

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA,

4 vs.

Criminal No. 19-139

5 JAMES G. ALLEN, JR.,
6 Defendant.

7 Transcript of Waiver of Indictment and Change of Plea
8 Proceedings on Tuesday, June 4, 2019, United States District
9 Court, Pittsburgh, Pennsylvania, before Arthur J. Schwab,
10 District Court.

11 APPEARANCES:

12 For the Government:

Carl F. Brooker, Esq.
Melissa S. Siskind, Esq.
Department of Justice Tax
Division
Room 7811
601 D Street NW
Washington, DC 20001

16 For the Defendant:

R. Anthony DeLuca, Esq.
225 Ross Street, 4th Floor
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21 Court Reporter:

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25 Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 (Proceedings held in open court; Tuesday, June 4, 2019.)

2 THE COURT: Good morning.

3 This is the time and place that has been set for
4 waiver of indictment and hearing on entry of guilty plea at
5 Criminal No. 19-00139.

6 I ask counsel for the United States to enter your
7 appearance, please.

8 MS. SISKIND: Good morning, Your Honor,
9 Melissa Siskind and Carl Brooker on behalf of the United
10 States.

11 THE COURT: On behalf of the defendant?

12 MR. DeLUCA: May it please the Court, Anthony DeLuca
13 on behalf of Mr. Allen.

14 THE COURT: Sir, would you stand and be sworn, please.
15 (Administration of the oath.)

16 THE COURT: Sir, do you understand that having been
17 sworn, your answers to my questions are subject to the
18 penalties of perjury or making a false statement if you do not
19 answer truthfully?

20 THE DEFENDANT: Good morning, Judge.

21 Yes, I understand.

22 THE COURT: The Court is informed that you wish to
23 waive your right to indictment by grand jury and to plead
24 guilty to Count One of an information, which charges you with
25 filing a false tax return, in violation of Title 26, United

1 States Code, Section 7206(1).

2 Correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Before accepting your waiver and guilty
5 plea, there are a number of questions I must ask you to make
6 sure it is a valid waiver and plea. If you do not understand
7 any of my questions or at any time you wish to consult with
8 your attorney, please say so.

9 Understand, sir?

10 THE DEFENDANT: Yes.

11 THE COURT: What is your full name again, please?

12 THE DEFENDANT: James Granger Allen Jr.

13 THE COURT: Where were you born?

14 THE DEFENDANT: Philadelphia, Pennsylvania.

15 THE COURT: How old are you?

16 THE DEFENDANT: I am 53 years old.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: I'm a physician; 14 years.

19 THE COURT: Have you had any drugs, alcohol or
20 medication in the last 48 hours?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you now or have you recently been
23 under the care of a physician or psychiatrist?

24 THE DEFENDANT: No.

25 THE COURT: Are you now or have you recently been

1 hospitalized or treated for substance abuse?

2 THE DEFENDANT: No.

3 THE COURT: You're pleading guilty to filing a false
4 tax return, in violation of Title 26, United States Code,
5 Section 7206(1).

6 Have you read and reviewed the entire information with
7 your attorney?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Correct, counsel?

10 MR. DeLUCA: Yes, Your Honor.

11 THE COURT: Do you completely understand the charge
12 against you?

13 THE DEFENDANT: I do.

14 THE COURT: Do you have any questions about the crime
15 charged against you in the information?

16 THE DEFENDANT: I do not.

17 THE COURT: Counsel, do you have any doubt about the
18 defendant's competency to waive his right to indictment and
19 plead guilty at this time to the offense set forth in the
20 information?

21 MR. DeLUCA: I do not have any doubt, Your Honor.

22 THE COURT: The Court finds the defendant is competent
23 to waive his right to indictment and plead guilty to the
24 information.

25 Unless you waived your right to indictment today, you

1 could not be charged with the felony listed in the information
2 unless a grand jury would find by the return of an indictment
3 that there was reasonable cause to believe that such a crime
4 had been committed and you had committed it.

5 If you do not waive your right to indictment, the
6 government may present the case against you to a grand jury and
7 request that it indict you.

