

FILED

CHAD A. ROCHE
CLERK - SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

DATE: 11/12/14
TIME: 3:00
BY: JKL

THE STATE OF ARIZONA,

Plaintiff,

v.

MILTON RAY FENDER
(d/o/b 7/13/1950),

Defendant.

Case No: S 1100 CR 2014 01434

PLEA AGREEMENT

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(Assigned to the Hon. Dwight P. Callahan)

The State of Arizona and the Defendant hereby agree to the following disposition of this case:

Plea: The defendant agrees to plead GUILTY to:

Amended Count 1, Attempted Illegal Voting, a Class 6 undesignated offense, in violation of A.R.S. §§ 16-1016(2), 13-701, 13-702, 13-707, 13-801 and 13-802, committed November 2, 2010.

This is a non-dangerous, non-repetitive offense under the criminal code.

Terms: On the following understandings, terms and conditions:

1. The crime carries a presumptive sentence of 1 year; a minimum sentence of .5 years (.33 years if trial court makes exceptional circumstances finding); and a maximum sentence of 1.5 years (2 years if trial court makes exceptional circumstances finding). Probation IS available. Restitution of economic loss to the victim and waiver of extradition for probation revocation procedures are required. The maximum fine that can be imposed is \$150,000.00 plus an 84% surcharge (plus a \$20.00 probation surcharge pursuant to A.R.S. § 12-114.01 and a \$13.00 assessment pursuant to A.R.S. § 12-116.04). If the defendant is sentenced to prison, the defendant shall also be sentenced to serve a term of community supervision equal to one-seventh of the prison term to be served consecutively to the actual period of imprisonment. If the defendant fails to abide by the conditions of community supervision, the defendant can be required to serve the remaining term of community supervision in prison. Special conditions regarding sentence imposed by statute (if any) are:

- A. Pursuant to A.R.S. § 12-116.04, the penalty assessment shall be forwarded to the treasurer of Pinal County, and \$4.00 shall be forwarded by that treasurer

to the agency which investigated the case, to wit: The Arizona Attorney General's Office.

- B. Pursuant to A.R.S. § 13-610, the defendant must submit to Deoxyribonucleic Acid (DNA) testing for law enforcement identification purposes.
- C. Pursuant to A.R.S. § 13-901(F), if sentenced to a term of probation, the defendant may be required to be imprisoned for up to one year in a county jail at the discretion of the court.

 2. The parties stipulate to the following additional terms, subject to court approval at sentencing:

- A. The Defendant shall be sentenced to a term of probation.
- B. The offense may be designated a misdemeanor by the Court at the time of sentencing. If not designated a misdemeanor at the time of sentencing, the offense may only be designated a misdemeanor upon successful completion of probation, including the satisfaction of all financial terms of probation to include fines and fees.
- C. The Defendant agrees to pay a fine in the amount of \$2,500.00 with said funds to be paid to the Attorney General's Anti-Racketeering Fund as set forth in A.R.S. §13-811(B) plus a \$20.00 probation surcharge, and \$13.00 penalty assessment for a total financial obligation of \$2,533.00. The parties have reached no agreement regarding the imposition of the 84% surcharge to the fine; if it is imposed by the Court, the total financial obligation would increase to \$4,633.00.
- D. In addition to the financial obligations, the Defendant also agrees to complete no less than 100 hours of community restitution while on probation. Community restitution hours completed after charges were filed but prior to sentencing may be credited against this requirement at the discretion of the Court, if proof is presented at the time of sentencing.
- E. Independent of the designation of the offense as a misdemeanor or felony, pursuant to A.R.S. §13-603(G) the Court shall revoke the Defendant's voter registration at the time of sentencing. The Defendant agrees not to re-register to vote unless the Defendant is discharged from probation, the offense has been designated a misdemeanor, and, if applicable, the Court has restored the Defendant's Right to Vote as set forth in A.R.S. §13-905(B).

 3. The following charges are dismissed, or if not yet filed, shall not be brought against the defendant by the Arizona Attorney General's Office:

None.

 4. This agreement serves to amend the complaint, indictment or information to charge the offense to which the defendant pleads, without the filing of any additional

pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.

