

8/11/2016

TONI L. HELLON, Clerk

R. J. Green
Deputy

THE STATE OF ARIZONA,

Plaintiff,

vs.

JOHN ANTON MARCHELLO,

Defendant(s).

PLEA AGREEMENT

CR20151329-001

The State of Arizona and the defendant agree to the following non-trial disposition of the above-entitled action under the terms and conditions specified within this Agreement:

I. **THE CHARGE:** Defendant, JOHN ANTON MARCHELLO, agrees to plead GUILTY to the charge(s) of:

AMENDED COUNT TWO: THEFT OF PROPERTY OR SERVICES, A CLASS FOUR FELONY

On or about the 1st day of January, 2013 through the 30th day of November, 2014, JOHN ANTON MARCHELLO, committed theft of MONEY AND/OR SERVICES with a value of \$3,000 or more, but less than \$4,000, belonging to UNIVERSITY OF ARIZONA, in violation of A.R.S. § 13-1802 (A).

FACTUAL BASIS – Under penalty of perjury, Defendant, JOHN ANTON MARCHELLO, declares that, in addition to the factual basis and *mens rea* provided to the Court, the Grand Jury or Preliminary Hearing Transcript in the above-entitled action contains an accurate account of his conduct in committing the foregoing offense(s), and is expressly incorporated herein.

A. Prison. If the defendant is sentenced to prison by the Court, the following statutory sentencing range applies:

- | | | |
|----|-----------------------|------------|
| 1. | Mitigated Sentence: | 1.00 year |
| 2. | Minimum Sentence: | 1.50 years |
| 3. | Presumptive Sentence: | 2.50 years |
| 4. | Maximum Sentence: | 3.00 years |
| 5. | Aggravated Sentence: | 3.75 years |

If sentenced to prison, the defendant must serve approximately 85 percent of the sentence imposed before (s)he is eligible for release on any basis. Upon completion of the prison sentence, the defendant will be placed on community supervision. The duration of community supervision is one day of community supervision for every seven days of the prison sentence imposed, not actually served. Violation of the terms of community supervision could result in the defendant being required to complete the prison term imposed by the Court.

B. Probation. The available term of probation for a Class Four Felony is four years. Whether the defendant's sentence is suspended and (s)he is placed on probation is within the sole discretion of the Court. Unless otherwise stated within the Special Terms of this Agreement, there is no agreement that the State will recommend that the defendant be placed on probation. The Defendant understands that (s)he may be incarcerated for up to twelve months in the Pima County Jail as a condition of probation, as well as being assessed a monthly probation fee.

C. Fines and Assessments. The Court may require the defendant to pay a fine of \$150,000 plus a surcharge of 83%. If the defendant is unable to pay any fine or assessment in full on the day of sentencing, a one-time \$20 time payment charge will be assessed in addition to any fine imposed.

II. SPECIAL TERMS

A material condition of this plea agreement is that Defendant shall pay restitution to the victim(s) in the amount of \$83,020.89.

III. STANDARD TERMS AND CONDITIONS

A. Dismissal of Other Charges and Allegations. This Agreement amends the charges filed in this case to the offense(s) set forth above. All other charges and allegations in this case are dismissed.

B. Restitution. Defendant agrees to pay restitution to all victims named in the original indictment, even if they are not named within the specific offense(s) to which Defendant is pleading guilty. Defendant further waives any and all rights to have the amount of the restitution (s)he owes determined by an evidentiary (restitution) hearing. The victims' restitution claim form shall be accepted as conclusive proof of the victims' economic loss. The State agrees, however, that if the amount of restitution requested by a victim is less than any restitution minimums stated herein, the minimums shall be automatically amended downward to reflect the lesser amount(s) requested by the victim(s). Defendant understands that (s)he is jointly and severally liable for the entire restitution amount(s). Defendant specifically agrees to make restitution to the victim(s) for losses suffered as a result of the entire course of conduct, in which Defendant may only have partially participated. If Defendant receives compensation for work performed while incarcerated pursuant to A.R.S. § 31-254, a portion of that compensation shall be ordered to pay restitution pursuant to A.R.S. § 13-603(c). **Restitution shall be paid to all victims named in the indictment, or their insurers, in the amount of \$83,020.89.**

C. Victim Rights. All victims listed in the original indictment retain all of their victim rights pursuant to Rule 39, Arizona Rules of Criminal Procedures, even if their names do not appear within the specific charge(s) to which the defendant is accepting responsibility. Art. II, § 2.1 and A.R.S. §§ 13-4401 - 4439.

1. The defendant agrees to have no contact with any of the victims listed in the original indictment without the prior knowledge and consent of either this Court or the probation department.

D. Waiver of Rights. By accepting this Agreement, the defendant understands that (s)he is giving up the following rights: [1] the right to a jury trial; [2] the right to confront and cross-examine the witnesses against him/her; [3] the right to present evidence and call witnesses, knowing that the State will compel witnesses to appear and testify; [4] the right to be represented at trial by counsel free of charge, if (s)he cannot afford to hire his/her own counsel; and [5] the right to remain silent, to refuse to be a witness against him/herself, and to be presumed innocent until proven guilty beyond a reasonable doubt.

E. Concurrent / Consecutive Sentencing. There is no agreement as to whether the sentence imposed in this cause number shall run consecutively or concurrently to any other sentence imposed, unless the applicable statutes expressly require consecutive sentences or unless otherwise stated in the special terms.

