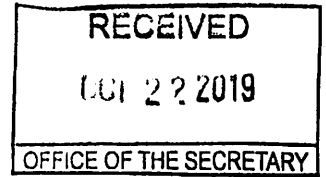


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-19151

In the Matter of

**CHARLES MYRICK
WINSTEAD,**

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT AND OTHER RELIEF

I. Introduction

The Division of Enforcement (the "Division"), pursuant to Rule 155(a) and 220(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), moves for entry of an Order finding Respondent Charles Myrick Winstead in default and determining this proceeding against him upon consideration of the record. The Division sets forth the grounds below.

II. History of the Case

The Commission issued the Order Instituting Proceedings ("OIP") on April 22, 2019 pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). In summary, the OIP alleges that Winstead, while associated with a broker-dealer and investment adviser, fraudulently converted to his own use \$117,863.74 he obtained for the purpose of purchasing insurance from Nationwide Insurance. These facts led to Winstead's guilty plea in the criminal case against him.

On August 29, 2019, the Commission issued an Order to Show Cause, Exch. Act Rel. No. 86823, recounting that Winstead had been served but had not filed an answer and ordering him to

show cause by October 14, 2019 why he should not be found in default and have the proceeding determined against him due to his failure to answer or otherwise defend the proceeding. That date passed without a response from Winstead.

III. Memorandum of Law

A. Winstead Criminal Case

On August 10, 2017, a grand jury in the Circuit Court of Madison County, Mississippi returned a three-count indictment against Winstead charging him with Embezzlement (Counts I and II), in violation of Miss. Code § 97-23-19(c), and Wire Fraud (Count III), in violation of Miss. Code § 97-19-83.¹ On January 19, 2018, Winstead agreed to plead guilty to the embezzlement charged in Count II.² On January 22, 2018, the Court accepted the plea.³ On January 29, 2018, the court sentenced Winstead as follows: 20 years imprisonment, with the last 10 years suspended, five years of supervised probation, restitution to Nationwide of \$121,811.56, and court costs of \$998.50.⁴

B. Facts

Based on Winstead's default, the allegations of the OIP "may be deemed to be true." 17 C.F.R. § 201.155(a). Moreover, Winstead's guilty plea binds him to the facts he admitted. *See Gary L. McDuff*, Exch. Act Rel. No. 74803, at 5 & n.18, 2015 WL 1873119 (Apr. 23, 2015); *Don Warner Reinhard*, Exch. Act Rel. No. 63720, at 11-12, 2011 WL 121451 (Jan. 14, 2011) (respondent who pleaded guilty "cannot now dispute the accuracy of the findings set out in the Factual basis for Plea Agreement); *Gary M. Kornman*, Exch. Act Rel. No. 59403, at 12, 2009 WL

¹Exh. 1 (Indictment, *State of Mississippi v. Winstead*, No. 2017-0386-C (Cir. Ct., Madison Cty. Miss.)).

²Exh. 2 (Petition to Enter Guilty Plea).

³Exh. 3 (Judgment of Conviction).

⁴Exh. 4 (Order of Sentence).

367635 (Feb. 13, 2009) (criminal conviction based on guilty plea precludes litigation of issues in Commission proceedings), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010).

The OIP and the facts admitted pursuant to the plea establish the following:

From August 2000 through March 2005, Winstead was associated with Allstate Financial Services, LLC, a broker-dealer registered with the Commission. From April 2005 through August 2014, Winstead was associated with Nationwide Securities LLC, a dually registered broker-dealer and investment adviser.⁵

On April 1, 2014, in Madison County, Mississippi, Winstead converted to his own use a \$117,863.74 check payable to Nationwide Insurance Company, which an individual had provided to Winstead in his capacity as an insurance agent for the purpose of purchasing an insurance policy.⁶

C. Entry of Default is Appropriate

Under Rule 155(a) of the Commission's Rules of Practice, a party who fails to file a timely answer "may be deemed to be in default and the Commission "may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true" 17 C.F.R. § 201.155(a). Here Winstead has not filed an answer and has not responded to the order to show cause. Therefore, the proceeding should be determined against him based on the record.

