Eastern District of Kentucky
FILED
DEC 10 2024
AT LEXINGTON
Robert R. Carr
CLERK U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
LONDON

CRIMINAL ACTION NO. 6:24-CR-083-CHB

UNITED STATES OF AMERICA **PLAINTIFF**

V. **PLEA AGREEMENT**

JOSHUA DANIEL PENNINGTON **DEFENDANT**

* * * * *

1. Pursuant to Federal Rule of Criminal Procedure 11(c), the Defendant will enter a guilty plea to Count 1 of the Information, charging a violation of 18 U.S.C. § 1956(h), Conspiracy to Commit Money Laundering.

2. The essential elements of Count 1, 18 U.S.C. § 1956(h) are:

(a) That two or more people agreed to try to accomplish a common and unlawful plan to:

a. Conduct monetary transactions by, through, or to a financial institution, of property derived from specified unlawful activity (that is, wire fraud in violation of 18 U.S.C. § 1343) in an amount greater than $10,000 and in a manner affecting interstate commerce.

(b) The Defendant knew about the plan's unlawful purpose and willfully joined in it.

3. As to Count 1, the United States could prove the following facts that establish the essential elements of the offense beyond a reasonable doubt, and the Defendant admits these facts:

(a) At all relevant times, **Joshua Daniel Pennington** operated out of the Eastern District of Kentucky and elsewhere. **Joshua Daniel Pennington** was married to Nicole Marcelle Pennington.

(b) Nicole Marcelle Pennington made materially false statements on applications for Small Business Administration's Payment Protection Program (PPP) loans and Economic Injury Disaster loans (EIDLs). Six of these loan applications were funded for a total of $3,000 in EIDL advances, $150,000 in EIDLs, and $937,498.35 in PPP loans. Between May 4, 2020 and May 18, 2021, $1,090,398.35 in fraudulently obtained SBA proceeds were deposited into bank accounts in which **Joshua Daniel Pennington** and Nicole Marcelle Pennington had access.

(c) After receiving the loan proceeds, Nicole Marcelle Pennington and **Joshua Daniel Pennington** engaged in a series of monetary transactions using the criminally derived proceeds to benefit themselves. Between May 2020 to June 10, 2021, **Joshua Daniel Pennington** and Nicole Marcelle Pennington laundered over $1,000,000 in criminally derived funds. Specifically, **Joshua Daniel Pennington** and Nicole Marcelle Pennington engaged in transactions using the criminally derived proceeds in amounts greater than $10,000 by withdrawing cash, transferring money between bank accounts, purchasing automobiles and motorcycles, paying off mortgages and other loans, renovating their kitchen, paying for plastic surgery, and purchasing a Viking River Cruise Trip.

(d) After June 10, 2021, **Joshua Daniel Pennington** continued to engage in monetary transactions over $10,000 using criminally derived SBA funds.

4. The statutory punishment for Count 1 is imprisonment for not more than 10 years, a fine of not more than the greater of $250,000 or twice the value of the funds involved in the transactions, and a term of supervised release of not more than three years. A mandatory special assessment of $100 applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

5. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend the following sentencing guidelines calculations, and they may object to or argue in favor of other calculations. This recommendation does not bind the Court.

(a) United States Sentencing Guidelines (U.S.S.G.), November 1, 2023, manual, will determine the Defendant's guidelines range.

(b) Pursuant to U.S.S.G. § 1B1.3, the Defendant's relevant conduct includes all monetary transactions over $10,000 of criminally derived property from May 2020 to November 2023.

(c) Pursuant to U.S.S.G. § 2S1.1(a)(2), the base offense level is 8.

(d) Pursuant to U.S.S.G. §§ 2S1.1(a)(2) and 2B1.1(b)(1)(H), increase the offense level by 14 for a loss amount in excess of $550,000.

(e) Pursuant to U.S.S.G. § 2S1.1(b)(2), increase the offense level by 1 level for a conviction under 18 U.S.C. § 1957.

