

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

United States of America

v.

Kevin Andrew Doyle

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

No. CR 12-02016-001-PHX-SRB

Jason D. Lamm (Retained)
Attorney for Defendant

USM#: 82842-308

THE DEFENDANT ENTERED A PLEA OF guilty on 11/30/12 to the one Count Information.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 18, U.S.C. §1001(a)(2), False Statements, a Class D Felony offense, as charged in the Information.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is hereby placed on probation for a term of **FIVE (5) YEARS** on Count 1.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: \$100.00 **FINE:** Waived **RESTITUTION:** \$0.00

The defendant shall pay a special assessment of \$100.00, which shall be due immediately.

The Court finds the defendant does have the ability to pay a fine but orders the fine waived in light of the substantial financial commitment required in order to comply with the special terms of probation.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than \$25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of \$100.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for the one Count Information.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address.

CONDITIONS OF SUPERVISION

It is the order of the Court that, pursuant to General Order 12-13, which incorporates the requirements of USSG §§5B1.3 and 5D1.2, you shall comply with the following conditions, of particular importance, you shall not commit another federal, state or local crime during the term of supervision and the defendant shall abstain from the use of illicit substances:

- 1) You shall not commit another federal, state, or local crime during the term of supervision.
- 2) You shall not leave the judicial district or other specified geographic area without the permission of the Court or probation officer.
- 3) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 4) You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 5) You shall support your dependents and meet other family responsibilities.
- 6) You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 7) You shall notify the probation officer at least ten days prior to any change of residence or employment.
- 8) You shall refrain from excessive use of alcohol and are subject to being prohibited from the use of alcohol if ordered by the Court in a special condition of supervision.
- 9) You shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 801) or any paraphernalia related to such substances, without a prescription by a licensed medical practitioner. The use or possession of medicinal marijuana, even with a physician's written certification, is not permitted. Possession of controlled substances will result in mandatory revocation of your term of supervision.
- 10) You shall not frequent places where controlled substances are illegally sold, used, distributed or administered, or other places specified by the Court.
- 11) You shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 12) You shall permit a probation officer to visit at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 13) You shall immediately notify the probation officer (within forty-eight (48) hours if during a weekend or on a holiday) of being arrested or questioned by a law enforcement officer.
- 14) You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
- 15) As directed by the probation officer, you shall notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm your compliance with such notification requirement.
- 16) If you have ever been convicted of a felony, you shall refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon. If you have ever been convicted of a misdemeanor involving domestic violence, you shall refrain from possession of any firearm or ammunition. Possession of a firearm will result in mandatory revocation of your term of supervision. This prohibition does not apply to misdemeanor cases that did not entail domestic violence, unless a special condition is imposed by the Court.
- 17) Unless suspended by the Court, you shall submit to one substance abuse test within the first 15 days of supervision and thereafter at least two, but no more than two periodic substance abuse tests per year of supervision, pursuant to 18 U.S.C. §§ 3563(a)(5) and 3583(d);
- 18) If supervision follows a term of imprisonment, you shall report in person to the Probation Office in the district to which you are released within seventy-two (72) hours of release.

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- 19) You shall pay any monetary penalties as ordered by the Court. You will notify the probation officer of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.
- 20) If you have ever been convicted of any qualifying federal or military offense (including any federal felony) listed under 42 U.S.C. § 14135a(d)(1) or 10 U.S.C. § 1565(d), you shall cooperate in the collection of DNA as directed by the probation officer pursuant to 42 U.S.C. § 14135a(a)(2).

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

1. You shall submit your person, property, house, residence, vehicle, papers, computers as defined in 18 U.S.C. 1030(e)(1), other electronic communications or data storage devices or media, or office, to a search conducted by a probation officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
2. You shall complete 50 hours of community service at the rate of not less than 8 hours per week as approved and directed by the probation officer, to be completed by 10/1/2013.

The defendant shall comply with the additional conditions set out on the Attachment to Judgment of Probation as stipulated in his plea agreement.

THE COURT FINDS that you have been sentenced in accordance with the terms of the plea agreement and that you have waived your right to appeal and to collaterally attack this matter. The waiver has been knowingly and voluntarily made with a factual basis and with an understanding of the consequences of the waiver.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

IT IS FURTHER ORDERED that the Clerk of the Court deliver two certified copies of this judgment to the United States Marshal of this district.