The facts established by Winstead's default and his guilty plea show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A), which provides in relevant part:

⁵OIP ¶ II.A.1.

⁶Exh. 1, Indictment, Count II; Exh. 2, Petition to Enter Guilty Plea, ¶¶ 6-7.

With respect to any person . . . at the time of the alleged misconduct, who was associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

* * * *

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

Advisers Act Section 203(f) provides for an identical associational bar (but not a penny stock bar) for a person with a qualifying conviction who at the time of the misconduct was associated with an investment adviser. Each of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Winstead was associated with a broker-dealer and/or an investment adviser—are satisfied here.

a. The Division Timely Filed this Action

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within “10 years” of the criminal conviction. *See Joseph Contorinis*, Exch. Act Release No. 72031, at 4-6, 2014 WL 1665995 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Winstead was convicted in January 2018, and the OIP was issued in April 2019. Therefore, this matter was timely filed.

b. Winstead Was Convicted of a Qualifying Offense

Under both the Exchange Act and the Advisers Act, the Commission may sanction Winstead for an offense that “involves . . . embezzlement, fraudulent conversion, or

misappropriation of funds.” See Exchange Act Sections 15(b)(4)(B)(iii), 15(b)(6)(A)(ii); Advisers Act Sections 203(e)(2)(C), 203(f). Here, Winstead’s conviction was for embezzlement, and the underlying conduct involved the fraudulent conversion and misappropriation of funds. Therefore this condition is satisfied.

c. Winstead Was Associated with a Broker and an Investment Adviser at the Time of the Misconduct

Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f) each require that Winstead have been associated with, respectively, a broker or investment adviser at the time of the misconduct. Here, deemed admitted is the OIP’s allegation that Winstead was associated with Nationwide Securities, a dually registered broker-dealer and investment adviser, from April 2005 through August 2014. In his plea, he admitted to embezzling funds in April 2014. Thus, Winstead was associated “at the time of the alleged misconduct.” See *Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010) (“The Commission properly relied on the ordinary meaning of alleged ‘misconduct,’ which refers to allegedly ‘unlawful or improper behavior.’”).

d. Industry and Penny Stock Bars Are Appropriate Sanctions

In determining whether “industry and penny stock bars . . . are in the public interest,” the Commission

considers, among other things, the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.

David R. Wulf, Exch. Act Rel. No. 77411, at 5-6, 2016 WL 1085661 (Mar. 21, 2016) (quotation and alterations omitted). “Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry.” *Frederick W. Wall*, Exch. Act Rel. No. 52467, at 8, 2005 WL 2291407 (Sept. 19, 2005) (quotation omitted); accord *Shreyans*

Desai, Exch. Act Rel. No. 80129, at 6, 2017 WL 782152 (Mar. 1, 2017).

Here, these factors weigh in favor of industry and penny stock bars. First, Winstead's actions were egregious. His conviction establishes a knowing conversion of a significant amount of funds for his own use.

The second factor weighs in favor of Winstead, since he pled only to a single episode of embezzlement.⁷ As to the third factor, the level of scienter is high, giving rise to a criminal conviction.

With respect to the fourth and fifth factors, notwithstanding his guilty plea, Winstead has not participated in this matter, thus providing no assurances that he will avoid *future* violations of the law. Although “[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar, . . . the existence of a violation raises an inference that it will be repeated.” *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, at 10 n.50, 2013 WL 3864511 (July 26, 2013) (quotation and alternations omitted). Winstead has offered no evidence to rebut that inference.

Sixth, although Winstead is currently in custody, he will eventually be released, and unless barred from the securities industry he will have the chance to harm investors.

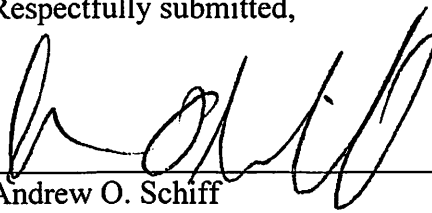
IV. Conclusion

For the reasons discussed above, the Division asks the Commission to sanction Winstead by issuing a penny stock bar and barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

⁷In Counts I and III, the Indictment charges that in early 2013, Winstead embezzled a \$10,000 check intended for Nationwide and later gave Nationwide a false explanation of what had occurred. Since these charges were dismissed without an adjudication, the Division is not asking for the Commission to consider them.

