

FILED

MAY 30 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RALPH L. DeLOACH, Clerk
By  Deputy

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. 07-20020-02-JWL

DWAYNE GILES,
Defendant.

PLEA AGREEMENT

The United States of America, by and through undersigned counsel, and the defendant, Dwayne Giles, personally and by and through his undersigned counsel, hereby enter into the following plea agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure:

1. **Defendant's Guilty Plea.** The defendant agrees to plead guilty to count 1 of the indictment charging conspiracy to embezzle, steal, and unlawfully and willfully convert money from a labor organization engaged in an industry affecting commerce, in violation of Title 18, United States Code, § 371. The defendant will enter his plea of guilty no later than May 30, 2007. By entering into this plea agreement, he admits to knowingly committing this offense and to being guilty of this offense. The defendant understands that the maximum punishment that may be imposed for this offense is a term of imprisonment that may not be more than 5 years; a maximum fine of \$250,000, or twice the gross pecuniary gain from the offense, or twice the gross loss suffered, whichever is greater; a \$100 mandatory special assessment; restitution in the amount of \$11,959.44; a term of supervised release after imprisonment of not more than three years; and if the term of supervised release is revoked he may be required to serve an additional term of not more than two years in prison.

2. **Factual Basis for the Guilty Plea.** The parties agree the facts constituting the offense to which the defendant is pleading guilty are as follows:

During a time period that included April 2003 through August 2004, Local 238 of the American Postal Workers Union, in Kansas City, Kansas, was a labor organization engaged in an industry affecting commerce.

William Kendrick and Dwayne Giles were the treasurer and president, respectively, of Local 238.

Local 238 had a checking account at Security Bank of Kansas City, in Kansas City, Kansas; a check could be written on that account if it had the signatures of two of the people who held the positions of president, vice president, and treasurer of Local 238.

From on or about April 14, 2003, and continuing through on or about August 25, 2004, in the District of Kansas and elsewhere, Mr. Kendrick and Mr. Giles knowingly and intentionally conspired and agreed to embezzle, steal, and unlawfully and willfully convert to their own use money of Local 238 while acting in their capacities as officers of Local 238, which is an offense against the United States in violation of Title 29, United States Code, Section 501(c).

In furtherance of the conspiracy, Mr. Kendrick and Mr. Giles co-signed Local 238 checks as alleged in the indictment, including the ones as set forth below, payable to Mr. Kendrick for amounts to which he was not entitled, allowing Mr. Kendrick to embezzle, steal, and unlawfully and willfully convert to his own use money of Local 238:

<u>Date</u>	<u>Check No.</u>	<u>Amount</u>
4-14-2003	14601	\$ 346.31
8-25-2004	15448	\$ 517.62

Additionally, Mr. Kendrick and Mr. Giles co-signed Local 238 checks payable to "Kansas Payment Center" to satisfy child support obligations owed by Mr. Giles, instead of making deductions from his salary, as alleged in the indictment, including the ones as set forth below, and in so doing Mr. Giles was able to embezzle, steal, and unlawfully and willfully convert to his own use money of Local 238:

<u>Date</u>	<u>Check No.</u>	<u>Amount</u>
7-31-2003	14790	\$ 236.31
5-5-2004	15275	\$ 236.31

When interviewed, Mr. Kendrick and Mr. Giles admitted taking money from Local 238. Including the acts alleged in the indictment, as well as other uncharged conduct, Mr. Giles converted union funds by making unauthorized payments totaling \$7,912.17 to himself, and by knowingly co-signing unauthorized child-support payments totaling \$4,047.27 for his benefit.

3. Application of the Sentencing Guidelines. The parties ask the court to apply the United States Sentencing Guidelines (Guidelines) to determine a reasonable sentence and that the court impose a sentence that is consistent with the Guidelines and any agreements contained herein. The defendant further waives any right to have facts that determine the offense level under the Guidelines be alleged in an indictment and found by a jury beyond a reasonable doubt; agrees that facts that determine the offense

level will be found by the court at sentencing by a preponderance of the evidence and agrees that the court may consider any reliable evidence, including hearsay, in making those findings; and agrees to waive all constitutional challenges to the validity of the Guidelines. The parties further agree to request a sentence within the guideline range that the court finds to be applicable. In other words, the United States will not request a sentence in excess of the high end of the applicable guideline range and the defendant will not request a sentence below the low end of the applicable guideline range. The parties understand this agreement binds the parties only and does not bind the court.