(f) Pursuant to U.S.S.G. § 3E1.1 and unless the Defendant commits another crime, obstructs justice, or violates a court order, decrease the offense level by 2 levels for the Defendant's acceptance of responsibility. If the offense level determined prior to this 2-level decrease is level 16 or greater, the United States will move at sentencing to decrease the offense level by 1 additional level based on the Defendant's timely notice of intent to plead guilty.

(g) Pursuant to U.S.S.G. § 4C1.1, the parties agree that if the Defendant has zero criminal history points, the offense level should be decreased by two points because he would be an eligible zero-point offender.

(h) Pursuant to U.S.S.G. § 5E1.1, the Defendant shall pay restitution in a total amount not less than the sum of the amounts set forth as follows:

1. $3,000 for the EIDL advance, $149,900 for the principal balance, and interest through the date of entry of this plea agreement to the SBA for EIDL No. 3300738057;

2. $145,833.34 representing the principal balance, $7,291.67 for the lender processing fee, and interest through the date of entry of this plea agreement to Square Capital for PPP loan No. 6209747307;

3. $208,333.00 for the principal balance and interest through the date of entry of the plea agreement to Cross River Bank for PPP loan No. 3148787800;

4. $416,666.67 for the principal balance and interest through the date of entry of the plea agreement to the Cross River Bank for PPP loan No. 2196138005;

5. $145,833.34 for the principal balance, $7,291.67 for the lender processing fee, and interest through the date of entry of this plea agreement to Square Capital for PPP loan No. 7594168600; and

6. $20,832 for the principal balance and $2,500 for the lender processing fee to the Prestamos CDFI for PPP loan No. 4886878904.

6. The Defendant reserves his right to request a mitigating role adjustment under U.S.S.G. § 3B1.2.

7. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4.

8. The Defendant will not file a motion for a decrease in the offense level based on a departure motion pursuant to U.S.S.G. Chapter 5, Parts H or K.

9. The Defendant waives the right to appeal the guilty plea and conviction. The Defendant waives the right to appeal any determination made by the Court at sentencing with the following two exceptions: (a) that the Defendant may appeal the Court's ruling regarding the applicability of U.S.S.G. § 3B1.2, the mitigating role adjustment, and (b) that the Defendant may appeal any aspect of the sentence if the length of the term of

imprisonment exceeds the advisory sentencing guidelines range as determined by the Court at sentencing. Except for claims of ineffective assistance of counsel, the Defendant also waives the right to attack collaterally the guilty plea, conviction, and sentence.

10. The Defendant consents to the forfeiture to the United States, by administrative or judicial proceedings, of all right, title, and interest in the property listed in the forfeiture allegation of the Information. The Defendant agrees that this property is subject to forfeiture because a nexus exists between the property and the offense to which he is pleading guilty, as set forth in the forfeiture allegation of the Information. The Defendant also consents to the imposition of a forfeiture money judgment in the amount of $1,090,398.35, which represents the amount of proceeds that the Defendant obtained as a result of the offense to which he is pleading guilty and/or the value of property involved therein, and which amount shall be offset by the net proceeds realized from the sale or disposition of any directly forfeited property.

11. The Defendant consents to the entry of a Preliminary Order of Forfeiture, pursuant to Federal Rule of Criminal Procedure 32.2, and agrees take any steps necessary to assist the government in effectuating the surrender and forfeiture of the assets identified herein, including but not limited to executing any documents necessary for the surrender and transfer of title to the United States. The Defendant agrees not to file a claim or petition seeking remission or otherwise contesting the forfeiture of the assets identified herein in any administrative or judicial proceeding, or to assist any other person or entity with doing so, and agrees to withdraw, and hereby withdraws, any such claim or petition that he/she

already has submitted. If the Defendant fails to surrender and forfeit the assets identified for forfeiture herein and/or fails to pay in full the forfeiture money judgment, he consents to the forfeiture of any other property of his up to the amount of the value of the assets identified for forfeiture and/or up to the amount of the forfeiture money judgment, pursuant to 21 U.S.C. § 853(p), and further agrees that the conditions of 21 U.S.C. § 853(p)(1)(A)-(E) have been met. The Defendant voluntarily and knowingly waives all provisions in Rule 32.2 pertaining to notice and/or the timing of forfeiture orders. The Defendant also waives his/her right, if any, to a jury trial on forfeiture and all constitutional, legal, or equitable defenses to the forfeiture. The Defendant agrees that this forfeiture is separate and distinct from any restitution, fine, or penalty ordered by the Court and shall survive bankruptcy.

