

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-CR-243

DIANNE MCLESTER-HEIM,

Defendant.

PLEA AGREEMENT

1. The United States of America, by its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and Andrew J. Maier, Assistant United States Attorney, and the defendant, Dianne McLester-Heim, individually and by attorney Shane L. Brabazon, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

CHARGES

2. The defendant has been charged in a one-count indictment, which alleges a violation of Title 18, United States Code, Section 641.

3. The defendant has read and fully understands the charge contained in the indictment. She fully understands the nature and elements of the crime with which she has been charged, and the charge and the terms and conditions of the plea agreement have been fully explained to her by her attorney.

4. The defendant voluntarily agrees to plead guilty to the sole count in the Indictment, which reads as follows:

THE GRAND JURY CHARGES THAT:

*Between on or about August 9, 2019, and January 2, 2020, in the State
and Eastern District of Wisconsin,*

DIANNE L. MCLESTER-HEIM,

*willfully and knowingly stole, embezzled, and converted to her own use money of
the United States with a value of more than \$1,000, namely \$12,509.59 in medical
reimbursement claims, to which McLester-Heim was not entitled, paid by the
Department of Health and Human Services.*

In violation of Title 18, United States Code, Section 641.

5. The defendant acknowledges, understands, and agrees that she is, in fact, guilty of the offense described in paragraph 4. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt. The defendant admits that these facts are true and correct and establish her guilt beyond a reasonable doubt:

The defendant worked for the Oneida Tribe of Wisconsin as a Purchased-Referred Care (PRC) supervisor in the Community Health Center. The Community Health Center operates through a compact with Indian Health Services, which is a component of the United States Department of Health and Human Services. PRC provides direct payments or reimbursements for medical services received by eligible tribal members that must be received through medical providers outside the tribal medical center. PRC funds are limited to Indians who reside on reservations and are often rationed based on medical need. The money disbursed as PRC funds from Indian Health Services to the Community Health Center belongs to the United States government.

Beginning in early August 2019, and continuing through early January 2020, the defendant fraudulently directed PRC reimbursement payments to which neither herself nor certain members of her family were entitled. The defendant submitted falsified documents support the fraudulent reimbursement claims. The total amount issued to McLester-Heim was \$12,509.59. The Oneida Nation uses an internal accounting form known as the "A/P Check Request Form," which the PRC Supervisor uses to request payment for approved reimbursements of PRC services. On six separate occasions between August 9, 2019, and January 2, 2020, McLester-

Heim altered existing forms and supporting documents to justify payments from Oneida PRC funds to her personal checking account:

DATE	INTENDED RECIPIENT	ACTUAL RECIPIENT	AMOUNT
8/09/2019	S.M.	Dianne McLester-Heim via direct deposit	\$1386.56
8/23/2019	C.M.	Dianne McLester-Heim via direct deposit	\$1567.00
9/18/2019	S.H.	S.H. via check	\$2398.21
11/14/2019	Dianne McLester-Heim	Dianne McLester-Heim via direct deposit	\$1177.08
11/14/2019	Dianne McLester-Heim	Dianne McLester-Heim via direct deposit	\$1377.87
11/27/2019	S.M.	S.M. via check	\$3225.00
1/2/2020	Dianne McLester-Heim	Dianne McLester-Heim via direct deposit	\$1377.87

Regarding the check issued to S.H., the check was endorsed by S.H. “pay to the order of Dianne McLester-Heim,” and then endorsed by McLester-Heim.

Regarding the check issued to S.M., the check was endorsed with an illegible signature and was cashed.

After the Oneida Nation discovered the thefts, an investigator with the Oneida Nation interviewed McLester-Heim on March 25, 2020. In this interview McLester-Heim denied making fraudulent PRC claims. The next day, the investigator returned and confronted her with copies of the “A/P Check Request” forms and supporting documents for the six thefts. McLester-Heim confirmed that the documentation was fraudulent, and said she had “stuff that my family is going through.” None of the PRC payments received by the defendant were for legitimate, reimbursable medical services, and she converted the funds to her own use.

This information is provided for the purpose of setting forth a factual basis for the plea of guilty. It is not a full recitation of the defendant’s knowledge of, or participation in, this offense.

PENALTIES

6. The parties understand and agree that the offense to which the defendant will enter a plea of guilty carries a maximum term of ten years of imprisonment and up to a \$250,000 fine. Each count also carries a mandatory special assessment of \$100, and a maximum of three years of supervised release. The parties further recognize that a restitution order may be entered by the

court. The parties' acknowledgments, understandings, and agreements with regard to restitution are set forth in paragraph 26 of this agreement.

7. The defendant acknowledges, understands, and agrees that she has discussed the relevant statutes as well as the applicable sentencing guidelines with her attorney.

ELEMENTS

8. The parties understand and agree that in order to sustain the charge of Theft of Government Property under 18 U.S.C. § 641, the government must prove the following elements beyond a reasonable doubt:

First, the money as described in the indictment belonged to the United States; and

Second, the money had a value that exceeded \$1000; and

Third, the defendant stole, embezzled, and knowingly converted that money to the defendant's own use; and

Fourth, the defendant did so knowingly with the intent to deprive the owner of the use or benefit of that money.

SENTENCING PROVISIONS

9. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

10. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

11. The parties acknowledge and understand that prior to sentencing the United States Probation Office will conduct its own investigation of the defendant's criminal history. The parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties

may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of the defendant's criminal history.

Sentencing Guidelines Calculations

12. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

Relevant Conduct

13. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offense to which the defendant is pleading guilty.

