correctly reflect the results of plea negotiations.

I am fully satisfied with my attorney's representation during all phases of this case.

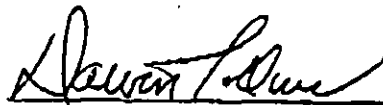
I am freely and voluntarily pleading guilty in this case.

I am pleading guilty as set forth in this Plea Agreement because I am guilty of the crime(s) to which I am entering my plea(s).

My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within 10 days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and file a Notice of Appeal on my behalf if I ask that to be done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

Finally, my attorney has informed me, and I understand, that if I provide or cause to be provided materially false information to a judge, magistrate-judge, or probation officer, then Section 3C1.1 of the Sentencing Guidelines allows the Court to impose a two (2) level increase in the offense level.

8/29/2003
DATE



Darvin Collins
Defendant