October 21, 2019

Respectfully submitted,



Andrew O. Schiff
Regional Trial Counsel
Direct Line: (305) 982-6390
schiffa@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

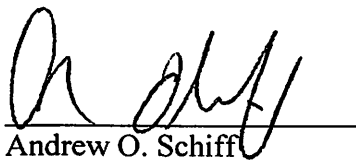
CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on this 21st day of October 2019, on the following persons entitled to notice:

VIA USPS REGULAR MAIL

Mr. Charles Myrick Winstead

██████████ ID ██████████
██████████
Poplarville, MS. ██████████



Andrew O. Schiff
Regional Trial Counsel

**COUNT III
(WIRE FRAUD)**

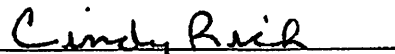
CHARLES MYRICK WINSTEAD did on or about March 5, 2013 in Madison County Mississippi, unlawfully, willfully, fraudulently and feloniously commit the crime of Wire Fraud to wit: by mailing and by talking telephonically and by wire and by electronic means and by other means of communication, transmit and cause to be transmitted, across county and state jurisdictional lines, a false and misleading statement to Nationwide Insurance Company and other(s), by representing that the reason Sidney Holliday's money had not been received was because Mr. Holliday was waiting on a CD to mature, when in fact Charles Myrick Winstead had already received the money and had converted and embezzled same to his own use and did so for the purpose of obtaining a benefit and payment, for the purpose of executing and attempting to execute a devised scheme and artifice to defraud and being designed to obtain money and property, by means of unlawful embezzlement and fraud, in violation of Section 97-19-83 of the Mississippi Code of 1972 as amended and against the peace dignity of the state of Mississippi.

This being a multi-count indictment pursuant to Section 99-7-2 of the Mississippi Code of 1972, as amended.

A TRUE BILL



Special Assistant Attorney General
550 High Street
Jackson, MS 39201
swald@ago.state.ms.us
ph# 601-359-3814


Grand Jury Foreman

AFFIDAVIT

COMES NOW Cindy Rich, Foreman of the aforesaid Grand Jury, and makes oath that this indictment presented to this Court was concurred in by twelve (12) or more members of the Grand Jury and at least fifteen (15) members thereof were present during all deliberations.

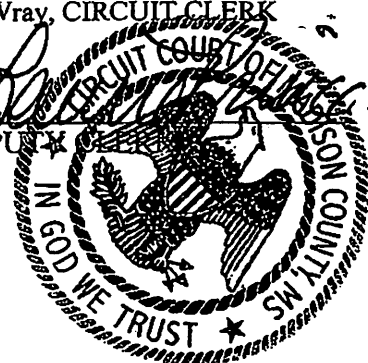

FOREMAN OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 10th day of August, 2017.

Anita E. Wray, CIRCUIT CLERK

BY: 

DEPUTY



IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

FILED
MADISON COUNTY

Dismissed → Count I Embezzlement
Dismissed → Count II Embezzlement
Count III Wire Fraud

STATE OF MISSISSIPPI JAN 19 2018

ANITA WRAY, CIRCUIT CLERK

VS.

BY mw D.C.

CAUSE NO. 17-0-386-C

Charles Myrick Winstead

DEFENDANT

PETITION TO ENTER GUILTY PLEA

COMES NOW YOUR DEFENDANT, and respectfully petitions this Honorable Court to accept his/her plea of guilty to the crime of Embezzlement "Count II", and in support thereof would show unto the Court the following:

1. My true name is Charles Myrick Winstead, also known as Myrick Winstead. I request that all proceedings against me be had in my true name. I am 54 years of age. My date of birth is [REDACTED], and my Social Security Number is [REDACTED]. I completed 12 years of school and 2 years of college. I (can) ~~(cannot)~~ read and write. There is nothing wrong with me physically or mentally which might impair my ability to read and understand this petition or to impair my ability to knowingly, willingly, and voluntarily enter this plea of guilty. I have never been treated for a mental or nervous condition, disease, or disorder other than: (if none, state "none") NONE

_____. I am not under the influence of any drugs

[Signature]
DEFENDANT
Charles Myrick Winstead



or intoxicants or any other substance which might impair my ability to understand this petition and these proceedings.