8 The grand jury is composed of at least 16 but not more
9 than 23 persons. At least 12 grand jurors must find that
10 there's probable cause to believe that you committed the crime
11 for which you are charged before you may be indicted. The
12 grand jury may or may not indict you for this offense or some
13 other offense.

14 If you waive your right to indictment by grand jury,
15 this case will proceed against you on the United States
16 Attorney's information just as though you had been indicted on
17 the count set forth therein.

18 Have you discussed with your attorney the matter of
19 waiving your right to indictment by grand jury?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Correct, counsel?

22 MR. DeLUCA: That is correct, Your Honor.

23 THE COURT: Do you understand your right to indictment
24 by grand jury?

25 THE DEFENDANT: I do.

1 THE COURT: Has anyone made any threat to you or
2 anyone else that has forced you in any way to waive your right
3 to indictment?

4 THE DEFENDANT: No, sir.

5 THE COURT: The Court finds the defendant understands
6 his right to a grand jury and has knowingly, intelligently and
7 voluntarily given up that right as to the offense charged in
8 the information.

9 Sir, I'm holding up before you a waiver of indictment
10 form.

11 Is that your signature, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Counsel, your signature?

14 MR. DeLUCA: It is, Your Honor.

15 THE COURT: I have signed the document and returned it
16 to the deputy clerk.

17 If you did not plead guilty but instead went to trial,
18 you'd have certain trial rights. I will now explain these
19 trial rights which you'll be giving up by waiving your right to
20 indictment and pleading guilty today.

21 Do you understand that if you would plead not guilty,
22 you would have the right to be assisted by an attorney at the
23 trial of this charge?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand that you have the right

1 to plead not guilty and that if you pled not guilty and are
2 unable to afford an attorney, you're entitled to be assisted by
3 an attorney at no cost to you at all phases of the processing
4 of the charge against you, including at trial and on appeal?

5 THE DEFENDANT: I understand.

6 THE COURT: Do you understand that under the
7 Constitution and laws of the United States, you're entitled to
8 a speedy trial by judge and jury?

9 THE DEFENDANT: I do.

10 THE COURT: Do you understand you're presumed to be
11 innocent at all times, unless and until you're convicted or
12 plead guilty?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand at trial, you do not
15 have to prove that you're innocent?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand at trial, the government
18 would be required to prove your guilt by competent evidence and
19 beyond a reasonable doubt?

20 THE DEFENDANT: I understand.

21 THE COURT: Do you understand that at trial, the jury
22 would have to be unanimous in order to find you guilty?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that you'd have the
25 right to participate in the selection of the jury and the right

1 to strike or eliminate any prospective juror for cause if it is
2 established that that juror is unable to render a fair and
3 impartial verdict in your case, and that, in addition, you'd
4 have the right to strike ten jurors without assigning any
5 reason at all?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you understand in the course of the
8 trial, witnesses for the government must come to court and
9 testify in your presence?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand in the course of the
12 trial, your counsel would cross-examine the witnesses for the
13 government, object to evidence offered by the government, and
14 could offer evidence on your behalf?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand at trial, you'd have the
17 right to call witnesses to present your side of the case and
18 that you could compel their attendance by the use of the
19 subpoena power of this court?

20 THE DEFENDANT: I understand.

21 THE COURT: Do you understand if you qualify as being
22 financially unable to pay witness fees to witnesses you wished
23 to call on your behalf, the government would pay those witness
24 fees?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand at trial, you'd have the
2 right to testify, if you chose to do so?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand at trial, you'd have the
5 right not to testify and no inference or suggestion of guilt
6 could be drawn from the fact that you did not testify?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand by pleading guilty, that
9 you're giving up any defenses you may have to the offense
10 charged, including defenses or challenges to the indictment
11 based on the Constitution, and you'll not be able to raise any
12 such defenses or challenges after you plead guilty?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand that if you plead guilty
15 and I accept your plea, that you'll have to give up your right
16 to a jury trial and the other trial rights I've explained,
17 there will be no trial, and I will enter a judgment of guilty
18 and sentence you after first considering a presentence
19 investigation report prepared by the probation office.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: If I accept your guilty plea, do you
22 understand that you'll have to give up your right not to
23 incriminate yourself because I will ask you about your conduct
24 to satisfy myself that you're guilty as charged and you'll have
25 to admit your guilt?