MF 5. If the defendant is charged with a felony, he/she hereby waives his/her rights to a preliminary hearing or other probable cause determination on the charges to which he/she pleads. The defendant agrees that this agreement shall not be binding on the State should the defendant be charged with or commit a crime between the time of this agreement and the time for sentencing in this cause; nor shall this agreement be binding on the State until the State confirms all representations made by the defendant and his/her attorney, to-wit:

The Defendant avows that he has no prior felony convictions, diversions or deferred prosecutions, and was not on probation, parole, community supervision, work furlough, work release, or any other form of court-supervised monitoring at any time during the time periods of any count alleged in the indictment.

If the defendant fails to appear for sentencing, the court may disregard the stipulated sentence and impose any lawful sentence which is the same as or exceeds the stipulated sentence in the plea agreement. In the event the court rejects the plea, or either the State or the defendant withdraws the plea, the defendant hereby waives and gives up his/her right to a preliminary hearing or other probable cause determination on the original charges.

MF 6. Unless this plea is rejected by the court or withdrawn by either party, the defendant hereby waives and gives up any and all motions, defenses, objections, or requests which he/she has made or raised, or could assert hereafter, to the court's entry of judgment against him/her and imposition of a sentence upon him/her consistent with this agreement. By entering this agreement, the defendant further waives and gives up the right to appeal (A.R.S. §13-4033) and agrees that the only available review is pursuant to Rule 32, Rules of Criminal Procedure.

MF 7. The parties hereto fully and completely understand and agree that by entering into a plea agreement, the defendant consents to judicial fact-finding by preponderance of the evidence as to any aspect or enhancement of sentence, and that any sentence either stipulated to or recommended herein in paragraph 2 is not binding on the court. In making the sentencing determination, the court is not bound by the rules of evidence. If after accepting this plea the court concludes that any of the plea agreement's provisions regarding the sentence or the term and conditions of probation are inappropriate, it can reject the plea. If the court decides to reject the plea agreement provisions regarding the sentencing, it must give both the state and the defendant an opportunity to withdraw from the plea agreement. In case this plea agreement is withdrawn, all original charges will automatically be reinstated. The defendant in such case waives and gives up his/her right

to a probable cause determination on the original charges.

MP 8. If the court decides to reject the plea agreement provisions regarding sentencing and neither the state nor the defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein in paragraph 2 is not binding upon the court, and the court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.

MP 9. This plea agreement does not in any way compromise, or provide any protection or defense with regard to, any civil action, whether by or on behalf of a victim or any government entity, and whether previously or later filed, including but not limited to an action pursuant to A.R.S. Title 13, Chapter 23 or §§ 13-4301-4315; nor does it abrogate or limit the provisions of A.R.S. § 13-2314(H) or A.R.S. § 13-4310(C), or in any other way adversely affect the State in any current or future forfeiture proceeding or other civil action pursuant to A.R.S. § 13-2314, § 13-4301-4315, or § 32-1993, if applicable.

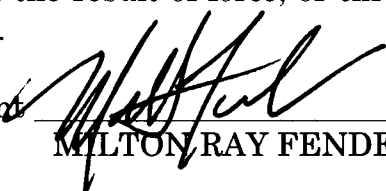
MP 10. I understand that if I am not a citizen of the United States that my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.

MP 11. I have read and understand all of the provisions on all of the pages of this agreement, and I have discussed the case and my constitutional rights with my lawyer. I understand that, by pleading guilty, I will be waiving and giving up my right to a determination of probable cause; to a trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence and witnesses on my behalf; my right to remain silent, my privilege against self-incrimination, presumption of innocence, my right to a trial by jury on facts used to aggravate a sentence, and my right to appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that if, as part of this plea agreement, I am granted probation by the court, the terms and conditions thereof are subject to modification at any time during the period of probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced to any term or terms stated above in paragraph 1, without limitation.

...

I have personally and voluntarily placed my initials in each of the above boxes and signed the signature line below to indicate I read, or had read to me, understood and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement. My plea is voluntary and is not the result of force, or threat, or promises other than those contained in this plea agreement.

Date 11/17/14

Defendant 

MILTON RAY FENDER

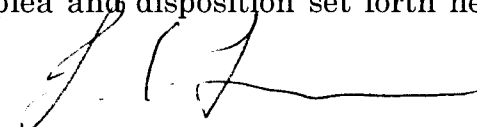
I have discussed this case with my client in detail and advised him/her of his/her constitutional rights and all possible defenses. I believe that the defendant's plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date 11/17/14

 d9104
URSULA H. GORDWIN #019104
Attorney for Defendant

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date 11/17/14


TODD C. LAWSON #020216
Assistant Attorney General