Date of Imposition of Sentence: **Monday, February 11, 2013**



Susan R. Bolton
United States District Judge

Date: February 13, 2013

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RETURN

I have executed this Judgment as follows: _____

Defendant delivered on _____ to _____ at _____, the institution designated by the Bureau of Prisons, with a certified copy of this judgment in a Criminal case.

_____ By: _____

United States Marshal

Deputy Marshal

Attachment to Judgment of Probation

1. Communication

- (a) Within 30 days of sentencing, defendant shall provide a letter or memo to his employees at Pentas Controls, LLC (hereinafter Pentas Controls) involved in any nuclear safety-related activities including but not limited to the repair, refurbishment or replacement of nuclear safety-related items, advising them that he violated U.S. Nuclear Regulatory Commission (NRC) requirements, and the consequences of his violation.
- (b) The letter or memo will inform employees of all possible avenues (including the NRC) that are available to raise safety-related concerns.

2. Training

- (a) Pentas Controls will create a written policy, develop training, and train employees involved in any nuclear-safety related activities including but not limited to the repair, refurbishment and replacement of nuclear safety-related items, addressing compliance with NRC regulations within 60 days of sentencing.
- (b) Within 90 days of sentencing, Pentas Controls shall hire an outside consultant approved by the NRC with expertise in NRC employee protection regulations to develop and conduct training modules, and provide recommendations for improvement. The training will include:
 - 1. Information regarding the important role an open and collaborative work environment plays in a positive safety culture as described in the NRC's Safety Culture Policy Statement, which applies to vendors and suppliers of nuclear safety-related items;
 - 2. The importance of providing complete and accurate information to the NRC, including a focus on the actions that led to the subject terms of probation and the lesson-learned from the precipitating event to include a review of the consequences of and the potential actions that NRC may take against an individual for willful violations;
 - 3. A focus on 10 CFR 50.5, "Deliberate Misconduct," 50.7, "Employee Protection," and 50.9, "Completeness and Accuracy of Information" to include potential enforcement outcomes when these requirements are violated either by an organization such as Pentas Controls or an individual, including:

- A. Defining key terms and including examples of discriminatory practices that address all categories of protected activities listed in 10 CFR 50.7; and
- B. Informing employees of their rights and avenues for raising nuclear safety concerns (including to the NRC) without fear of retaliation.
- C. The initial and follow-up refresher training, at its first offering, shall be conducted by the outside consultant; thereafter, it may be provided by Pentas Controls via a recording of the original training with appropriate updates.
- D. Within 180 days of sentencing, Pentas Controls will commence training after hiring the outside consultant referred to in paragraph 2(b) above.
- E. Pentas Controls will provide all new employees involved in any nuclear safety-related activities, including but not limited to the repair, refurbishment or replacement of nuclear safety-related items, with the training described in these terms of probation within 30 days of starting their employment at Pentas Controls.
- F. Pentas Controls will provide all employees involved in any nuclear safety-related related activities, including but not limited to the repair, refurbishment or replacement of nuclear safety-related items, with annual refresher training on the items described in the terms of probation.
- G. Training records shall be retained consistent with applicable Pentas Controls record retention policies and made available to the NRC upon request.

3. Organizational Changes

- (a) For the first 365 days of probation, defendant is banned from any decision-making authority under the purview of the NRC regulatory authority regarding **any nuclear safety-related activities** including but not limited to repair, refurbishment or replacement of nuclear safety-related items.
- (b) Defendant will be removed indefinitely as the individual responsible for QA oversight of activities regarding the repair, refurbishment or replacement of nuclear safety-related items. The NRC, in consultation with the U.S. Probation Office, will have the authority to reduce the restrictive nature of this term as appropriate.
- (c) For the first 365 days of probation, defendant is banned from any decision-making authority **over significant adverse actions involving employees working in any nuclear-safety related items and activities** including but not limited to the repair, refurbishment or replacement of nuclear safety-related items.
- (d) Pentas Controls will hire a Quality Assurance Manager to provide oversight for the repairs, refurbishment or replacement of all nuclear safety related items. Defendant

will not have any authority over the quality assurance activities in order to ensure sufficient independence from cost and schedule when opposed to safety considerations.