1 THE DEFENDANT: Yes.

2 THE COURT: Having explained your rights in detail
3 today, do you still intend to plead guilty?

4 THE DEFENDANT: I do.

5 THE COURT: The maximum sentence I'm authorized to
6 impose under the law for the commission of this crime,
7 including any mandatory minimums, as set forth in the
8 information memorandum, as you and the government have agreed
9 and as set forth in the plea agreement is a term of not more
10 than three years; a fine of \$250,000; a term of supervised
11 release of not more than one year; and a special assessment of
12 \$100.

13 Do you understand the potential sentence that the
14 Court is authorized to impose?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: If you're sentenced to prison and a term
17 of supervised release, do you understand if you violate the
18 conditions of supervised release, the Court may revoke the
19 supervised release and incarcerate you with no credit for the
20 time you had served while on supervised release.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that the plea agreement
23 states that you agree to pay restitution to the Internal
24 Revenue Service in the amount of \$892,523.45, plus interest,
25 pursuant to Title 18, United States Code, Section 3663(a)(3),

1 and that the total amount of restitution is a result of your
2 criminal conduct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand the plea agreement
5 states that the parties stipulate that the United States
6 Sentencing Guidelines shall be calculated pursuant to Section
7 2T1.1 et seq., and that the tax loss, including all relevant
8 conduct, is more than \$550,000, but not more than \$1.5 million.

9 Do you understand that this stipulation is not binding
10 on the Court and does not preclude the parties from bringing to
11 the attention of the United States Probation Office or the
12 Court any information within their knowledge at the time the
13 agreement is executed?

14 THE DEFENDANT: I understand.

15 THE COURT: You understand that stipulation?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that the plea agreement
18 also states that the parties agree that the United States
19 Sentencing Guidelines should be calculated as follows:

20 (1), the base offense level is 20 before the
21 application of Paragraph B.3 of the plea agreement;

22 And that, (2), no other offense characteristics or
23 adjustments shall apply to the guideline calculation?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand I'm required to consider

1 the guidelines adopted by the United States Sentencing
2 Commission before reaching an appropriate sentence, but that
3 those guidelines are advisory and not binding on this Court?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you and your attorney discussed how
6 the guidelines might apply in your case?

7 THE DEFENDANT: We have.

8 THE COURT: Correct, counsel?

9 MR. DeLUCA: That is correct.

10 THE COURT: Do you understand the Court will not be
11 able to determine your advisory guideline sentence until after
12 I review the presentence investigation report and you and the
13 government have had an opportunity to challenge the reported
14 facts and the probation office's application and calculation of
15 the guidelines?

16 THE DEFENDANT: Yes.

17 THE COURT: What is the government's position as to
18 the applicable advisory guideline range, please?

19 MS. SISKIND: Your Honor, I apologize.

20 It would be an applicable guideline range for a total
21 offense level of 17, but I apologize, I do not have the
22 guideline in front of me.

23 THE COURT: Counsel, do you know?

24 MR. DeLUCA: I do, but I did not bring that note. I
25 apologize.

1 THE COURT: We will try to do your work for you.

2 MR. DeLUCA: I believe it's 30 months, Your Honor.

3 MS. SISKIND: The applicable sentencing range is 24 to
4 30 months.

5 THE CLERK: Seventeen and a one?

6 MS. SISKIND: Yes.

7 THE COURT: My understanding is the government says
8 that a sentencing range of 24 to 30 months is the applicable
9 advisory guideline range.

10 Agreed?

11 MR. DeLUCA: Agreed.

12 THE COURT: Understand, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand that by pleading guilty and
15 being sentenced, there's a possibility that you will be
16 incarcerated?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you also understand that after the
19 initial advisory guideline range has been determined, the Court
20 has the authority, in some circumstances, to depart upwards or
21 downwards from the range, and that the Court will examine other
22 statutory sentencing factors under Title 18 United States Code,
23 Section 3553(a) that may result in the imposition of a sentence
24 that is either greater or lesser than the applicable advisory
25 guideline sentence?