12. The Defendant abandons any interest in, and consents to the official use, destruction, or other disposition of, any item obtained by any law enforcement agency during the course of the investigation, unless an item is specifically provided for in another provision of this Agreement. The Defendant also waives any notice of a proceeding to implement the official use, destruction, or other disposition of any item abandoned under this paragraph.

13. The Defendant agrees to pay restitution in the amounts and to the victims set forth in Paragraph 5(h) of this Agreement, pursuant to 18 U.S.C. § 3663(a)(3). The Defendant agrees that the restitution amount may include restitution for all losses caused by the Defendant's criminal conduct or through the commission of the offense of conviction,

even if such losses resulted from crimes not charged or admitted by Defendant in the factual basis.

14. The Defendant agrees to cooperate fully with the United States Attorney's Office by making a full and complete financial disclosure. Within 30 days of pleading guilty, the Defendant agrees to complete, sign, and return to the United States Attorney's Office a financial disclosure statement or affidavit disclosing all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. Upon request, the Defendant agrees to provide the United States Attorney's Office with records verifying his/her financial information or with any releases required to obtain such records, with such releases being valid for a period extending 90 days from the date of sentencing. The Defendant will submit to an examination, which may be taken under oath and may include a polygraph examination. Prior to sentencing, the Defendant agrees to notify the United States Attorney's Office and obtain its consent before transferring, encumbering, or disposing of any interest in property with a value exceeding $1,000.00 owned or controlled directly or indirectly, individually or jointly, by the Defendant, including any interest held or owned under any name, including trusts, partnerships, and corporations. If the Defendant is ever incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a

schedule of payments. The Defendant agrees to notify the United States Attorney's Office of any material changes in his/her economic circumstances, as described in 18 U.S.C. § 3664(k), which occur prior to sentencing, within seven days of the event giving rise to the changed circumstances. If the Defendant fails to comply with any of the provisions of this paragraph, the United States, in its discretion, may refrain from moving the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may argue that the Defendant should not receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a).

15. The Defendant understands and agrees that, pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, the Defendant agrees that it is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. The Defendant waives any requirement for demand of payment on any fine, restitution, or assessment imposed by the Court and agrees that any unpaid obligations will be submitted to the United States Treasury for offset. The Defendant waives any defense or objection to any action to enforce the collection of financial obligations to be imposed in connection with this prosecution, including, but not limited to, collection procedures authorized by the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, et seq., 18 U.S.C. § 3664, or 18 U.S.C. § 3613. The Defendant expressly authorizes the United States to obtain the Defendant's credit reports at any time. The Defendant authorizes the

U.S. District Court to release funds posted as security for the Defendant's appearance bond in this case, if any, to be applied to satisfy the Defendant's financial obligations contained in the judgment of the Court. The Defendant authorizes the United States Attorney's Office to inspect and copy all financial documents and information held by the U.S. Probation Office.

16. By no later than ten days prior to sentencing, the Defendant agrees to pay $30,000, by certified check or money order made payable to the "Clerk, U.S. District Court," to be deposited into the Court registry until the date of sentencing and, thereafter, to be applied to satisfy the financial obligations of the Defendant, pursuant to the judgment of the Court.

17. If the Defendant violates any part of this Agreement, the United States may void this Agreement and seek an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.

18. This document contains the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky and the Defendant. The United States has not made any other promises to the Defendant.

19. This Agreement does not bind the United States Attorney's Offices in other districts, or any other federal, state, or local prosecuting authorities.

20. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this

Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

CARLTON S. SHIER, IV
UNITED STATES ATTORNEY

Date: 12/5/2024 By: Brittany Dunn-Pirio
Brittany Dunn-Pirio
Assistant United States Attorney

Date: 12-5-24
Joshua Daniel Pennington
Defendant

Date: 12-4-24
Jennifer Nicholson
Attorney for Defendant