- (e) Pentas Controls will create a management review team composed of, at a minimum, an independent human resources specialist and a legal representative who are aware of NRC regulations and legal responsibilities, that provide oversight for any proposed adverse actions involving employees to include termination, loss of pay, written reprimands, and/or promotion to ensure that these are not taken in retaliation for an employee raising a nuclear safety-related concern.
- (f) Examples of actions that would affect nuclear safety-related activities that defendant cannot participate in for the length of this ban, i.e. for one year from the date that the terms of probation take effect include but are not limited to the following:
 - i. Defendant shall not direct or attempt to influence employee decisions regarding any activities involving the repair, refurbishment or replacement of nuclear safety-related items.
 - ii. Defendant shall not direct or attempt to influence activities related to the shipment of nuclear safety-related items to customers as repaired, refurbished or replaced items.
 - iii. Defendant shall not direct or attempt to influence the activities of the QA Manager.
 - iv. Defendant shall not direct the substantive activities of the third party consultant hired to provide any training as set forth in these terms of probation.
 - v. Defendant shall not direct or attempt to influence any activities which require compliance with NRC requirements.
 - vi. Defendant shall not direct or attempt to influence the implementation of any of these terms of probation.
- (g) Notwithstanding the limitations specified herein, defendant may participate in the business functions (i.e., non nuclear-safety related functions) of Pentas Controls that may include, but are not limited to, seeking clients, retaining clients and negotiating contracts. Additionally, defendant may retain responsibility for overall corporate policy and provide executive direction and guidance for the corporation as well as promulgate corporate policy through the company's senior management staff, except for policy affecting the quality assurance program.

4. Verification

- (a) In order to ensure that items identified in these terms of probation are subject to NRC inspection and will allow for appropriate NRC inspection follow-up.
 - 1. Within 60 days of sentencing, defendant will provide the NRC with a list of all licensees that Pentas Controls has provided services for within the last 24 months.

2. Within 60 days of sentencing, Pentas Controls will establish written procedures for the qualification of personnel involved in any nuclear safety-related activities including but not limited to those who repair, refurbish or replace nuclear safety-related items to ensure that only personnel that meet the requirements are permitted to perform these activities.

(b) Regarding the training required in Section 2 above:

1. Pentas Controls will provide documentation regarding the required training to the NRC for review upon request.
2. Pentas Controls will notify NRC Office of Enforcement when initial and refresher training (first occurrence) is completed.

(c) Pentas Controls will contract a third party auditor specializing in safety culture and approved by the NRC to conduct two audits of Pentas Controls's safety culture during the first 3 years of defendant's probation. The first such audit will be conducted within 12 months after the imposition of these terms of probation. The auditor will provide results of the audit to the NRC.

(d) Pentas Controls will contract a third party auditor specializing in QA and approved by the NRC to conduct an audit of Pentas Controls's QA program annually for five years. The first such audit will be conducted 12 months after the imposition of these terms of probation. The auditor will provide results of the audit to the NRC.

(e) Pentas Controls will maintain a log of all nuclear safety-related repairs that Pentas Controls engages in for five (5) years from the imposition of these terms of probation including the name of the entity that is requesting the repair, refurbishment or replacement of a nuclear safety-related item, the work to be done and the work logs for the work that is done on the items to repair or refurbish them. Annually during the terms of probation, a copy of the work log will be provided to the NRC, such that independent verification of the nuclear safety-related repairs may be conducted on the affected licensees.

5. Violations of Probation

(a) If there is evidence of wrongdoing by defendant and he is found in violation of the terms of these terms of probation by the District Court, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and defendant stipulate and agree that the Court shall impose the following penalties:

1. An immediately effective order issued by the NRC banning defendant's involvement in any NRC licensed activities for an additional term of 5 years, waiving all rights to appeal imposition of the order banning such activities.

2. A civil penalty in the amount of \$22,000 due in full, waiving all rights to appeal imposition of the civil penalty.
- (b) In addition, if there is evidence of wrongdoing by defendant and he is found in violation of these terms of probation, or any other terms of probation, by the District Court, defendant understands that he is subject to prosecution to the full extent of the law for any new violations of federal law or NRC regulations. With respect to Section 5(b) of these terms of probation, defendant expressly reserves his right to appeal the imposition of any additional penalty, beyond those set forth in Sections 5(a)(1) and 5(a)(2) immediately above, imposed under Title 18 of the United States Code and the United States Sentencing Guidelines.