

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JAMES BOYD DOUGLAS, JR.

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CR. NO. 3:12CR49-MEF-CSC

PLEA AGREEMENT

DEFENSE COUNSEL:

TERRIE BIGGS
WILLIAM O. WALTON III

ASSISTANT U.S. ATTORNEY:

JARED MORRIS

COUNT(S) AND STATUTES CHARGED:

Count 1 18 U.S.C. §1343

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

COUNTS PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1 18 U.S.C. §1343

Wire fraud

PENALTIES BY COUNT - MAXIMUM PENALTY:

Count 1 18 U.S.C. §1343

NMT 20Y imprisonment
NMT \$250,000.00 or, if greater, twice the gross gain to the offender or twice the gross loss to the victim, or both the fine and imprisonment
NMT 3Y SUP REL;
\$100.00 Assessment Fee
VWPA

ELEMENTS OF THE OFFENSES:

Count 1 18 U.S.C. § 1343

1. The Defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by using false pretenses, representations, or promises;
2. The false pretenses, representations, or promises were about a material fact;
3. The Defendant acted with the intent to defraud; and
4. The Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

Jared Morris, Assistant United States Attorney, and Terrie Biggs, Esq., attorney for the defendant, pursuant to Rule 11(c)(1)(A) and Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended, have, with the authorization of the undersigned defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Information herein and a Plea Agreement has been reached by said parties. The parties understand that, if the terms of the Plea Agreement are not accepted by the Court, the defendant will be allowed to withdraw the defendant's plea of guilty and proceed to trial. If the Court accepts this agreement, however, and defendant thereafter breaches this agreement, his guilty plea may not be withdrawn.

GOVERNMENT'S PROVISIONS

1. Upon entering a plea of guilty by the defendant to the offense charged in Count 1 of the Information, the attorney for the Government will agree that a two-level reduction in the applicable offense level pursuant to U.S.S.G. § 3E1.1(a) for the defendant's acceptance of responsibility is appropriate, so long as the defendant does not obstruct justice or otherwise fail to accept responsibility for the offense conduct. Should the Government find that the defendant assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely

notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, and if the defendant otherwise qualifies, the Government will move at sentencing for a further reduction of one level, pursuant to U.S.S.G. § 3E1.1(b). Determination of whether the defendant met his obligation to qualify for the reduction pursuant to U.S.S.G. § 3E1.1 is at the sole discretion of the Government.

2. The parties agree that for purposes of calculating the applicable Guidelines range, the intended loss in this case was an amount in excess of \$1,000,000. The Government reserves the right to argue at sentencing that the intended loss in this case was an amount in excess of \$2,500,000.

3. The Government agrees that a sentence not exceeding the bottom end of the applicable Guidelines range, as calculated by the Court, is appropriate in this case. The defendant reserves the right to argue at sentencing for a downward departure or variance, and the Government reserves the right to oppose any downward departure or variance.

4. If the defendant pleads guilty and is sentenced on Count 1 of the Information, the Government agrees not to pursue any other criminal charges against the defendant stemming from the facts supporting his conviction in this case.

5. The Government reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses, restitution, and the defendant's background.

DEFENDANT'S PROVISIONS

6. The defendant agrees to plead guilty to Count 1 of the Information and to waive his right to prosecution by indictment.

7. For purposes of sentencing, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the defendant agrees with the provisions set forth in Paragraphs 1-3 of the Government's Provisions above.

8. The defendant further agrees not to commit any other federal, state, or local offense while awaiting sentencing. The determination of whether the defendant's conduct is a violation of this provision is at the complete discretion of the Government.

