

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
At Albuquerque NM
AUG 19 2011 *W*

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 VINCENT J. GARCIA,)
)
 Defendant.)

Criminal No. 10-1727 JB

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **VINCENT GARCIA**, and the Defendant's counsel, Jason Bowles, Esq.:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury; and
- at a trial:
- 1) to confront and cross-examine adverse witnesses,
 - 2) to be protected from compelled self-incrimination,

- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Count Three of the superseding indictment, charging a violation of Title 18, United States Code, Sections 1344(2) and 2, that being Bank Fraud.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose as to Count 3 is:
- a. imprisonment for a period of not more than twenty (20) years;
 - b. a fine not to exceed the greater of \$1,000,000.00 or twice the pecuniary gain to the defendant or pecuniary loss to the victim;
 - c. a mandatory term of supervised release of not more than five (5) years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and
 - e. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. The Defendant agrees and acknowledges that, as part of the Defendant's sentence, the Court is not limited to ordering restitution only for the amount involved in the particular offense or offenses to which the Defendant is entering a plea of guilty, but may and should order restitution resulting from all of the Defendant's criminal conduct related to this case.

7. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

a. I knowingly executed a plan to obtain funding from the Columbian Bank & Trust Co. by means of false representations in that I caused Derek Barnhill to submit a bank construction loan draw-down request containing a material false statement which is more specifically described below.

b. Based on a recommendation by the bank's correspondent broker and his statement that the bank was concerned about our liquidity, I utilized \$360,000.00 in construction loan proceeds to purchase an interest in a casino in the State of Washington. To obtain these funds, on or about February 12, 2007, my associate, Derek Barnhill, acting at my direction, submitted a construction loan draw-down request to the Columbian Bank & Trust Co. The draw-down request he submitted was in the amount of \$365,677.00. Although I was not aware of the specific documentation that Mr. Barnhill submitted at the time, the documentation and invoices included a representation that the funds were needed for "materials and price lock" for construction services to be provided by a company called DevCorp Inc., which was false.

c. I instructed Mr. Barnhill to draw down on the construction loan knowing that the funds would not be utilized directly in the construction of the Anasazi Building, but with the intent to provide additional cash for the completion of the building if the casino proved successful.

d. In requesting of Derek Barnhill that he submit the draw-down request, I had the knowledge that the request would falsely represent that the money was for a direct construction expense, which would induce the Columbian Bank & Trust Co. to fund the request.

f. The false representation in the draw down request was material in that it was capable of influencing the decision of the Columbian Bank & Trust Co. as to whether to disburse the funds.

g. The Blue Dot Corporation engaged my son, David Garcia, to perform the functions of the General Contractor's qualifying party and to supervise construction on the Anasazi Building, Copper Square and Lockhaven Estates in Clovis, New Mexico. David held a contractor's license and was legitimately entitled to compensation for his efforts in supervising construction at all three sites. It was agreed by contract that he would be paid in part, in "like kind" or "in kind" compensation for his work and license, in the form of labor and materials for construction work on his personal residence. Invoices for work performed and materials provided were billed to Anasazi Downtown LLC and Copper Square Condominiums LLC., and accounted for on a separate ledger as expenses charged to the respective projects. The payments for the applicable labor and materials were paid through draw down requests from the Columbian Bank & Trust Co. and First Financial Credit Union. In some instances, however, the invoices represented that the work performed and labor provided were for the projects directly and not for David's residence. In this respect and in those cases, the invoices were manipulated to appear to be direct project expenses.

h. I never told David that any of the invoices for work performed and labor provided at his residence were being submitted to the banks as direct project expenses. David never said anything to me that suggested that he knew. David never signed off on any of the draw-down requests himself. The preparation of bank paperwork was not part of David's role with Blue Dot Corporation. To the best of my knowledge, David actually did not know about the manipulation of these invoices. I regret that any of the above actions and improper handling of invoices placed David at risk of criminal prosecution.

9. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant will plead guilty. The Defendant agrees that

the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

10. The United States and the Defendant stipulate as follows:
 - a. The advisory sentencing guideline applicable to this case is U.S.S.G. § 2B1.1.
 - b. The gross loss amount in this case is \$842,237.44.
 - c. Application Notes 3(E)(i) and (ii) to U.S.S.G. § 2B1.1, "Credit Against Loss," are applicable to this case.
 - d. The net loss amount in this case should be determined by the application of credits pursuant to Application Notes 3(E)(i) and (ii) against the gross loss amount.
 - e. The parties will make their best, good faith efforts to agree upon a stipulated net loss amount in accordance with the United States Sentencing Guidelines and applicable case law by the date of sentencing hearing. If, despite their best efforts, the parties are unable to agree upon a net loss figure by that date, the calculation of the net loss will be submitted to the Court and the parties will each reserve their respective arguments as to the amount of the net loss.
 - f. U.S.S.G. § 2B1.1(b)(14)(B), pertaining to substantial endangerment of a financial institution, is not applicable to this case.

- g. The Columbian Bank & Trust Co. was a financial institution within the meaning of 18 U.S.C. §§ 20 and 1344.
- h. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.
- i. Apart from the stipulations set forth in this plea agreement, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

11. The Defendant understands that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant

understands that the Court may choose to vary from the advisory guideline sentence. The Defendant understands that if the Court does not accept any one or more of the above stipulations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any stipulations the parties may enter into, the Defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

WAIVER OF APPEAL RIGHTS

13. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction and any sentence, including any fine, within the statutory maximum authorized by law, as well as any order of restitution entered by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction pursuant to 28 U.S.C. § 2255, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver.

GOVERNMENT'S AGREEMENT

14. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing, the United States will move to dismiss all remaining charges against the Defendant in the present superseding indictment.
- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present superseding indictment.

15. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

16. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

17. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any

crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

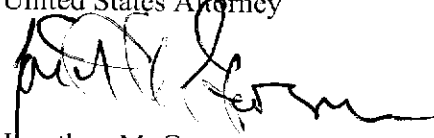
18. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

19. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this Agreement will be considered part of the record of the Defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

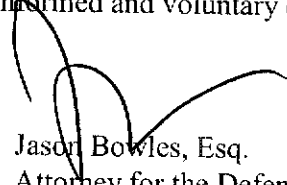
AGREED TO AND SIGNED this 19th day of August, 2011.

KENNETH J. GONZALES
United States Attorney



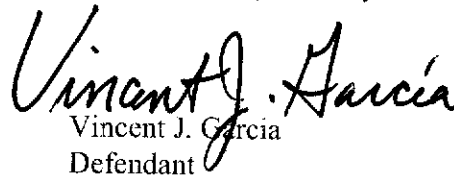
Jonathon M. Gerson
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

I am Vincent J. Garcia's attorney. I have carefully discussed every part of this Agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this Agreement. To my knowledge, my client's decision to enter into this Agreement is an informed and voluntary one.



Jason Bowles, Esq.
Attorney for the Defendant

I understand the terms of this Agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this Agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this Agreement. Finally, I am satisfied with the representation of my attorney in this matter.



Vincent J. Garcia
Defendant