

BIF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
OCT 19 PM 12:23
SOUTHERN DISTRICT
OF INDIANA
LARA L. BRIGGS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS D. POGUE,)
)
 Defendant.)

Cause No. IP 04-170-CR BIF

FILED

NOV 02 2004

U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

INFORMATION

The United States Attorney charges that:

Beginning in or about October 1999 and continuing to approximately October 2002, in Shelbyville, Indiana, within the Southern District of Indiana,

THOMAS D. POGUE

the defendant herein, then being an officer of a labor organization did embezzle and steal moneys and funds from the labor organization; to wit, THOMAS D. POGUE, while holding the position of President in the Glass Molders Plastics Local 32 labor union, did embezzle and steal moneys and funds of said labor union in excess of \$5,000.

All of which is a violation of Title 29, United States Code, Section 501(c).


SUSAN W. BROOKS
United States Attorney

4

STATE OF INDIANA)
)
COUNTY OF MARION)

SS:

Gayle L. Helart, being first duly sworn, upon her oath deposes and says that she is an Assistant United States Attorney in and for the Southern District of Indiana, that she makes this affidavit for and on behalf of the United States of America and that the allegations in the foregoing information are true as she is informed and verily believes.

Gayle L. Helart
Gayle L. Helart
Assistant United States Attorney

Subscribed and sworn to before me, a notary public, on this 15th day of October, 2004.

Sharon Szeszycki
Sharon Szeszycki
Notary Public

My Commission Expires:

November 19, 2006

My County of Residence:

Hancock

BF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS D. POGUE,)
)
 Defendant.)

IP 04-CR-170 -01 B/F

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U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

PLEA AGREEMENT

The United States of America, by counsel, Susan W. Brooks, United States Attorney for the Southern District of Indiana, and by Gayle L. Helart, Assistant United States Attorney, and the Defendant, THOMAS D. POGUE, in person and by counsel, Jeff Baldwin, 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 is its terms and conditions:

1. THOMAS D. POGUE agrees to plead guilty to a one Count Information charging him with a violation of Title 29, United States Code §501(c) (embezzling moneys and funds of a labor union of which he is an officer).

The statutory penalty for a violation of 29 U.S.C. §501(c) is a term of imprisonment of not more than 5 years, a fine of not more than \$250,000, and a term of supervised release of not more than 3 years. The elements of the offense alleged in Count One of the Information are: 1) the defendant was an officer of a labor organization; 2) at the time that the defendant was an officer, the defendant embezzled moneys and funds of the labor organization without authorization.

7

GENERAL PROVISIONS

2. THOMAS D. POGUE 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. He understands that the final determination concerning the applicable guideline calculation, criminal history category, and sentencing guideline range will be made by the Court.

3. THOMAS D. POGUE 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. He 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, §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.

4. THOMAS D. POGUE, by entering this plea, also waives any right to have facts that the law makes essential to the punishment either (1) charged in the Information, (2) proven to a jury, or (3) proven beyond a reasonable doubt. THOMAS D. POGUE explicitly consents to be sentenced pursuant to the applicable Sentencing Guidelines and to have the sentence based on the facts to be found by the sentencing judge by a preponderance of the evidence. THOMAS D. POGUE explicitly acknowledges that his plea to the charged offense(s) authorizes the court to impose any sentence, up to and including the statutory maximum sentence, that is authorized by the Sentencing Guidelines.

5. THOMAS D. POGUE understands and agrees that the Government's position is based on the information currently known to the Government.

SPECIFIC PROVISIONS

6. THOMAS D. POGUE will pay a total of \$100 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, §3013.

7. At the time of sentencing, the Government will not ask the Court to impose an upward departure.

8. At the time of sentencing, the Government will make known to the Court the nature, extent and timing of the acceptance of responsibility of THOMAS D. POGUE.

9. The parties agree that THOMAS D. POGUE will not be ordered to pay restitution. As of the date of this plea agreement, THOMAS D. POGUE has paid restitution in the amount of \$10,153.27, which satisfies the amount of the loss revealed by the government's investigation.

10. THOMAS D. POGUE understands that as a consequence of his guilty plea, he will be barred from serving as an officer in a labor organization for a period of thirteen (13) years after his conviction pursuant to 29 U.S.C. §504(a).

11. Both parties reserve the right to present evidence and arguments concerning whether the Court should impose a fine in this case and the amount of any such fine.

12. THOMAS D. POGUE understands that he has the statutory right to appeal the 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,

he agrees that in the event the Court sentences him within the range determined by the Court, he expressly waives his right to appeal the sentence conferred by Title 18, United States Code, §3742. Additionally, he also 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, §2255.

SENTENCING GUIDELINES STIPULATIONS

13. 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.

(a) The parties stipulate that Guideline §2B1.1 covers violations of 18 U.S.C. §501(c) (embezzlement by an officer of a labor union), and provides a base offense level of six (6).

(b) The parties stipulate that a two (2) level increase pursuant to §2B1.1(b)(1)(B) applies because the loss exceeded \$5,000.

(c) The parties stipulate that a two (2) level increase pursuant to §3B1.3 applies because the offense involved an abuse of a position of trust that significantly facilitated the commission or concealment of the offense.

Acceptance of Responsibility

14. To date, THOMAS D. POGUE has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. Based upon his willingness to accept a plea agreement and enter a plea of guilty to the criminal conduct noted in this agreement, the Government agrees that THOMAS D. POGUE should receive a two (2) level reduction *provided* he satisfies the criteria set forth in Guideline §3E1.1(a) and (b) up to and including the time of sentencing. THOMAS D. POGUE timely notified the government of his intention to enter a plea of guilty, thereby permitting the government and the court to allocate their resources efficiently. The parties reserve the right to present evidence and arguments concerning THOMAS D. POGUE's acceptance of responsibility at the time of sentencing.

FINAL PROVISION

15. THOMAS D. POGUE acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce THOMAS D. POGUE to plead guilty. This document is the complete and only plea agreement between THOMAS D. POGUE 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.

Respectfully submitted,

SUSAN W. BROOKS
United States Attorney

October 12, 2004
DATE

Gayle L. Helart
Gayle L. Helart
Assistant United States Attorney

10/13/04
DATE

Christina McKee
Christina McKee
Chief, Criminal Division

Oct. 4, 2004
DATE

Thomas D. Pogue
THOMAS D. POGUE
Defendant

Oct. 6, 2004
DATE

Jeff Baldwin
Jeff Baldwin
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 to which I am entering my plea.

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 office, then Section 3C1.1 of the Sentencing Guidelines allows the Court to impose a two (2) level increase in the offense level.

Oct. 6, 2004
Date

Thomas D. Pogue
THOMAS D. POGUE
Defendant