4. **Relevant Conduct.** The defendant agrees that the conduct charged in any dismissed counts is to be considered as well as all other uncharged related criminal activity as relevant conduct for purposes of calculating the offense level for the count(s) of conviction, in accordance with U.S. Sentencing Guidelines (U.S.S.G.) § 1B1.3(a)(2).

5. **Government's Agreements.** In return for the defendant's plea of guilty as set forth herein, the United States Attorney for the District of Kansas agrees:

- a. To not file any additional charges against him arising out of the facts forming the basis for the present indictment;
- b. To not take a position on the sentence to be imposed within the applicable guideline range; however, if the defendant receives a downward departure (however denominated, e.g., "adjustment," "variance," etc.) over the opposition of the United States, the United States may recommend any sentence within the applicable guideline range as finally determined by the court; and
- c. To recommend a 2-level reduction in the applicable offense level under the sentencing guidelines for acceptance of responsibility. Additionally, if the defendant's offense level is 16 or greater prior to any reduction for acceptance of responsibility and the court finds the defendant qualifies for that reduction, the government will move at the time of sentencing for a reduction of one additional level for timely acceptance of responsibility.

The government's obligations under this paragraph are contingent upon the defendant's continuing manifestation of acceptance of responsibility as determined by the United States. If he denies or gives conflicting statements as to his involvement, falsely

denies or frivolously contests relevant conduct that the court determines to be true, willfully obstructs or impedes the administration of justice as defined in U.S.S.G. § 3C1.1 (or willfully attempts to do so), or engages in additional criminal conduct, the United States reserves the right to withdraw any recommendations under this paragraph without breaching this agreement.

If the defendant breaches or violates this plea agreement or otherwise fails to adhere to its terms, the United States will not be bound by this paragraph and may pursue any additional charges arising from the criminal activity under investigation as well as any perjury, false statement, or obstruction of justice charges that may have occurred. The defendant understands and agrees that if he violates this plea agreement, all statements that he made subsequent to the execution of this plea agreement, any testimony that he gave before a grand jury or any tribunal, and any leads from such statements or testimony will be admissible against him in any and all criminal proceedings. The defendant waives any rights that might be asserted under the U.S. Constitution, any statute, Federal Rule of Criminal Procedure 11(f), Federal Rule of Evidence 410, and any other federal rule that pertains to the admissibility of any statements he made subsequent to entering into this plea agreement.

6. **Sentence to be Determined by the Court.** The defendant understands that the sentence to be imposed will be determined solely by the United States District Judge. The United States cannot make and has not made any promise or representation as to what sentence he will receive.

7. **Information Provided by Defendant.** The United States agrees not to use new information the defendant provides about his own criminal conduct except as specifically authorized by U.S.S.G. § 1B1.8. As such, this information may be revealed to the court but may not be used against the defendant in determining his applicable guideline range or departing above his guideline range. Defendant understands and agrees,

however, that under U.S.S.G. § 1B1.8 there will be no such restrictions on the use of the information: (1) previously known to the United States; (2) revealed to the United States by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; (4) if there is a breach of this agreement; or (5) in determining whether and to what extent a downward departure as a result of a government motion pursuant to 18 U.S.C. § 3553(e) or U.S.S.G. § 5K1.1 is warranted.

8. **Withdrawal of Plea Not Permitted.** The defendant understands that if the court accepts this plea agreement but imposes a sentence with which he does not agree, he will not be permitted to withdraw his plea of guilty.

9. **Payment of Special Assessment.** The defendant understands that a mandatory special assessment of \$100 per count of conviction will be entered against him at the time of sentencing. The defendant agrees to deliver to the clerk of the court a check or money order payable to "Clerk of the U.S. District Court" in the appropriate amount no later than the day of his guilty plea. If he fails to make full payment of the special assessment, and is financially able to do so, the United States will no longer be bound by the provisions contained in section 5(b) of this agreement. The burden of establishing an inability to pay the required special assessment lies with the defendant.