1 THE DEFENDANT: I understand.

2 THE COURT: Do you also understand that you or the
3 government have the right to appeal any sentence that I impose,
4 unless you voluntarily give up that right?

5 THE DEFENDANT: I do.

6 THE COURT: Do you understand there's no parole from a
7 sentence of imprisonment in the federal system?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you also understand that a defendant
10 must serve the full sentence imposed, except for up to 54 days
11 of earned good time for each year after the first year of
12 imprisonment?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you understand that you're pleading
15 guilty to a felony offense and if the Court accepts your plea
16 and finds you guilty, you'll be deprived of certain valuable
17 civil rights, such as the right to vote, the right to hold
18 public office, the right to serve on a jury, and the right to
19 possess any kind of firearm?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand the possible
22 consequences of your pleading that I've reviewed with you in
23 detail?

24 THE DEFENDANT: Yes.

25 THE COURT: I have before me the original plea

1 agreement that has been marked as Government Exhibit No. 1.

2 Sir, I direct your attention to Page 7 of the
3 document.

4 Is that your signature, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Counsel, your signature?

7 MR. DeLUCA: It is, Your Honor.

8 THE COURT: Did you read and review the entire
9 agreement with your counsel before you signed it?

10 THE DEFENDANT: I did.

11 THE COURT: Do you understand all its terms and
12 contents?

13 THE DEFENDANT: I do, sir.

14 THE COURT: Are there any other agreements or
15 understandings with the United States government that are not
16 set forth in the plea agreement?

17 THE DEFENDANT: Not to my knowledge.

18 THE COURT: Do you understand I'm not bound by any
19 recommendation of sentence your attorney and/or the government
20 may have suggested or agreed to, nor by the government's
21 agreement not to oppose your attorney's requested sentence, if
22 any, and that the Court could sentence you up to the maximum
23 sentence permitted by the statute?

24 THE DEFENDANT: I understand.

25 THE COURT: Do you understand if I decline to impose

1 any sentence recommended by the government and/or your attorney
2 and impose a more severe sentence, you'll not be entitled to
3 withdraw your guilty plea for that reason?

4 THE DEFENDANT: I understand.

5 THE COURT: If the Court rejects your plea agreement,
6 you'll be advised in open court and given the opportunity to
7 withdraw your guilty plea. In that event, you can continue to
8 plead guilty without an agreement.

9 Do you understand that the Court may reject your plea
10 agreement?

11 THE DEFENDANT: I understand.

12 THE COURT: On the other hand, if I accept your guilty
13 plea, the probation office will prepare a presentence
14 investigation report and recommendation of sentence and you'll
15 be interviewed by the probation office in order to calculate an
16 appropriate advisory sentence under the sentencing guidelines.

17 Understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anyone made any promise or assurance
20 to you that is not in the plea agreement to persuade you to
21 accept this agreement?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has anyone threatened you in any way to
24 accept this agreement?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Except for what is in the plea agreement,
2 has anyone predicted or promised you what your actual sentence
3 will be?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anything I've said here today
6 suggested to you what your actual sentence will be?

7 THE DEFENDANT: I understand the guidelines, but, no,
8 I don't know.

9 THE COURT: Has anything I've said here today
10 suggested to you what your actual sentence will be?

11 THE DEFENDANT: No.

12 THE COURT: Has anyone told you not to tell the truth
13 or to respond untruthfully to any question?

14 THE DEFENDANT: No.

15 THE COURT: Would you please place on the record the
16 elements of the offense to which the defendant is pleading
17 guilty.

18 MS. SISKIND: The elements of the crime of filing
19 false tax return, in violation of 26 United States Code,
20 Section 7206(1) are:

21 First, that the defendant made and subscribed a
22 return --

23 THE COURT: We're not in a race here. Kindly pull the
24 microphone closer to you, please, and read slowly, we would
25 appreciate it.