9. Waiver of the Defendant's Right to Appeal or Collaterally Attack the Sentence.

a. *Defendant's Waiver.* By entering into this Plea Agreement, the defendant knowingly and voluntarily waives any and all of his rights under 18 U.S.C. § 3742 to appeal the sentence in this case. The defendant specifically waives his right to appeal the sentence on the grounds that the Sentencing Guidelines are in any respect unconstitutional, or that any fact found by the Court for sentencing was not alleged in the Information, admitted by the defendant, found by a jury, or found beyond a reasonable doubt. The defendant further expressly waives his right to appeal the conviction and sentence on any other ground, including any challenge to the reasonableness of the sentence, and waives the right to attack the sentence in any post-conviction proceeding.

b. *Exceptions.* This waiver does not include (and the defendant expressly reserves) the right to appeal or collaterally attack his sentence on the grounds of ineffective assistance of counsel or prosecutorial misconduct. The defendant is released from this waiver if the Government files an appeal under 18 U.S.C. § 3742(b).

c. *No Waiver by Government.* Nothing in this Plea Agreement affects the Government's right and/or duty to appeal the sentence imposed in the case, as set forth in 18 U.S.C. § 3742(b). Nor does the Government waive its right to appeal any order dismissing the

Information, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings.

FACTUAL BASIS

10. The defendant admits the allegations charged in Count 1 of the Information and understands that the nature of the charge to which the plea is offered involves proof as to Count 1 as follows:

a. At all relevant times, the defendant, JAMES BOYD DOUGLAS, JR., was a licensed attorney in Alabama and practiced law in Auburn, Alabama, within the Middle District of Alabama.

b. From in or around January 2005 until on or about September 23, 2011, DOUGLAS's law firm served as legal counsel in a number of residential mortgage closings, including sales and refinance transactions.

c. For purposes of executing the scheme and artifice set forth in the Information, and for purposes of obtaining money and property by means of false and fraudulent pretenses, representations, and promises, DOUGLAS would receive into his law firm's escrow accounts the proceeds of mortgage loans; those proceeds were intended to repay previously existing mortgage loans on properties being sold or refinanced in transactions in which DOUGLAS's law firm was involved. However, instead of using those funds to repay the previously existing mortgage loans, DOUGLAS would convert the funds to his own personal use. In order to conceal the thefts, DOUGLAS would falsely represent both to the mortgage lenders and to his clients that he had repaid the previous mortgage loans in full.

d. DOUGLAS conducted numerous loan closings in the above-described fashion, ultimately resulting in losses of more than \$2 million.

e. For purposes of executing the scheme and artifice set forth in the Information, and for purposes of obtaining money and property by means of false and fraudulent pretenses, representations, and promises, on or about May 27, 2008, in Lee County, within the Middle District of Alabama, and elsewhere, DOUGLAS did transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures, and sounds, to wit: funds totaling approximately \$603,891.91, which were transferred from SunTrust Mortgage of Atlanta, Georgia, into an escrow account that DOUGLAS's law firm maintained at Frontier Bank of Auburn, Alabama. All in violation of Title 18, United States Code, Section 1343.

18 U.S.C. § 3553(a)

11. The defendant acknowledges that counsel for the defendant has conferred with the defendant prior to the signing of this plea agreement and advised the defendant that the Court, at sentencing, will consider the factors set forth in 18 U.S.C. § 3553(a), and explained to the defendant each of those factors specifically including (1) the nature and circumstances of the offense and the history characteristics of the defendant; the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) the need for deterrence; (3) the need to protect the public; (4) the need to provide the defendant with needed educational or vocational training or medical care; (5) the kinds of sentences available; (6) the need to avoid unwanted sentencing disparities; and, (7) the need to provide restitution to victims.

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

12. The defendant, before entering a plea of guilty to Count 1 of the Information, as provided for herein, advises the Court that:

a. The discussions between the attorney for the Government and the attorney for the defendant towards reaching an agreed plea in this case have taken place with the defendant's

authorization and consent.

b. The defendant further understands that, pursuant to 18 U.S.C. § 3013, said \$100.00 assessment fee is to be paid by the defendant on the date of sentencing and that, if a fine is imposed by the Court at sentencing, the defendant shall meet with a member of the Financial Litigation Section of the United States Attorney's Office on the day of sentencing and complete a written personal financial statement setting forth the defendant's assets and liabilities as of the date of the offense. The defendant will make an honest, good faith effort to pay said fine as directed by the Financial Litigation Section of the United States Attorney's Office. The defendant further understands that by completing the financial statement, the defendant is representing that it is true and accurate to the best of the defendant's information, knowledge, and belief.

