

JAN 29 2018

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:17-cr-00080-MOC-DLH-1

UNITED STATES OF AMERICA,)	
)	
)	RULE 11 and RULE
v.)	11(C)(1)(C) INQUIRY and
)	ACCEPTANCE OF
)	PLEA
PHILLIP SAMPSON ARMACHAIN Sr.)	
_____)	

The Court is advised that you wish to change your plea of not guilty to guilty in this case and have filed a written Plea Agreement under Rule 11(c)(1)(C), which means that it is only binding on you if Judge Cogburn accepts that plea and the recommendation contained therein as to sentencing. If Judge Cogburn accepts the plea, the Court will not impose any sentence other than that agreed by the parties in the plea agreement. Do you understand that? ^{yes} Here, the binding provisions are as follows:

6. The parties are entering into this Plea Agreement pursuant to Federal Rule of Criminal Procedure Rule 11(c)(1)(C), and are agreeing that the appropriate sentence is one within the applicable Sentencing Guideline range. If the Court accepts this Plea Agreement, the Court will be bound to impose a sentence within that range, and the defendant preserves his right to appeal and to withdraw from this Plea Agreement if the Court should announce its intention to impose a sentence greater than that range.
7. Pursuant to Rule 11(c)(1)(C), the parties agree that the Total Adjusted Offense Level is 19, that the Criminal Offense Category is 1, and that the applicable Sentencing Guideline range is 30 to 37 months.

The Court is required by the Federal Rules of Criminal Procedure to inquire and advise you concerning such request. The Court must ask you some questions and you

will be required to personally respond to those questions under oath. I will now ask the Clerk to administer the oath to you.

1. Do you understand that you are now under oath and that you are required to give truthful answers to the questions that I am about to ask you?

YES: X NO: _____

2. Do you understand that if you give false information under oath you may be prosecuted for perjury or false statements?

YES: X NO: _____

3. Are you able to hear and understand my questions?

YES: X NO: _____

4. Please state your full name, age, and education.

Phillip Sampson Avmachenski 51

Graduate of Sylvia Webster H.H. School in 1986
Southwestern Community College
State Cert. as a paramedic
2002

5. a) Are you presently under the influence of any intoxicating liquors?

YES: _____ NO: X

Perdue Structural Pest Control
Completed course in termite
& pest control. Received two
pest controller licenses
after 2002

b) Are you presently under the influence of any narcotics?

YES: _____ NO: X

c) Are you presently under the influence of any medicines or drugs of any kind?

YES: _____ NO: X

d) Have you taken any medications within the last 48 hours?

YES: _____ NO: X

If so, what medications have you taken within the last 48 hours?

6. a) Are you currently under the care of a physician?

YES: X NO: _____

I have seen a doctor at the jail but I am not currently seeing a physician

b) Have you ever been treated for mental illness?

YES: _____ NO: X

c) Have you ever been treated for substance abuse?

YES: _____ NO: X

7. Is your mind clear and do you understand that you are here today to enter a guilty plea that may not later be withdrawn?

YES: X NO: _____

8. Have you and your attorney reviewed the Second Superseding Bill of Indictment and have you and your attorney discussed your decision to change your plea to guilty?

YES: X NO: _____

9. I am advised that you are pleading guilty to Count Five as contained the Second Superseding Bill of Indictment.

Are you pleading guilty to that offense or offenses?

YES: X NO: _____

The law requires that I advise you of the essential elements of such offenses. Before I advise you of those elements, I am going to read to you the statute that is alleged that you have violated.

Count Five: 18 U.S.C. § 1589(a) Forced Labor

18 U.S.C. § 1589(a)

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means--

(3) by means of the abuse or threatened abuse of law or legal process;

shall be punished as provided under subsection (d).

(d) Whoever violates this section shall be fined under this title, imprisoned not

more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

Elements:

1. That you knowingly obtained the labor or services of a person, that being A.B. as described in the Second Superseding Bill of Indictment;
2. That you did so by means of the abuse or threatened abuse of law or legal process; and
3. That you did so knowingly, intentionally, willfully, and unlawfully.

Penalty:

I am also required by law to advise you concerning the maximum and minimum penalties prescribed by law for such an offense or offense(s). Those maximum and minimum penalties are as follows:

A term of imprisonment of not more than 20 years, a fine not to exceed the sum of \$250,000, or both, a term of supervised release of not more than 3 years and a \$100 special assessment.

10. a) Do you fully understand the charges against you, including the maximum and minimum penalties?

YES: x NO:

- b) Do you understand each element of the offense charged?

YES: x NO:

- c) Do you understand that upon a plea of not guilty the Government would be required to prove each element of the offense charged beyond a reasonable doubt?

YES: x NO:

d) Do you understand that the Government would be required to prove that the unlawful act(s) were committed knowingly, willfully, intentionally, and unlawfully?

YES: X NO:

11. If the Court imposes an active term of imprisonment of more than one year, the Court is required also to order a term of what is called "supervised release," and a term of supervised release may be ordered in other circumstances. This means that after a defendant is released from prison, there are certain terms and conditions they will be required to follow. The length of supervised release usually ranges from one to five years, but may be more or less than that for certain offenses. Do you understand the terms "supervised release" as the Court has explained them to you?

YES: X NO:

12. Do you understand that if you violate the terms and conditions of supervised release, you could be returned to prison for an additional period of time?

YES: X NO:

13. Do you understand that parole has been abolished in the federal system, and if you are sentenced to a term of imprisonment, you will not be released on parole?