1 MS. SISKIND: Yes, Your Honor.

2 First, the defendant made and subscribed a return
3 statement or other document which was false as to material
4 matter;

5 Second, the return, statement or other document
6 contained a written declaration that it was made under the
7 penalties of perjury;

8 Third, the defendant did not believe the return,
9 statement or other document to be true and correct as to every
10 material matter;

11 And, fourth, that the defendant acted willfully, that
12 is, with the intent to violate a known legal duty.

13 THE COURT: Sir, do you understand at trial, the
14 government would have to prove each element of the offense
15 charged beyond a reasonable doubt in order to prove you guilty?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Would you now on behalf of the government
18 summarize its evidence, please.

19 MS. SISKIND: If this case had proceeded to trial, the
20 government would have proven that the defendant, James Allen,
21 filed individual income tax returns, both Forms 1040 and
22 1040-EZ, for the years 2010 through 2017, in which he failed to
23 report any income received from his work as an
24 anesthesiologist.

25 The defendant also caused his wife to file individual

1 income tax returns, Forms 1040 and 1040A, for the years 2011
2 through 2017, in which she failed to report any income received
3 from her work as an anesthesiologist, as well as a false
4 individual income tax return, Form 1040, for 2010 on which she
5 failed to report a portion of her wages for that year.

6 The evidence would show that the defendant worked as
7 an anesthesiologist during the years 2010 through 2017 and
8 despite receiving substantial income during those years, the
9 defendant filed individual income tax returns that reported
10 only minimal income, specifically, interest and dividends. And
11 the defendant did not report any income from his work as an
12 anesthesiologist, including both wages and nonemployee
13 compensation. In total over the years 2010 through 2017, the
14 defendant only reported income in the amount of \$7,766.96,
15 whereas there was additional unreported income of \$2,176,633.

16 The defendant's wife also worked as an
17 anesthesiologist during the years 2011 through 2017, and
18 despite receiving substantial income during those years, the
19 defendant caused his wife to file tax returns that only
20 reported minimal incomes, specifically, interest and dividends.

21 The defendant's wife's returns did not report any
22 income from her work as an anesthesiologist during those years,
23 including wages and nonemployee compensation. In total for the
24 years 2011 through 2017, the defendant's wife's returns
25 reported income of \$18,143.41, whereas there was additional

1 unreported income of \$1,253,082.

2 The defendant also caused his wife to file a tax
3 return for 2010 that underreported her wages by \$72,245.

4 With respect to the count charged in the information,
5 the evidence would show the defendant signed a 2014 Form 1040
6 under penalties of perjury and filed it with the Internal
7 Revenue Service on or about April 7, 2015. The defendant knew
8 this return was false as to a material matter because on this
9 return, the defendant reported that he received total income of
10 \$700 when, in fact, he knew that he had earned substantially in
11 excess of that amount during the year. The defendant filed
12 this return willfully with a specific intent to violate the
13 law.

14 The false tax returns the defendant filed and caused
15 his wife to file for the years 2009 through 2017 were based on
16 a tax fraud scheme promoted by Peter Hendrickson in his book
17 Cracking the Code.

18 The IRS calculated that the false returns filed by the
19 defendant and his wife for the years 2010 through 2017 resulted
20 in a tax loss of more than \$900,000.

21 THE COURT: Sir, in a moment I'll ask you whether you
22 agree with the government's summary of what you did, but first,
23 do you understand your answers may be later used against you in
24 the prosecution for making a false statement or for perjury if
25 you do not answer truthfully?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you agree with the government's summary
3 of what you did?

4 THE DEFENDANT: I do.

5 THE COURT: Any additions or corrections you wish to
6 make?

7 MR. DeLUCA: Your Honor, if I may, I believe the
8 correction that Mr. Allen would like to make, and it's really a
9 matter of semantics, but as to his wife filing the false tax
10 return, Mr. Allen had a corporation which his wife worked for
11 and they jointly took the income from that. As a result, it
12 was basically a subcontractor relationship with the hospital
13 and the hospital would pay the company for the services
14 provided. As a result, Mr. Allen believes he was fully
15 responsible for reporting all the income and not his wife.