c. The defendant understands that the defendant has a right to be represented by an attorney at every stage of the proceedings against the defendant herein and is represented by the defendant's undersigned attorney.

d. The defendant understands that the defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right to call witnesses in the defendant's own behalf, and the right not to be compelled to incriminate the defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the defendant waives the right to a trial by jury or to a trial before the Court.

e. The defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the

defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. The Defendant further understands and advises the Court that the Plea Agreement as set forth herein and the plea to be entered by the defendant as a result thereof is voluntary on the defendant's part and is not the result of any force or threats or of any promises apart from the aforesaid Plea Agreement. The defendant further advises the Court that the Plea Agreement set forth herein is the result of prior discussions between the attorney for the Government and the attorney for the defendant, all conducted with the defendant's authorization, knowledge, and consent.

g. The defendant further advises the Court that the defendant's understanding of this Plea Agreement is as set forth in this document.

h. The defendant further understands that the Government can only make a recommendation, which is not binding upon the Court. However, if the Court does not accept the plea agreement, the Defendant would be permitted to withdraw the defendant's plea, if the defendant so chooses.

i. The defendant further advises the Court that the defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crime charged in the Information herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the defendant. However, the defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Information herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the defendant under oath, on the court record, and in the presence of counsel.

j. The defendant is satisfied that defense counsel has been competent and effective

in representing defendant.

13. The undersigned attorneys for the Government and for the defendant represent to the court that the foregoing Plea Agreement is the agreement of the parties that has been reached pursuant to the Plea Agreement procedure provided for in Rule 11(c)(1)(A) and Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended. The attorney for the defendant further advises the Court that the defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the defendant has been advised of the defendant's right to plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the defendant; and that if the defendant pleads guilty, there will not be a further trial of any kind. Further, the defendant has been advised that if the defendant pleads guilty, the Court may ask questions about the offense to which the defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the defendant in a civil or criminal proceeding, but that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

14. The defendant understands that the U.S. Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the defendant's conduct related to the offense to which the plea is offered, as well as the defendant's criminal history. The offense level or criminal history category, as calculated by the Probation Officer and determined by the court, may differ from that projected by defendant's counsel or the U.S. Attorney.

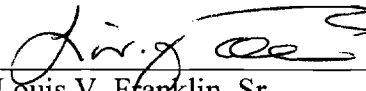
Done this 22nd day of March, 2012.

Respectfully submitted,

SANDRA J. STEWART
ACTING UNITED STATES ATTORNEY



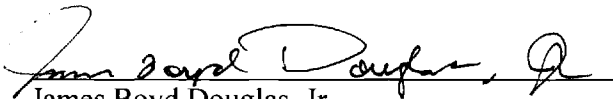
Jared Morris
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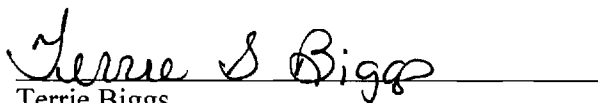
Louis V. Franklin, Sr.
Chief, Criminal Division

I have read the foregoing Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement that has been reached.

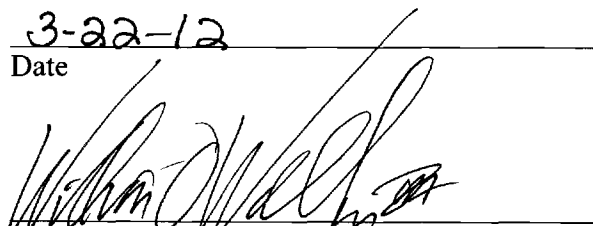
IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL.


James Boyd Douglas, Jr.
Defendant

3-22-12
Date


Terrie Biggs
Attorney for the Defendant

3-22-12
Date


William O. Walton III
Attorney for the Defendant

3/22/12
Date