10. **Waiver of Appeal and Collateral Attack.** The defendant knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with this prosecution, his conviction, or the components of the sentence(s) to be imposed herein (including the length and conditions of supervised release, as well as any sentence imposed upon a revocation of supervised release). The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the conviction and sentence. By entering into this agreement, he knowingly waives any right to appeal a sentence imposed that is within the guideline range determined appropriate by the court. He also waives any right to challenge his conviction or sentence (or the manner in which either was determined) in


any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 [except as limited by *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001)], as well as any motion brought under 18 U.S.C. § 3582(c)(2) and/or Fed. R. Civ. Pro. 60(b). In other words, he waives the right to appeal the sentence imposed in this case except to the extent, if any, the court departs upwards from the applicable guideline range determined by the court. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), he is released from this waiver and may appeal his sentence as authorized by 18 U.S.C. § 3742(a).

11. **Waiver of FOIA Request.** The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

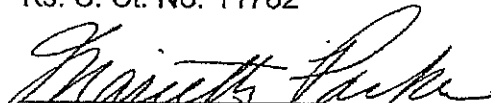
12. **Full Disclosure by United States.** The defendant understands the United States will provide to the court and the United States Probation Office all information it deems relevant in determining the appropriate sentence in this case. This may include information concerning his background, character, and conduct, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he has pled guilty. The United States may respond to comments made or positions taken by the defendant or his counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The defendant also has the right to provide information concerning the offense to the United States Probation Office.

13. Parties to the Agreement. The defendant understands this plea agreement only binds him and the United States Attorney for the District of Kansas, and that it does not bind any other federal, state, or local prosecution authority.


14. No Other Agreements. The defendant has had sufficient time to discuss this case, the evidence, and this agreement with his attorney and he is fully satisfied with the advice and representation provided by his counsel. Further, he acknowledges that he has read this plea agreement, understands it, and agrees it is true and accurate and not the result of any threats, duress, or coercion. The defendant also understands that this plea agreement supersedes any and all other agreements or negotiations between the parties, and that this agreement embodies each and every term of the agreement between the parties. The defendant acknowledges that he is entering into this agreement and is pleading guilty because he is guilty and is doing so freely and voluntarily.


LEON PATTON
Assistant United States Attorney
500 State Avenue, Suite 360
Kansas City, Kansas 66101
913-551-6730
Ks. S. Ct. No. 11782

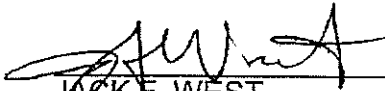
Date: 5-9-07


MARIETTA PARKER, No. 77807
Supervisory Assistant U.S. Attorney
500 State Avenue, Suite 360
Kansas City, Kansas 66101

Date: May 9, 2007


DWAYNE BILES
Defendant

Date: 5/23/07


JACK F. WEST
748 Ann Avenue
Kansas City, KS 66101
Counsel for Defendant

Date: 5/23/07

**United States District Court
District of Kansas**

**UNITED STATES OF AMERICA
v.
DWAYNE GILES**

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:07CR20020-002-JWL

USM Number: 11569-031

Defendant's Attorney Jack West

THE DEFENDANT:

- pleaded guilty to count(s): 1 of a one-count Indictment.
- pleaded nolo contendere to count(s) ___ which was accepted by the court.
- was found guilty on count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §371, with reference to 29 U.S.C. §501(c)	CONSPIRACY TO EMBEZZLE MONEY FROM A LABOR ORGANIZATION, a Class D Felony	08/25/2004	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) ___.
- All other counts in any charging document under this case number, as such pertain to this defendant, are dismissed upon motion of the government.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of material changes in economic circumstances.

