



U.S. Department of Justice

AUG 12 2003

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Southern Division*

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August 12, 2003

Paula Xinis, Esq.
Assistant Federal Public Defender
6411 Ivy lane, Suite 710
Greenbelt, MD 20770-4510

Re: United States v. Efrain Tulier
Criminal No. PJM 02-0310

Dear Ms. Xinis:

This letter confirms the amended plea agreement which has been offered to your client by the United States Attorney's Office for the District of Maryland ("this Office"). If your client accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by August 21, 2003, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. Mr. Tulier, your client, agrees to plead guilty to a one-count Indictment in which he is charged with embezzlement of funds from a labor organization in violation of 29 U.S.C. § 501(c). Your client admits that he is, in fact, guilty of that offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which your client has agreed to plead guilty, and which the government would prove if the case went to trial, are as follows:

First, that the entity embezzled from is a labor organization within the meaning of 29 U.S.C. §§ 402(i) and (j);

Second, that the defendant was either an officer of the labor organization within the meaning of 29 U.S.C. §402(n) or was directly or indirectly employed by the labor organization during the period when the offense occurred;

Third, that the actions of the defendant constituted embezzlement, stealing, or unlawful and willful abstraction or conversion to his own use or the use of another; and

Fourth, that the assets taken were money, funds, securities, properties or other assets of the labor organization.

Penalties

3. The maximum sentence provided by statute for the offense to which your client is pleading guilty is as follows: imprisonment for not more than five (5) years without parole, a term of supervised release of three years and a fine of \$250,000. In addition, your client must pay \$100.00 as a special assessment under 18 U.S.C. Section 3013, which will be due and should be paid at or before time of sentencing. Pursuant to Title 18 U.S.C. §3612, if the court imposes a fine in excess of \$2500.00 that remains unpaid 15 days after it is imposed, the defendant shall be charged interest on that fine, unless the court modifies the interest payment in accordance with 18 U.S.C. §3612(f)(3). If a fine or restitution is imposed, it shall be payable immediately unless, pursuant to 18 U.S.C. §3572(d), the Court orders otherwise. The defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the defendant could be returned to custody to serve another period of incarceration and a new term of supervised release.

Restitution

4. Your client agrees that, pursuant to title 18 U.S.C. §§3663 and 3663A, the court may order restitution of the nonreimbursed amount of the actual, total loss caused by the offense conduct set forth in the Stipulation. Your client further agrees that he will fully disclose to the probation officer and to the court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the Stipulation. Your client further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If your client does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations.

Waiver of Rights

5. Your client understands that by entering into this agreement, he surrenders certain rights as outlined below:

(a) If your client had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if your client, this Office, and the court all agreed.

(b) If your client elected a jury trial, the jury would be composed of twelve individuals selected from the community. You and your client would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and you would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before your client could be found guilty of any count. The jury would be instructed that your client was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

(c) If your client went to trial, the government would have the burden of proving your client guilty beyond a reasonable doubt. Your client would have the right to confront and cross-examine the government's witnesses. Your client would not have to present any defense witnesses or evidence whatsoever. If your client wanted to call witnesses in his defense, however, he would have the subpoena power of the court to compel the witnesses to attend.

(d) Your client would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

(e) If your client were found guilty after a trial, he would have the right to appeal the verdict to see if any errors were committed which would require a new trial or dismissal of the charges against him.

(f) By pleading guilty, your client will be giving up all of these rights, except the right, under the limited circumstances set forth in ¶9 below, to appeal the sentence. By pleading guilty, your client understands that he may have to answer the court's questions both about the rights he is giving up and about the facts of his case. Any statements your client makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

Sentencing Guidelines Apply

6. Your client understands that a sentencing guideline range for this case will be determined by the Court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. Section 3551-3742 and 28 U.S.C. Sections 991 through 998. Your client further understands that the Court will impose a sentence within that guideline range unless the Court finds there is a basis for departure because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines which should result in a sentence different from the guideline range.

Factual and Guidelines Stipulation

7. (a) This Office and your client understand, agree and stipulate to following statement of facts and applicable sentencing guideline factors:

Beginning in May, 1996 and continuing to January 1, 2001, defendant Efrain Tulier was the Secretary-Treasurer of the Communications Workers of America, Local Union 2185. Local 2185 is a labor organization engaged in an industry affecting commerce within the meaning of 29 U.S.C. Sections 402(k) and (j) and is located in Greenbelt, Maryland. During the defendant's tenure as Secretary-Treasurer of Local 2185, defendant utilized the trust placed in him as a union officer to embezzle a total of \$45,659.96 from the union bank accounts. Specifically, the defendant made unauthorized cash withdrawals from the union's bank accounts and wrote unauthorized union checks to third parties, converting the funds to his own use or to the use of others. Prior to the discovery of the defendant's conduct, the defendant repaid \$4,203 back to the union.

The parties agree that the United States Sentencing Guidelines (U.S.S.G.) as amended through December 16, 2000 apply to this case pursuant to U.S.S.G. 1B1.11.

