

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

MARK R. JONES, :

Defendant. :

06-CR- :

_____ :

PLEA AGREEMENT

The defendant, MARK R. JONES, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and to plead guilty to a 1 count Information charging a violation of Title 29, United States Code, Section 501(c) (Embezzlement from a labor union), which carries a maximum possible sentence of a term of imprisonment of 5 years, a fine of \$10,000, or both, a mandatory \$100 special assessment and a term of supervised release of at least 2 years and up to 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands and agrees that the Court must require restitution in the amount of no more than \$6,738.17 to be paid to Musicians Local 92, Buffalo, New

York and restitution in the amount of no more than \$2,390.00 to be paid to New York State Conference of Musicians, Syracuse, New York, as part of the sentence pursuant to Sentencing Guidelines §5E1.1 and Title 18, United States Code, Section 3663A.

3. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

4. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

ELEMENTS OF THE CRIME

5. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

- a. That the defendant was an officer or employee of a labor organization;

b. That the funds taken were those which belonged to the labor organization; and

c. That the defendant did unlawfully embezzle, steal or unlawfully and willfully convert labor organization funds.

FACTUAL BASIS

6. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

At all pertinent times, the defendant, MARK R. JONES, held the position of President and Secretary/Treasurer of the Musicians Local 92. Musicians Local 92 is a labor organization engaged in an industry affecting commerce, within the meaning of 29 U.S.C. Section 402(l) and (j).

At all pertinent times, the defendant, MARK R. JONES, was also Secretary-Treasurer of the New York State Conference of Musicians, a labor organization engaged in an industry affecting commerce, within the meaning of 29 U.S. C. Section 402 (l) and (j).

The defendant, MARK R. JONES also held the position of President with the Buffalo Council, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

Beginning on a date unknown, but no later than January 2002, and continuing until December 2005, the defendant, MARK R. JONES, embezzled, stole, and unlawfully converted to his own use \$40,738.17 of union funds belonging to Musicians Local 92. In part, this was accomplished by writing checks on the Musicians Local 92 bank account payable to himself. He improperly used the signature stamp of the union Vice President to obtain the necessary second signature, and he falsified union records to disguise the true nature of these checks.

When asked to produce copies of the checks for a compliance audit in September 2005, JONES provided falsified copies of 5 checks to an investigator from the United States Department of Labor Office of Labor Management Standards. These checks, which were actually written to Jones, were altered to look like the checks were made payable to legitimate payees.

In addition to writing checks to himself, JONES also used the credit card paid by Musicians Local 92 to charge expenses were not union-related. In some cases, he submitted the same expenses for payment by the Musicians Local 92 and other unions.

JONES also collected cash dues payments for Musician Local 92, not all of which was properly deposited into the union's bank account.

Since the commencement of this investigation, the defendant, MARK R. JONES has repaid \$34,000 to the Musicians Local 92.

During the same period of time, the defendant, MARK R. JONES also wrote checks payable to himself, totaling \$34,672.00, on the bank account belonging to the New York State Conference of Musicians, without authorization or documentation.

Prior to the commencement of this investigation, the defendant, MARK R. JONES made deposits totaling \$21,925 into the bank account of the New York State Conference of Musicians. Subsequent to the commencement of this investigation, JONES repaid an additional \$10,300 to the New York State Conference of Musicians.

BASE OFFENSE LEVEL

7. The government and the defendant agree that Guidelines §2B1.1 applies to the offense of conviction and provides for a base offense level of 6.

SPECIFIC OFFENSE CHARACTERISTICS **USSG CHAPTER 2 ADJUSTMENTS**

8. The government and the defendant agree that the following specific offense characteristics do apply:

a. §2B1.1(b)(1)(D): the total loss (including relevant conduct) was in excess of \$30,000 (namely, \$75,413.17 embezzled from the unions, less the \$21,925 paid back prior to the commencement of the investigation) (Application Note 3(E)(1)) and thus there is a 6 offense level increase.

USSG CHAPTER 3 ADJUSTMENTS

9. The government and the defendant agree that the following adjustments to the base offense level do apply:

a. The 2 level upward adjustment of Guidelines §3B1.3 (abuse of a position of trust).

b. The 2 level upward adjustment of Guidelines §3C1.1 (obstruction of justice).

ADJUSTED OFFENSE LEVEL

10. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 16.

ACCEPTANCE OF RESPONSIBILITY

11. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines §3E1.1(a) (acceptance of responsibility) and further agrees to move the Court to apply the additional one (1) level downward adjustment of Guidelines §3E1.1(b), which would result in a total offense level of 13.