F. Forfeiture. Nothing in this Agreement shall be construed to limit the State's ability to initiate or maintain an action for civil forfeiture, now or in the future, arising out of or related to the facts supporting any of the offenses originally charged in the Indictment, nor to protect or otherwise immunize the Defendant or his/her property from such civil forfeiture action. Nothing in this Agreement shall be construed to bind, limit or preclude the State's evidence in any civil forfeiture action.

G. Extradition / Detainer Costs. The defendant agrees to pay all costs of extradition to Pima County already incurred, if any. The defendant further agrees that in the event (s)he fails to appear pursuant to any court or probation order or any warrant that (s)he will pay any and all costs associated with his/her return to Pima County, Arizona. Reimbursement is to be made to the Pima County Sheriff's Department.

H. Rejection of or Withdrawal From the Plea Agreement

1. **Defendant's Disclosure of Prior Convictions.** The Defendant avows that this Plea Agreement contains his/her true name and that (s)he has no other prior felony convictions other than those specifically referenced in any Allegation of Prior Conviction(s) and/or the string cite of the original indictment. Should this representation be inaccurate, the State may withdraw from this Plea Agreement.

2. **Defendant's Future Unlawful Conduct.** The State may withdraw from this Agreement if the defendant is charged with or commits a crime between the time of the Court's acceptance of this Agreement and sentencing.

3. **Waiver of Double Jeopardy Claims.** If the defendant fails to comply with any of the provisions or conditions of this plea agreement at any time before or after sentencing or if at any time before or after sentencing, the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court, the plea agreement will become void and the parties to the plea agreement shall return to the positions they were in before executing the plea agreement. Additionally, the State will be free to prosecute the defendant for all charges of which the State has knowledge. Any charges that were dismissed because of the plea agreement will be automatically reinstated. In such event, the defendant expressly waives any objections, motions, or defenses based upon the Statute of Limitations, Rule 8, Arizona Rules of Criminal Procedure, the Double Jeopardy Clause, or any other constitutional restrictions on bringing of charges.

I. Appeals. Defendant hereby waives any right to raise and/or appeal any and all motions, defenses, probable cause determinations, restitution orders, and objections which defendant has asserted or could assert to this prosecution and to the court's entry of judgment against defendant and imposition of sentence upon defendant consistent with this agreement. See A.R.S. § 13-4033. This waiver expressly encompasses potential issues that may arise as a result of future changes in the law.

J. Motions and Dismissals. The Defendant understands that (s)he gives up any motions, defenses or other matters which have been or could be asserted in this case regardless of their merit. If the defendant is permitted to withdraw from this Agreement for any reason, the original indictment and allegations shall be automatically reinstated. The State will then be permitted to file any additional charges not previously filed as a result of this Agreement.

K. Entire Agreement. This Agreement contains the complete agreement between the parties concerning this subject matter and supersedes all prior written or oral communications and understandings between the defendant, defense counsel and/or the State. All other terms or conditions previously discussed that are not specifically contained within this Agreement are null and void. Any predictions regarding what sentence the defendant might receive are voided by this Agreement.

IV. DEFENDANT'S ACKNOWLEDGMENTS

A. Advice by attorney: I have read each of the provisions of the plea agreement with assistance of counsel and I understand them. I have discussed the case and my constitutional and other rights with my attorney. I have been advised by my attorney of the nature of the charge[s], of the nature and range of the possible sentence, and of the fact that my ultimate sentence will be determined solely by the Court. I am satisfied that my defense attorney has represented me in a competent manner.

B. Waiver of trial rights: I understand that by entering my plea of guilty I will be giving up my rights to plead not guilty, to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present evidence in my defense, to remain silent and refuse to be a witness against myself by asserting my privilege against self-incrimination – all with the assistance of counsel – and to be presumed innocent until proven guilty beyond a reasonable doubt. **I further agree to waive my right to all trials. This includes any jury determination of aggravating factors beyond a reasonable doubt. I also agree that the Court, using a standard of preponderance of the evidence, may find the existence of aggravating or mitigating factors which may impact my sentence or disposition. I further agree that the rules of evidence do not apply in the determination of aggravating and mitigating factors.**

C. Waiver of Appellate Rights. I hereby waive any right to raise and/or appeal any and all motions, defenses, probable cause determinations, restitution orders, and objections, which I have asserted or could assert to this prosecution, and to the court's entry of judgment against and imposition of sentence upon me consistent with this negotiated Agreement. I expressly waive any objections, motions, or defenses based upon the Statute of Limitations, Rule 8, Arizona Rules of Criminal Procedure, the Double Jeopardy Clause, or any other constitutional restrictions on bringing of charges.

D. Acting on own volition with clear mind: My plea is not the result of force, threats, assurances or promises other than those contained in this agreement. I agree to the provisions of this agreement as a voluntary act on my part, rather than at the direction of or because of the recommendation of any other person, and I agree to be bound according to its provisions. I am not now on or under the influence of any drug, medication, liquor, or other intoxicant or depressant, which would impair my ability to fully understand the terms and conditions of this plea agreement.

E. Merger clause: I agree that this written Plea Agreement contains all the terms and conditions applicable and that any promises made by anyone (including my attorney), specifically any predictions as the sentence I may receive, that are not contained within this written Agreement are without force and effect and are null and void. No assurances, promises of leniency, or representations have been made to me or to my counsel by the State of Arizona or by any of its representatives which are not contained in this written agreement.

F. Immigration consequences of Admission. I understand that if I am not a citizen of the United States, pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. I understand that my plea or admission of guilt could result in my deportation or removal and further could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. My attorney has explained all this to me, I understand it, and I still want to enter this Plea Agreement.

8/11/16
Date



JOHN ANTON MARCHELLO
DEFENDANT