16 THE COURT: Do you accept that correction?

17 MS. SISKIND: The government would dispute that as a
18 matter of the application of the tax laws, but we understand
19 that is the defendant's position about how his wife's income
20 should be treated.

21 THE COURT: In light of that correction by the
22 defendant, are you willing to still go forward with the plea
23 agreement?

24 MS. SISKIND: Yes, Your Honor.

25 THE COURT: The Court finds there's a factual basis to

1 accept the defendant's plea of guilty to the offenses charged
2 in the information.

3 I noticed in the plea agreement there is a number
4 different than the one I previously read as the amount of
5 restitution.

6 So, is the correct amount of the restitution
7 \$902,721.45?

8 MS. SISKIND: Your Honor, that is the amount that was
9 correct as of the time that the plea was executed. This
10 morning, Mr. DeLuca brought to the government's attention some
11 recent payments that the defendant's wife has made. So that
12 number may go down by the date of sentencing, but as of the
13 date of the execution of the plea agreement, that is the
14 correct restitution figure.

15 THE COURT: \$902,721.45.

16 Correct?

17 MS. SISKIND: Yes, Your Honor.

18 THE COURT: Agreed?

19 MR. DeLUCA: Agreed, Your Honor.

20 THE COURT: Agreed, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: You have initialed that change on Page 2
23 of Government Exhibit No. 1.

24 Is that correct?

25 THE DEFENDANT: I did that this morning.

1 THE COURT: Sir, having been advised of all of your
2 rights, do you still intend to plead guilty?

3 THE DEFENDANT: I do.

4 THE COURT: Is that consistent with your advice,
5 counsel?

6 MR. DeLUCA: It is, Your Honor.

7 THE COURT: Has anyone forced you in any way to enter
8 a plea of guilty to this charge?

9 THE DEFENDANT: No.

10 THE COURT: Did you make this decision to plead guilty
11 of your own free will and voluntarily?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you understood everything I discussed
14 with you today?

15 THE DEFENDANT: I do.

16 THE COURT: Have you ever had any physical or mental
17 illness that affects your ability to understand this proceeding
18 or my explanation of your rights?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Have you any doubt about the defendant's
21 competency to plead guilty, counsel?

22 MR. DeLUCA: I do not, Your Honor.

23 THE COURT: Sir, are you completely satisfied with
24 your attorney's advice and representation?

25 THE DEFENDANT: I am.

1 THE COURT: Has he done everything you've asked him to
2 do?

3 THE DEFENDANT: He has.

4 THE COURT: Is there anything he's done that you
5 believe he should not have done?

6 THE DEFENDANT: Not to my knowledge.

7 THE COURT: I have reviewed the plea agreement, but
8 would you please briefly summarize its most important terms.

9 I will review the waiver of appellate rights in a few
10 moments.

11 I've already gone over the amount of restitution and
12 the various stipulations contained in Government Exhibit No. 1.

13 MS. SISKIND: Your Honor, the defendant has agreed to
14 waive indictment and enter a plea to a one-count information
15 that charges him with violating 26 United States Code, Section
16 7206(1).

17 He agrees to pay restitution to the Internal Revenue
18 Service as the Court indicated in the amount of \$902,721.45.
19 The plea agreement contains agreements covering that
20 restitution.

21 He has agreed to waive his right to appeal his
22 conviction or sentence except under the limited circumstances
23 outlined in Paragraph 16.

24 The government has agreed to recommend a two level --
25 a three-level downward adjustment for acceptance of

1 responsibility in consideration for his plea, and has agreed
2 not to prosecute Maria Munoz Allen for conduct currently known
3 as the tax division relating to the filing of false tax returns
4 for the years 2010 through 2017.

5 The parties have stipulated to the applicable maximum
6 sentence considerations as well as the guideline calculation.

7 Those are the pertinent provisions of the plea
8 agreement, Your Honor.

9 THE COURT: If you will all join me at sidebar along
10 with the defendant, please.

11 (Discussion at sidebar was held.)

12 (Discussion at sidebar was concluded.)