CRIMINAL HISTORY CATEGORY

12. It is the understanding of the government and the defendant that the defendant's criminal history category is I.

The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

13. It is the understanding of the government and the defendant that, with a total offense level of 13 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 12 to 18 months, a fine of \$3,000 to \$10,000, and a period of supervised release of at least 2 years and up to 3 years. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in paragraph 1 of this agreement.

14. a) The government and the defendant agree to the Sentencing Guidelines calculations set forth in this agreement and neither party will advocate or recommend the application of any other Guideline, or move for any guideline departure pursuant to Chapter 5K of the Sentencing Guidelines, except as specifically set forth in this agreement. A breach of this paragraph by one party will relieve the other party of any agreements made in this plea agreement with respect to sentencing motions and recommendations.

b) Both parties, however, reserve the right to seek a non-Guidelines sentence and to bring to the attention of the Court all information deemed relevant to a determination of the proper sentence in this action.

III. STATUTE OF LIMITATIONS

15. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to

this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to the embezzlement of funds from Musicians Local 92 or the New York State Conference of Musicians, beginning in January 2002 and continuing until December 2005, which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

IV. GOVERNMENT RIGHTS AND RESERVATIONS

16. At sentencing, the government agrees not to oppose the recommendation that the Court sentence the defendant at the lowest point of the applicable Guidelines range.

17. The defendant understands that the government has reserved the right to:
- a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;
 - b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;
 - c. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor;

d. oppose any application for a downward departure and/or sentence outside the Guidelines range made by the defendant.

18. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

**WAIVER OF RIGHT TO POST CONVICTION
DNA TESTING OF PHYSICAL EVIDENCE**

19. The defendant fully understands that, to the extent that the government has or may have any items of physical evidence in this case that could be subjected to DNA testing pursuant to 18 U.S.C. §3600, the defendant has the right to file a motion with the Court to have such items tested for DNA in an attempt to prove that the defendant is actually innocent of the crime to which the guilty plea has been entered in this case. The defendant has discussed this right with defense counsel, and the defendant knowingly and voluntarily waives the right to make such a motion and to have such DNA testing performed on any such items the government may have or may obtain in the future. The defendant fully understands that because the defendant is waiving these rights, any physical evidence that may exist or be found to exist in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

V. APPEAL RIGHTS

20. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal, modify pursuant to Title 18, United States Code, Section 3582(c)(2) and collaterally attack any component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, ¶13 above, notwithstanding the manner in which the Court determines the sentence. The defendant further agrees not to appeal a restitution order which does not exceed the amount set forth in Section I of this agreement.

21. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

22. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, ¶13 above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

VI. CIVIL ACTION

23. Defendant waives and agrees not to assert in any civil lawsuit arising from the

conduct which gave rise to the criminal charges that are the subject of this plea any defense based on the double jeopardy or excessive fines clauses of the Constitution.

VII. TOTAL AGREEMENT AND AFFIRMATIONS

24. This plea agreement represents the total agreement between the defendant, MARK R. JONES, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

TERRANCE P. FLYNN
United States Attorney
Western District of New York

BY:

GRETCHEN L. WYLEGALA
Assistant U. S. Attorney

Dated: July , 2006

I have read this agreement, which consists of 13 pages. I have had a full opportunity to discuss this agreement with my attorney, Patrick J. Brown, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

MARK R. JONES
Defendant
Dated: July , 2006

PATRICK J. BROWN, Esq.
Attorney for the Defendant
Dated: July , 2006

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FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :
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 MARK R. JONES :
 Defendant :

I N F O R M A T I O N

Title 29, U.S.C. §501(c)

COUNT I

THE UNITED STATES ATTORNEY CHARGES THAT:

From in or about January 2002, and continuing until in or about December 2005, the exact dates being unknown, in the Western District of New York, the defendant, MARK R. JONES, while an officer (President and Secretary/Treasurer) of the Musicians Local 92 and while an officer (Secretary-Treasurer) of the New York State Conference of Musicians, both labor organizations engaged in an industry affecting commerce, did embezzle, steal and unlawfully and willfully convert to his own use \$40,738.17 of union funds

belonging to Musicians Local 92 and \$34,672.00 of union funds belonging to the New York State Conference of Musicians.

All in violation of Title 29, United States Code, Section 501(c).

DATED: Buffalo, New York, July , 2006.

TERRANCE P. FLYNN
United States Attorney

BY:

GRETCHEN L. WYLEGALA
Assistant United States Attorney
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716)843-5700, ext. 822
gretchen.wylegala@usdoj.gov