

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11 CR 93

FILED  
IN COURT  
ASHEVILLE, N.C.

DEC 5 2011

U.S. DISTRICT COURT  
W. DIST. OF N.C.

UNITED STATES OF AMERICA, )

Vs. )

NICHOLAS DIMITRIS. )  
\_\_\_\_\_ )

RULE 11 INQUIRY and  
ORDER OF ACCEPTANCE  
OF PLEA

The court is advised that you have filed a written plea agreement with the government in this case. The court is required by the Federal Rules of Criminal Procedure to inquire and advise you concerning the agreement. 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. Do you understand that you have the right to have a United States District Judge conduct this proceeding?

YES:  X  NO: \_\_\_\_\_

5. Recognizing your right to proceed before a district judge, do you expressly consent to proceed in this court, that is, before a United States Magistrate Judge?

YES: X

NO: \_\_\_\_\_

6. Please state your full name, age, and education. *graduated from Avon Central High School in Avon, New York in 1994. Then did a correspondence course out of Beacon University in Colabor Georgia. The defendant says he has enough credits for a Bachelor Degree in Theology.*
- Nicholas Edward Dimitov 37
7. Are you presently under the influence of any intoxicating liquors? *Bochelor Degree in Theology.*

YES: \_\_\_\_\_

NO: X

Are you presently under the influence of any narcotics?

YES: \_\_\_\_\_

NO: X

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

YES: \_\_\_\_\_

NO: X

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?

8. Are you currently under the care of a physician?

YES: \_\_\_\_\_

NO: X

Have you ever been treated for mental illness?

YES: \_\_\_\_\_

NO: X

Have you ever been treated for substance abuse?

YES: \_\_\_\_\_

NO: X

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 Is your mind clear and do you understand that you are here today to enter a guilty plea that cannot later be withdrawn?

YES: X

NO: \_\_\_\_\_

10. Have you and your attorney reviewed the bill of information and have you and your attorney reviewed the plea agreement?

YES: X

NO: \_\_\_\_\_

11. From my examination of the plea agreement I am advised that you are pleading guilty to count one as contained in the bill of information.

Read count of the bill of information to which the defendant is pleading guilty. Are you pleading guilty to that offense(s)?

YES: X

NO: \_\_\_\_\_

The law requires that I advise you of the essential elements of such an offense. The elements of the offenses to which you are pleading guilty are as follows:

Count One:

**18 USC § 371**

**Conspiracy to Commit Offense or to Defraud United States**

**If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than 5 years' or both.**

**Elements:**

Count One:

1. That two or more persons conspired together to commit any offense against the United States, that being a scheme or artifice to defraud and ~~that~~ <sup>in that</sup> in the scheme or artifice to defraud:

a) that you, along with employees of Pisgah Community Bank, with intent to injure and defraud Pisgah Community Bank, did willfully embezzle, abstract, purloin and willfully misapply any of the moneys, funds, or credits of Pisgah Community Bank, in that you did procure and obtain as a "straw borrower" a series of "straw borrower" loans and that you recruited other persons to obtain "straw borrower" loans

From Pisgah Community Bank as "straw borrowers" and as is in the bill of information in violation of Title 18, USC § 656; and

2. That you willfully became a member of that conspiracy;
3. That one or more of the conspirators, during the existence of the conspiracy, knowingly committed at least one of the overt acts described in the bill of information;
4. That such overt act or acts was or were knowingly committed at or about the time alleged in the bill of information in any effort to effect or accomplish some object or purpose of the conspiracy; and
5. That all such acts were done knowingly, intentionally, unlawfully and willfully.

**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:

The maximum possible penalty for this offense is a term of imprisonment of not more than 5 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.

12. Have you been advised by your attorney that if you are not a citizen of the United States, your guilty plea may have adverse immigration consequences?

YES:  X

NO: \_\_\_\_\_

13. Have you been advised by your attorney that if you are not a citizen of the United States, your guilty plea may result in deportation or removal from the United States?