October 1, 2007

Date of Imposition of Judgment

s/ John W. Lungstrum

Signature of Judge

Honorable John W. Lungstrum, Chief U. S. District Judge

Name & Title of Judge

October 2, 2007

Date

DEFENDANT: DWAYNE GILES
CASE NUMBER: 2:07CR20020-002-JWL

PROBATION

The defendant is hereby sentenced to probation for a term of 5 years.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable)
- The defendant is prohibited from possessing or purchasing a firearm, ammunition, destructive device, or any other dangerous weapon. (Check if applicable)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check if applicable)
- The defendant shall register as a sex offender, and keep the registration current, in each jurisdiction where the defendant resides, where the defendant is an employee, and where the defendant is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted, if such jurisdiction is different from the jurisdiction of residence. Registration shall occur not later than 3 business days after being sentenced, if the defendant is not sentenced to a term of imprisonment. The defendant shall, not later than 3 business days after each change in name, residence, employment, or student status, appear in person in at least one jurisdiction in which the defendant is registered and inform that jurisdiction of all changes in the information required. (Check if applicable)
- The defendant shall participate in an approved program for domestic violence. (Check if applicable)

If this judgment imposes a fine or restitution, it is to be a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DWAYNE GILES
CASE NUMBER: 2:07CR20020-002-JWL

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SPECIAL CONDITIONS OF SUPERVISION

The defendant is prohibited from possessing or purchasing a firearm, ammunition, destructive device, or other dangerous weapon.

The defendant shall immediately provide the probation officer with access to any and all requested financial information, to include executing any release of information forms necessary for the probation office to obtain and/or verify said financial information.

The defendant shall not incur new credit charges or open, or attempt to open, additional lines of credit, without the prior approval of the probation officer. The defendant shall also execute any release of information forms necessary for the probation officer to monitor the defendant's compliance with the credit restrictions.

The defendant shall not be employed in any capacity in which the defendant has discretionary authority over financial matters without the approval of the probation officer.

The defendant shall be placed on home detention for a period of six (6) months, to commence within 30 days of this Judgment Order. During the term of supervision the defendant shall remain at his place of residence except for employment and other activities approved in advance by the probation officer. As instructed by the probation officer, the defendant may be required to maintain a telephone at his place of residence without call forwarding, caller ID, call waiting, portable cordless telephones, answering machines/service, or any other feature or service which would interfere with the operation of electrical monitoring equipment for the above period. The defendant may be required to wear an electronic monitoring device, which may include Global Positioning System and/or Random Tracking, and follow electronic monitoring procedures specified by the probation officer. Additionally, the probation officer may restrict the defendant from certain areas within the community, and the defendant must comply with these restrictions. The defendant shall assist in the costs of home confinement, based on the ability to pay, at the direction of the probation officer.

AO 245B (Rev.06/05) Judgment in a Criminal Case--Criminal Monetary Penalties

DEFENDANT: DWAYNE GILES
CASE NUMBER: 2:07CR20020-002-JWL

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the Schedule of Payments set forth in this Judgment.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 100.00	\$ 0	\$ 11,949.44

The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
*American Postal Workers Local 238 PO Box 2444 Kansas City, KS 66110	11,949.44	11,949.44	
*Or its subrogee			
<u>Totals:</u>	<u>\$11,949.44</u>	<u>\$11,949.44</u>	

Restitution amount ordered pursuant to plea agreement \$ 11,949.44

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options set forth in this Judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for the fine and/or restitution.

the interest requirement for the fine and/or restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DWAYNE GILES
CASE NUMBER: 2:07CR20020-002-JWL

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ due immediately, balance due
 - not later than ____, or
 - in accordance with () C, () D, () E, or () F below; or
- B Payment to begin immediately (may be combined with () C, () D, or (x) F below); or
- C Payment in monthly installments of not less than 5% of the defendant's monthly gross household income over a period of __ years to commence __ days after the date of this judgment; or
- D Payment of not less than 10% of the funds deposited each month into the inmate's trust fund account and monthly installments of not less than 5% of the defendant's monthly gross household income over a period of __ years, to commence __ days after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
Payments shall be satisfied by monthly installments of not less than \$225.00, to commence 30 days from the date of this judgment.

If restitution is ordered, the Clerk, U.S. District Court, may hold and accumulate restitution payments, without distribution, until the amount accumulated is such that the minimum distribution to any restitution victim will not be less than \$25.

Payments should be made to Clerk, U.S. District Court, U.S. Courthouse - Room 259, 500 State Avenue, Kansas City, Kansas 66101.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount Joint and Several Amount and corresponding payee, if appropriate.

<u>Case Number</u> (including Defendant Number)	<u>Defendant Name</u>	<u>Joint and Several</u> <u>Amount</u>
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The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, (8) costs, including cost of prosecution and court costs.