The defendant agrees, pursuant to (U.S.S.G.) §2B1.1(a), that a base offense level of 4 is applicable to this matter. Pursuant to U.S.S.G. §2B1.1(b)(1)(H), the parties agree that 7 additional levels are added to the base offense level based upon an actual loss of \$45,659.96, with a credit against the loss of \$4,203, for a net loss of \$41,456.96, an amount that exceeds \$40,000 but is less than \$70,000, resulting in an adjusted offense level of 11.

The parties further stipulate and agree that the defendant abused a position of public or private trust in a manner that significantly facilitated the commission or concealment of the offense. Pursuant to U.S.S.G. §3B1.3, the adjusted base offense level is therefore increased by 2 to an adjusted offense level of 13.

The parties further stipulate and agree that the offense conduct involved more than minimal planning. Pursuant to U.S.S.G. §2B1.1(4)(A), the adjusted base offense level is therefore further increased by 2 to an adjusted offense level of 15.

The parties further stipulate and agree that the defendant may argue for a three-level adjustment for extraordinary family hardship pursuant to U.S.S.G. §5H1.6 and the government may oppose such a departure.

This Office agrees that it will not oppose a two level reduction in the defendant's adjusted offense level, based upon your client's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office may oppose any adjustment for acceptance of responsibility if your client (a)

fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statement about his involvement in the offense; (d) is untruthful with the Court, this Office or the United States Probation Officer; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

Court Not Bound

(b) Your client understands that neither the U.S. Probation Office nor the Court is bound by the stipulation, and that the Court will, with the aid of the presentence report, determine the facts relevant to sentencing. Your client understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. Your client understands that if the Court ascertains factors different from those contained in the stipulation, your client cannot, for that reason alone, withdraw his guilty plea.

Disputed / No Other Disputed Issues

(c) This Office and your client agree that there are no offense characteristics, sentencing guidelines factors, potential departures or adjustments that will be raised or are in dispute.

Criminal History

(d) Your client understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

Obstruction or Other Violations of Law

(e) Your client agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that your client (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under §3C1.1 of the Federal Sentencing Guidelines, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the presentence report, (iii) commits any offense in violation of federal, state or local law, or (iv) violates any regulation of the institution in which he is being detained, then this office will be relieved of its obligations to your client as reflected in this agreement. Specifically, this office will be free to argue sentencing guideline factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, the government will bear the burden of convincing the court of your client's obstructive or unlawful behavior and/or failure to acknowledge

personal responsibility by a preponderance of the evidence. Your client acknowledges that he may not withdraw his guilty plea because this office is relieved of its obligations under the plea agreement pursuant to this paragraph.

Obligations of the United States Attorney's Office

8. (a) At the time of sentencing, the defendant will be free to argue for a sentence at the low end of the applicable Sentencing Guideline range. This Office is free to recommend any sentence at any within the applicable Sentencing Guideline range.

(b) This Office reserves the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning your client's background, character and conduct.

Waiver of Appeal

9. Your client and the United States knowingly and expressly waive all rights conferred by 18 U.S.C. Section 3742 to appeal whatever sentence is imposed, including any issues that relate to the establishment of the guideline range, reserving only the right to appeal from an upward or downward departure from the guideline range that is established at sentencing. Nothing in this agreement shall be construed to prevent either your client or the United States from invoking the provisions of Federal Rule of Criminal Procedure 35, and appealing from any decision thereunder, should a sentence be imposed that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory minimum mandatory provision.

Court Not a Party

10. Your client expressly understands that the Court is not a party to this agreement. In the federal system, sentence is imposed by the Court, the Court is under no obligation to accept this Office's recommendations and the Court has the power to impose a sentence up to and including the statutory maximum stated above. If the Court should impose any sentence up to the maximum established by statute, your client cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. Your client understands that neither the prosecutor, you, nor the Court can make a binding prediction of, or promise him, the guideline range or sentence that ultimately will apply to his case. Your client agrees that no one has made such a binding prediction or promise.


Entire Agreement

11. This letter states the complete plea agreement in this case and pertains solely to federal criminal charges in the District of Maryland. There are no other agreements, promises, undertakings or understandings between your client and this Office.

If your client fully accepts each and every term and condition of this letter, please sign and have your client sign the original and return it to me promptly.

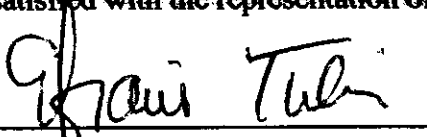
Very truly yours,

Thomas M. DiBiagio
United States Attorney

By: 
Donna C. Sanger
Assistant U. S. Attorney


I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. No other promises or inducements have been made to me other than those contained in this letter. In addition, no one has threatened me or forced me in any way to enter into this agreement. I am fully satisfied with the representation of my attorney.

8.18.03
Date


Efrain Tulier

I am Mr. Tulier's attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

8.19.03
Date


Paula Xinis, Esq.
Attorney for Efrain Tulier