

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE
WESTERN DISTRICT OF MISSOURI.

UNITED STATES OF AMERICA, Plaintiff,

vs

T. J. PENDERGAST, R. E. O'MALLEY, A. L. McCORMACK, Defendants.

No. 14,912.

PLEA IN BAR TO THE INDICTMENT, PLEA IN ABATEMENT OF THE
INDICTMENT, AND MOTION TO QUASH THE INDICTMENT, AND TO DISMISS THE
PROSECUTION, ON BEHALF OF DEFENDANT T. J. PENDERGAST

Comes now defendant T. J. Pendergast, and moves the Court to bar further
proceedings herein, to abate the indictment returned, and to quash said indictment and
dismiss this prosecution upon the following grounds:

(I). That in May, 1939, a certain indictment (which had been returned by the Grand
Jury in the United States Court for the Western Division of the Western District of
Missouri) was pending against this defendant, charging him in two Counts with the
Federal offense of income tax evasion; that, while said indictment was pending and
before trial thereon, said defendant's counsel, with the knowledge, consent, authorization
and approval of this defendant, conferred with the Honorable Maurice M. Milligan, then
United States District Attorney for the Western Division of the Western District of
Missouri and in charge, as the representative of the United States, of the prosecution of
this defendant under said indictment and of all investigations then being made of this
defendant, to ascertain what, if any, other Federal offenses had allegedly been
committed by him, for the purpose of discussing with said United States District Attorney
the possibility of this defendant's entering a plea of guilty to the indictment aforesaid;
that during the discussion which followed between this defendant's counsel and the said
United States District Attorney, this defendant's counsel stated that this defendant would
enter a plea of guilty on both Counts of the indictment aforesaid if he could be assured by
the United States District Attorney, representing the United States, that there would be
no further Indictment or prosecution in any form of this defendant for any other alleged
offense against the United States; that it was thereupon agreed between this defendant,

acting through his counsel, and the United States, acting through the United States District Attorney, that, if this defendant would enter a plea of guilty on both Counts of said indictment, the said United States would, and thereupon did, agree that there would be no further indictment or other prosecution of this defendant for any offense against the United States theretofore committed and, more particularly, that there would be no indictment or other prosecution of this defendant for the particular offense sought to be charged against him in the indictment presently pending to which this plea is filed; that, in addition to the agreement aforesaid relating to all offenses of any kind or character against the United States, it was specifically agreed then and there by the United States, acting as aforesaid, that there would be no indictment or other prosecution of this defendant on account of any alleged contempt of Court, obstruction of justice, conspiracy to obstruct justice, income tax evasion, or any other offense connected directly or indirectly with the so-called insurance rate litigation.

(2). That at said conference it was agreed in terms that, if this defendant entered the plea of guilty mentioned, so far as any past offenses against the United States allegedly committed by him, the slate would be wiped clean and there would be no further prosecution of any kind or character; that thereafter this defendant, relying upon the promise and agreement aforesaid of the United States, and pursuant thereto, did on the 22nd day of May, 1939, enter a plea of guilty, as agreed, on both Counts of the said indictment thus pending as aforesaid; that after said plea of guilty had been entered by this defendant, and before sentence had been passed, the Honorable Maurice M. Milligan, United States District Attorney, in open Court made a statement reviewing the facts in the case (including the facts allegedly showing this defendant to have been guilty of other offenses against the United States, including the offense sought to be charged in the indictment presently pending) and, pursuant to the agreement aforesaid, advised the Court that the Government would not further prosecute this defendant for those or other offenses.