Base Offense Level

14. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in the Indictment is 6 under Sentencing Guidelines Manual § 2B1.1(a)(2).

Specific Offense Characteristics

15. The parties acknowledge and understand that the government will recommend to the sentencing court that a 2-level increase is applicable to the offense level for the offense charged in the Indictment under Sentencing Guidelines Manual § 2B1.1(b)(1)(B), because the defendant's offense involved a total loss of more than \$6,500. The parties further acknowledge and understand

that the government will recommend to the sentencing court that a 2-level increase is applicable to the offense level for the offense charged in the Indictment under Sentencing Guidelines Manual § 3B1.3, because the defendant's offense involved an abuse of a position of trust. The parties acknowledge and understand that the defendant may not join in these recommendations.

Role in the Offense

16. Pursuant to Sentencing Guidelines Manual §§ 3B1.1 and 3B1.2, the parties agree to recommend to the sentencing court that no adjustment be given for an aggravating or mitigating role in the offense, as the defendant was neither an organizer, leader, manager, or supervisor, nor a minimal or minor participant.

Acceptance of Responsibility

17. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility.

Sentencing Recommendations

18. Both parties reserve the right to provide the district court and the probation office with any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

19. Both parties reserve the right to make any recommendation regarding any other matters not specifically addressed by this agreement.

20. The parties agree to recommend the court place the defendant on probation for a period of 3 years.

Court's Determinations at Sentencing

21. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 6 above. The parties further understand that the sentencing court will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

22. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

FINANCIAL MATTERS

23. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable in full upon entry of the judgment of conviction. The defendant further understands that any payment schedule imposed by the sentencing court shall be the minimum the defendant is expected to pay and that the government's collection of any and all court imposed financial obligations is not limited to the payment schedule. The defendant agrees not to request any delay or stay in payment of any and all financial obligations. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the court specifically directs participation or imposes a schedule of payments.

24. The defendant agrees to provide to the Financial Litigation Unit (FLU) of the United States Attorney's Office, upon request of the FLU during any period of probation or supervised release imposed by the court, a complete and sworn financial statement on a form

provided by FLU and any documentation required by the form. The defendant further agrees, upon request of FLU whether made before or after sentencing, to promptly: cooperate in the identification of assets in which the defendant has an interest, cooperate in the liquidation of any such assets, and participate in an asset deposition.

Fine

25. The parties agree to recommend to the sentencing court that no fine be imposed against the defendant.

Special Assessment

26. The defendant agrees to pay the special assessment in the amount of \$100 prior to or at the time of sentencing.

Restitution

27. The defendant agrees to pay restitution in the amount of \$12,509.59 to the Oneida Nation of Wisconsin. The defendant understands that because restitution for the offense is mandatory, the amount of restitution shall be imposed by the court regardless of the defendant's financial resources. The defendant agrees to cooperate in efforts to collect the restitution obligation. The defendant understands that imposition or payment of restitution will not restrict or preclude the filing of any civil suit or administrative action.

DEFENDANT'S WAIVER OF RIGHTS

28. In entering this agreement, the defendant acknowledges and understands that she surrenders any claims she may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charges against her, she would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the

government and the judge all must agree that the trial be conducted by the judge without a jury.

- b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and her attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.
- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.
- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and she would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on her own behalf. The defendant would be entitled to compulsory process to call witnesses.
- e. At such trial, defendant would have a privilege against self-incrimination so that she could decline to testify and no inference of guilt could be drawn from her refusal to testify. If defendant desired to do so, she could testify on her own behalf.

29. The defendant acknowledges and understands that by pleading guilty she is waiving all the rights set forth above. The defendant further acknowledges the fact that her attorney has explained these rights to her and the consequences of her waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

30. The defendant acknowledges and understands that she will be adjudicated guilty of the offense to which she will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

31. The defendant knowingly and voluntarily waives all claims she may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

Further Civil or Administrative Action

32. The defendant acknowledges, understands, and agrees that the defendant has discussed with her attorney and understands that nothing contained in this agreement, including any attachment, is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

GENERAL MATTERS

33. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

34. The parties acknowledge, understand, and agree that this plea agreement will be filed and become part of the public record in this case.

35. The parties acknowledge, understand, and agree that the United States Attorney's office is free to notify any local, state, or federal agency of the defendant's conviction.

36. The defendant understands that pursuant to the Victim and Witness Protection Act, the Justice for All Act, and regulations promulgated thereto by the Attorney General of the United States, the victim of a crime may make a statement describing the impact of the offense on the victim and further may make a recommendation regarding the sentence to be imposed. The defendant acknowledges and understands that comments and recommendations by a victim may be different from those of the parties to this agreement.

EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT

37. The defendant acknowledges and understands if she violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. The defendant further acknowledges and understands that the government's agreement to dismiss any charge is conditional upon final resolution of this matter. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of her breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and her attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that she continues to be subject to the terms of the proffer letter.

VOLUNTARINESS OF DEFENDANT'S PLEA

38. The defendant acknowledges, understands, and agrees that she will plead guilty freely and voluntarily because she is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

ACKNOWLEDGMENTS

I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 02/16/2021


DIANNE MCLESTER-HEIM
Defendant


I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 2-16-2021



SHANE L. BRABAZON
Attorney for Defendant

For the United States of America:

Date: 2/17/21


FRV MATTHEW D. KRUEGER
United States Attorney

Date: 2/17/21


ANDREW J. MAIER
Assistant United States Attorney