YES: X NO:

14. Have you and your attorney discussed how the United States Sentencing Guidelines may apply in your case?

YES: X NO:

15. Do you understand how these Guidelines may apply to you?

YES: X NO:

16. Do you understand that the Court will ~~not~~ be bound by the Sentencing Guidelines ~~and~~ ~~but nonetheless~~ must consult those Guidelines and ~~take them into account when~~ ~~sentencing?~~ *as agreed upon in the plea agreement, but apply them at sentencing*

YES: X NO:

17. Do you understand that under this agreement, the sentence the Court will impose will be the one you agreed to or the plea will be rejected?

YES: X NO:

18. Do you understand that in imposing the sentence, the Court will follow the procedural components of the Guidelines system even though you, the Government, and the Court have agreed to a sentence, which means that the Probation Office will prepare a presentence report which contains Guidelines calculations and both you and the Government will have an opportunity to object to any alleged deficiencies in the report?

YES: X NO:

19. Do you understand that the Court has the discretion, in appropriate circumstances, to order you to make restitution to any victim of any offense. The Court may also, in the appropriate circumstance, require you to pay the costs of your confinement in prison or costs of supervision or special investigative costs or all of these costs. The Court may also require you to forfeit property involved in the offense. Do you understand these requirements as I have explained them to you?

YES: X NO:

20. Do you understand you have a right to plead not guilty, to have a speedy trial before a judge and jury, to summons witnesses to testify in your behalf, and to confront witnesses against you?

YES: X NO:

21. Do you understand that if you exercise your right to trial you would be entitled to the assistance of an attorney, that you would not be required to testify, that you would have the right to voluntarily testify and to present evidence at trial, to compel the attendance of witnesses, that you would be presumed innocent, and the burden would be on the Government to prove your guilt beyond a reasonable doubt. Do you understand all of these rights?

YES: X NO:

22. Are you, in fact, guilty of the count in the second superseding bill of indictment to which you have come to court today to plead guilty? That is, did you commit the act(s) described in Count Five of the Second Superseding Bill of Indictment?

YES: X NO:

23. Is your plea of guilty voluntary and not the result of coercion, threats, or promises?

YES: X NO:

24. Do you understand that entering a plea of guilty to a felony charge may deprive you, at least for a time, of certain civil rights such as the right to vote, hold a public office, serve on a jury and possess a firearm?

YES: X NO:

25. Is your guilty plea the result of prior discussions between your attorney and the attorney for the Government?

YES: X NO:

26. Have you read (or had read to you) the Plea Agreement, has your attorney explained that agreement to you, and do you fully understand all terms of that agreement between you and the Government?

YES: X NO:

27. Would the Government summarize the essential terms of that agreement.

Do you understand those to be the essential terms of your Plea Agreement with the Government?

YES: X NO:

Is that your signature on the Plea Agreement?

YES: X NO:

28. Is there a factual basis for your plea? *yes*

Do you ~~agree that such constitutes a factual basis for your plea of guilty today?~~ *admit that the facts in the factual basis document as stated are all true & accurate?*

YES: X NO:

29. Is your willingness to plead guilty the result of prior discussions between you and your attorney?

YES: X NO: _____

30. Have you had ample time to discuss with your attorney any possible defense that you may have to the charges and have you told your attorney everything that you want your attorney to know about this case?

YES: X NO: _____

31. Are you entirely satisfied with the services of your attorney?

YES: X NO: _____

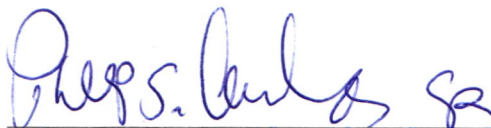
32. Are you telling the Court that you know and understand fully what you are doing; that you have heard and understood all parts of this proceeding; and that you want the Court to accept your plea of guilty?

YES: X NO: _____

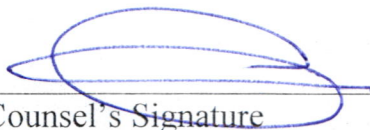
33. Do you have questions, statements, or comments to make about anything brought up or discussed in the course of the proceeding? If you do, I will be happy to try and answer your questions or I will be glad to hear any statements or comments that you want to make.

YES: _____ NO: X

On advice and in the presence of counsel, Defendant respectfully requests the Magistrate Judge to accept his or her guilty plea. By signing below, Defendant and counsel certify and affirm that the answers given to the questions propounded by the Court, as recorded above and on the record, are true and accurate to the best of their knowledge.



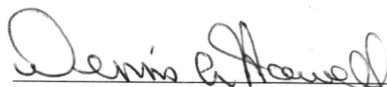
Defendant's Signature



Counsel's Signature

Based upon the representations and answers given by Defendant (and counsel) in the foregoing Rule 11 proceeding, the Court finds that Defendant's plea is knowingly and voluntarily made; and that Defendant understands the charges, potential penalties, and consequences of said plea. The Court further finds that Defendant's plea is supported by an independent basis in fact containing each of the elements of the offense charged against Defendant in Count Five of the Second Superseding Bill of Indictment. Based thereon Defendant's plea is hereby accepted. In addition, I recommend that the District Court accept Defendant's plea and enter judgment thereon. If you have any objection to my recommendation, you have 14 days to file any such objections in writing with this Court. If you fail to object within that 14 day period it will be deemed a waiver of any such objection.

SO ORDERED, this the 29th day of January 2018.



DENNIS L. HOWELL
UNITED STATES MAGISTRATE JUDGE