YES:  X

NO: \_\_\_\_\_

14. 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~~s~~ 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: \_\_\_\_\_

15. 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: \_\_\_\_\_

16. 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: \_\_\_\_\_

17. 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: \_\_\_\_\_

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

YES: X NO: \_\_\_\_\_

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

YES: X NO: \_\_\_\_\_

20. Do you understand that the court will not be bound by the Sentencing Guidelines but nonetheless must consult those Guidelines and take them into account when sentencing?

YES:   X                        NO:       

21. Do you understand that the sentence the Court will impose will be within the statutory limits and in the court's sound discretion and could be greater or less than the sentence as provided for by the Guidelines?

YES:   X                        NO:       

22. Do you understand that the court will follow the procedural components of the Guidelines system, 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:       

23. Do you understand that in some circumstances you may receive a sentence that is different - that is, either higher or lower - than that called for by the Guidelines?

YES:   X                        NO:       

24. Do you understand that if the sentence is more severe than you expect or the court does not accept the Government's sentencing recommendation, you will still be bound by your plea and have no right to withdraw the plea of guilty?

YES:   X                        NO:       

25. Do you understand that the court has the discretion, in appropriate circumstances, to order you to make restitution to any victim of the 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:

26. 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: \_\_\_\_\_

27. 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 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: \_\_\_\_\_

28. Do you understand that by entering a plea of guilty you forfeit and waive (or give up) your right to plead not guilty, to a trial by jury and at that trial the right to assistance of counsel, the right to confront and cross-examine witnesses against you, and the right against compelled self-incrimination or any other rights associated with a jury trial. Do you understand that by entering this plea of guilty you are waiving (or giving up) all of these rights. There will be no trial. If your plea of guilty is accepted, there will be one more hearing where the district court will determine:

(a) Whether there is a factual basis for your plea; and

(b) What sentence to impose.

Do you understand that?

YES:  X  NO: \_\_\_\_\_

29. Are you, in fact, guilty of the count in the bill of information to which you have come to court today to plead guilty? That is, did you commit the act(s) described in count one of the bill of information ?

YES:  X  NO: \_\_\_\_\_

30. Is your plea of guilty voluntary and not the result of coercion, threats or promises other than those contained in the written plea agreement?

YES:  X  NO: \_\_\_\_\_

31. 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: \_\_\_\_\_

32. Is your willingness to plead guilty the result of prior discussions between your attorney and the attorney for the government?

YES: X NO: \_\_\_\_\_

33. Have you and the government entered into a plea agreement in regard to this case? [Attorney for the government will present the terms of the agreement.]

YES: X NO: \_\_\_\_\_

34. Do you understand and agree with the terms of the plea agreement as they have just been explained to you?

YES: X NO: \_\_\_\_\_

35. Is this your signature on the plea agreement?

YES: X NO: \_\_\_\_\_

36. Have you discussed your right to appeal with your attorney, and do you understand the plea agreement in this case provides that you may not appeal your conviction or sentence or contest the same in a post-conviction proceeding unless it is on the grounds of prosecutorial misconduct or ineffective assistance of counsel?

YES: X NO: \_\_\_\_\_

Do you knowingly and willingly accept this limitation on your right to appeal and to file post-conviction proceedings?

YES: X NO: \_\_\_\_\_

37. Counsel, have you reviewed each of the terms of the plea agreement with the defendant and are you satisfied that he(~~she~~) understands those terms?

YES: X NO: \_\_\_\_\_



38. Have you had ample time to discuss with your attorney any possible defenses 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: \_\_\_\_\_

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

YES: X NO: \_\_\_\_\_

40. 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?

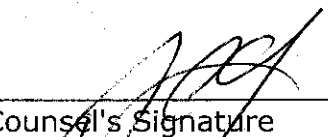
YES: X NO: \_\_\_\_\_

41. 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, the defendant respectfully requests the Magistrate Judge to accept his or her guilty plea. By signing below, the 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 the defendant (and counsel) in the foregoing Rule 11 proceeding, the court finds that the defendant's plea is knowingly and voluntarily made; and that the defendant understands the

charges, potential penalties, and consequences of said plea. Accordingly, the defendant's plea is hereby accepted.

**SO ORDERED**, this the 5<sup>th</sup> day of December 2011.

  
\_\_\_\_\_  
**DENNIS L. HOWELL**  
**UNITED STATES MAGISTRATE JUDGE**