13 THE COURT: Other than the plea agreement that has
14 been presented today, did the government tender counsel for the
15 defendant any other formal plea offer?

16 MS. SISKIND: No, Your Honor.

17 THE COURT: Did you receive any formal plea offer from
18 the government that you did not communicate to the defendant?

19 MR. DeLUCA: No, Your Honor.

20 THE COURT: Was the government's summary an accurate
21 summary of the terms of the plea agreement?

22 MR. DeLUCA: It was, Your Honor.

23 THE COURT: Do you agree, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand in the plea agreement

1 that you are giving up the right to appeal both the validity of
2 your plea, the legality of your sentence, with only three
3 limited exceptions. You may file a direct appeal from the
4 judgment and sentence of this Court only, (1), if the United
5 States files an appeal from the sentence, or (2), the sentence
6 exceeds the applicable statutory limits set forth in the United
7 States Code, or (3), the sentence unreasonably exceeds the
8 applicable advisory guideline range under the United States
9 Sentencing Guidelines?

10 THE DEFENDANT: I understand, Your Honor.

11 THE COURT: Do you further understand that there's
12 nothing in your waiver of appellate rights as set forth in the
13 plea agreement that shall preclude you from raising a claim of
14 ineffective assistance of counsel in an appropriate forum?

15 THE DEFENDANT: I understand.

16 THE COURT: On the other hand, do you understand the
17 government retains its right to oppose any such claims on
18 procedural or substantive grounds?

19 THE DEFENDANT: I do.

20 THE COURT: Do you understand that you're giving up
21 your right to appeal, including that you're waiving your right
22 to file a motion to vacate sentence under Title 28 United
23 States Code, Section 2255, except as I have stated?

24 THE DEFENDANT: I understand.

25 THE COURT: Were you on state, court or county court

1 probation or parole at the time of this offense?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Have you answered truthfully all the
4 questions I've asked you today?

5 THE DEFENDANT: I have, Your Honor.

6 THE COURT: You're charged with a one-count
7 information with filing a false tax return, in violation of
8 Title 26 United States Code, Section 7206(1).

9 How do you plead, sir?

10 THE DEFENDANT: I plead guilty, Your Honor.

11 THE COURT: The Court finds you're competent, that you
12 know and understand your right to a jury trial and the
13 consequences of waiving that right, and that you know the
14 maximum penalties for the offense charged. The Court,
15 therefore, accepts your plea agreement and your guilty plea and
16 finds you guilty of the offense charged in the information.

17 Sir, I'm holding up before you a Change of Plea Form
18 as to Count One.

19 Is that your signature, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Counsel, your signature?

22 THE DEFENDANT: It is, Your Honor.

23 THE COURT: I return that document, along with the
24 plea agreement to the deputy clerk.

25 The probation office is directed to prepare a

1 presentence investigation report in accordance with the Local
2 Rules of Criminal Procedure.

3 The Court will defer sentencing until the probation
4 office has prepared a presentence investigation report and you
5 and the government have had an opportunity to object to any
6 findings and conclusions contained therein.

7 Understand, sir?

8 THE DEFENDANT: I do.

9 THE COURT: An order will be filed scheduling a
10 sentencing hearing for November 12, 2019 at 11:00 a.m.

11 Any objection to that time?

12 MS. SISKIND: No, Your Honor.

13 MR. DeLUCA: No, Your Honor.

14 THE COURT: That's November 12, 2019 at 11:00 a.m.
15 Defendant is currently not in custody.

16 Do you have a recommendation on behalf of the United
17 States relating to whether or not he should be released on
18 bond?

19 MS. SISKIND: We would agree to release on bond, Your
20 Honor.

21 THE COURT: \$100,000 unsecured?

22 MS. SISKIND: Yes, Your Honor.

23 THE CLERK: I thought it was \$10,000.

24 MR. DeLUCA: There was a document we signed for
25 10,000.

1 THE COURT: I'm sorry. I misspoke. \$10,000 unsecured
2 bond.

3 Correct.

4 MS. SISKIND: Yes, Your Honor.

5 MR. DeLUCA: Correct, Your Honor.

6 THE COURT: Understand, sir?

7 THE DEFENDANT: I do.

8 THE COURT: The Court finds by clear and convincing
9 evidence the defendant is not likely to flee, does not pose a
10 danger to the community if released, pursuant to Title 18,
11 United States Code, Sections 3142(b) or (c).