(3). That the language of the United States District Attorney on that occasion was, in part, as follows "in keeping with the practice of this Court, we do not attempt to suggest what sentence shall be imposed upon this defendant for his crimes. As is well-known to all, the assessment of punishment in this Court is the Court's sole prerogative, and so it

should be. But we are never- the less aware that this Court, in assessing punishment, always received from the Government a statement of the offenses, beyond those with which the defendant at the time may be charged in the indictment, of which it has convincing evidence that he is guilty. Such offenses, we have always understood, this Court considers before ultimately assessing the penalty for the offenses with which the defendant stands charged, where, of course, the Court is assured that it is not the intention of the Government further to prosecute the defendant. *** Furthermore, as we have observed, already, the defendant, during the course of the investigation, has obstructed justice and suborned perjury, and, what seems to us the most subversive of all his offenses, he procured R. E. O'Malley, a public official, to palm off a fraudulent and corrupt settlement of the fire insurance rate litigation on this Court as an untainted and legitimate one, he has sought to make a mockery of its processes, and is guilty of a most flagrant contempt. Believing that the Court will consider these additional offenses in assessing the defendant's punishment for the offenses which he admits committing, as we understand the rule to be, we desire now to state that there will be no further criminal prosecution against the defendant for these additional offenses, and, of course, this is just, since they are here to be taken into account by the Court in assessing the defendant's punishment, and, in justice, should, therefore, not be presented against him again."

(4). That after said statement had been made by the United States District Attorney, sentence was imposed as follows:

"Count I

"It is the sentence and judgment of the Court, upon the plea of guilty to Count I of the indictment, that the defendant, Thomas J. Pendergast, be committed to the custody of the Attorney General to be confined in a federal penitentiary during the period of one year and three months.

"It is the intention of the Court that this sentence shall be served, except as hereafter it may lawfully be modified either by the Federal Board of Paroles or by the Chief Magistrate. The sentence will not be modified by the Court.

"The service of this sentence will begin immediately upon the conclusion of the pronouncement of sentence as to Count II, unless the Attorney General shall otherwise

direct.

"Count II

"It is the intention of the Court to grant probation as to the sentence imposed in connection with Count II.

"It is the sentence and judgment of the Court, upon the plea of guilty to Count II of the indictment, that the defendant, Thomas J. Pendergast, shall pay a fine of \$10,000 and that he shall be committed to the custody of the Attorney General, to be confined in a federal penitentiary during a period of three years. The service of this sentence is suspended and the defendant is placed on probation for a period of five years, which period of probation shall begin on the day when the defendant is released from actual institutional custody under the sentence imposed in connection with Count I."

(5). That, pursuant to said sentence and judgment, this defendant paid the fine assessed on Count II of the indictment, served the entire sentence on Count I of the indictment (except time off for good behavior) in the federal penitentiary at Leavenworth, Kansas, and, since his release therefrom, has faithfully kept and performed all the conditions and terms of his probation; and that this defendant has in all respects and at all times duly performed the terms and conditions of said agreement with the United States.

(6). That the United States admits the execution and existence of the agreement hereinbefore alleged and its due performance at all times by this defendant.

(7). That this defendant states that, because of the foregoing, public policy and the ends of justice require that his said agreement with the United States be in good faith carried out; that, by reason of said agreement, of defendant's plea of guilty entered in reliance thereon, and service by him of the sentence thereunder imposed, this defendant has an absolute right to an abatement and quashing of this indictment, the barring of the further prosecution thereunder, and the dismissal of this prosecution.

WHEREFORE, this defendant prays that this plea in bar be sustained, the indictment herein quashed and abated, and the prosecution dismissed.

RR Brewster

John G. Madden

Attorneys for Defendant, T. J. Pendergast.

STATE OF MISSOURI)

) SS:

COUNTY OF JACKSON)

R. R. BREWSTER AND JOHN G. MADDEN, of lawful age, first being duly sworn, upon their respective oaths state that they make this affidavit for the above defendant and on his behalf, being lawfully authorized so to do; that they are familiar with the facts alleged in the foregoing pleading and that said facts are true.

RR Brewster

John G. Madden

Subscribed and sworn to before me this 18 day of November, 1940. My commission expires March 26th, 1944.

Ella M. Sprauge, Notary Public.

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(Original)

R. R. Brewster, John G. Madden,

Attys.for Deft. T. J. Pendergast

Filed Nov. 18-1940

A. L. Arnold, Clerk

By HC Spaulding DC