12 It is, therefore, ordered that the defendant be
13 released on a \$10,000 unsecured bond, subject to the standard
14 conditions of pretrial release as set forth in the order
15 setting conditions of release and the additional following
16 conditions.

17 One, defendant shall surrender any passport and obtain
18 no new passport or other international travel documents.

19 Two, defendant shall not depart the Commonwealth of
20 Pennsylvania.

21 Three, the defendant shall refrain from possessing a
22 firearm, destructive device or other dangerous weapon.

23 Four, defendant shall refrain from excess use of
24 alcohol.

25 Five, defendant shall refrain from the use or unlawful

1 possession of a narcotic drug, unless prescribed by a licensed
2 medical practitioner.

3 Six, defendant shall submit to any method of testing
4 required by the Pretrial Service Office for determining whether
5 defendant is using a prohibited substance.

6 Seven, defendant shall participate in a program of
7 inpatient or outpatient substance abuse treatment, if deemed
8 advisable by Pretrial Service Office.

9 Eight, defendant shall refrain from obstructing in any
10 fashion the efficiency and accuracy of any prohibited substance
11 testing.

12 Nine, defendant shall report as soon as possible to
13 the Pretrial Service Office any contact with any law
14 enforcement personnel, including but not limited to any arrest,
15 questioning or traffic stop.

16 Ten, defendant shall report as soon as possible to
17 Pretrial Service Office any change in address, telephone,
18 number or employment status.

19 Understand, sir?

20 THE DEFENDANT: I do.

21 THE COURT: Do you further understand you must be in
22 this courtroom for sentencing as scheduled or rescheduled or
23 you'll be guilty of violating the Bail Reform Act, which
24 carries the maximum sentence of ten years imprisonment
25 consecutive to any other sentence I impose on the offense for

1 which you have pled guilty, and a fine of \$250,000, plus
2 interest, and that the failure to appear could also result in
3 forfeiture of any bond posted?

4 THE DEFENDANT: I do.

5 THE COURT: Any other matter that needs to be
6 discussed today on behalf of the government?

7 MS. SISKIND: No, Your Honor.

8 THE COURT: Defendant?

9 MR. DeLUCA: Yes, Your Honor.

10 I just wanted to note for the record that the
11 defendant came prepared today to accept responsibility for the
12 restitution. He came with checks to pay both the restitution
13 and the interest.

14 So, I talked to the U.S. Attorney, she does not
15 believe there's a mechanism for him to pay that restitution
16 now, but we just wanted to check with the Court to see if we
17 could do that for two reasons; one, to accept that
18 responsibility; and two, to prevent the further accrual of
19 interest between now and November.

20 THE COURT: I don't know the answer to that question.

21 My suggestion is you work with my deputy clerk who
22 will work with the Clerk of Court and see if that's possible to
23 be done today.

24 MR. DeLUCA: Thank you, Your Honor.

25 THE COURT: If I need to sign some order to that

1 effect, I'll be pleased to do so.

2 MR. DeLUCA: Thank you, Your Honor.

3 THE COURT: The plea agreement does provide that the
4 restitution shall be paid to the Clerk of Court in this
5 courthouse, and then the Clerk would forward it on to the IRS
6 office in Kansas City, Missouri.

7 We'll make sure the Clerk of Court is aware of that
8 provision in the plea agreement.

9 MR. DeLUCA: Thank you, Your Honor.

10 THE COURT: Thank you. We'll see you in November.

11 (Court adjourned.)

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13

14 CERTIFICATE

15

16 I, Juliann A. Kienzle, certify that the foregoing is
17 a correct transcript from the record of proceedings in the
above-titled matter.

18

s/Juliann A. Kienzle, RMR, CRR

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Juliann A. Kienzle, RMR, CRR

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