2. I am represented by an attorney who is (~~court appointed~~) (retained by me): His/her name is HARRY J. ROSENTHAL #5677. I have either read this petition in the presence of my attorney or had it read to me by him/her and he/she has explained it to me in detail and has answered any and all questions I had about it.

3. I wish to plead guilty to the charge of Embezzlement - as described in Count II of the Indictment.

4. My attorney has advised me as to the possibilities of my acquittal or conviction on the charge against me, and has thoroughly discussed all aspects of my case with me. My attorney has counseled and advised me, and has made no threats or promises of any type or kind to induce me to enter this plea of guilty. The decision to seek entry of this plea was mine alone, based on my own reasons, and free from any outside influences.

5. I understand that I have the right to plead not guilty to any offense charged against me. If I choose to plead not guilty, the Constitution guarantees me:

- (a) the right to a speedy and public trial by jury;
- (b) the right to see, hear, and cross-examine all witnesses called to testify against me;



DEFENDANT
Charles Myrick Winstead

- (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;
- (d) the right to have the assistance of an attorney at all critical stages of the proceedings against me;
- (e) the presumption of innocence, that is, the State must prove all of the elements of any charge beyond a reasonable doubt that I am guilty;
- (f) the right to a unanimous jury verdict of all twelve jurors before I could be found guilty;
- (g) the right to take the witness stand and testify in my own behalf if I want to; I further understand that if I do not wish to take the witness stand and testify, this fact cannot be held against me, and that the jury would be instructed that my refusal to testify may not be held against me; I understand that unless I knowingly, willingly, and voluntarily agree to do so, I cannot be compelled to give testimony against myself in violation of my Fifth Amendment rights.
- (h) I further understand that should I be convicted in a jury trial, I have the right to appeal my conviction to the Mississippi Supreme Court, and with the assistance of counsel at no cost to me should I be financially unable to pay for an attorney to represent and assist me.



DEFENDANT

Charles Myrick Winstead

Knowing and understanding the Constitutional and other legal rights and guarantees set forth in this paragraph, I hereby waive each and every one of them and renew my desire to enter a plea of guilty.


6. I have fully informed my attorney of all the facts and circumstances known to me about the charge against me. My attorney has counseled and advised me on the nature and elements of the charge, on any and all lesser-included charges, and on all possible defenses that I might have in this case. My attorney advises me and I understand that the elements of the charge to which I am pleading guilty are as follow:

that I did willfully, unlawfully, feloniously, knowingly on the 1st day of April, 2014 in Madison County, Mississippi, commit the crime of Embezzlement by converting \$117,863.74 - Fund entrusted to me to my own use; Fund of Joe Dokins - Ch# 2177 payable to Nationwide Insurance Company, in violation of Sect. 97-23-19(d) of Mississippi Code 1972.

7. I wish to plead guilty and request the court to accept my plea of guilty on the basis of the following: on the date(s) as set forth in the indictment or bill of information, I

did, in Madison County Mississippi, willfully, unlawfully, feloniously on April 1, 2014 convert the funds of Joe Dokins - check Number 2177 in the amount of \$117,863.74 to my own use in violation of Section 97-23-19(d) Mississippi Code 1972, as amended

8. I know that if I plead guilty to this charge, the sentence may be 0 years (minimum) to 20 years (maximum) incarceration, and/or a fine of \$ 0 (minimum) to \$ 25,000.00 (maximum). I also have been told by my attorney that any sentence I may receive is up to the Court, that the Court is not required to carry out any understanding made by me and my attorney with the District Attorney; I understand that


DEFENDANT
Charles Myrick Winstead

the Court is not required to follow the recommendation of the District Attorney; if any. The District Attorney will take no part other than providing to the Court, police reports and other factual information which may be requested by the Court; and the District Attorney shall make no recommendation to the Court concerning my sentence except as follows: (if none,

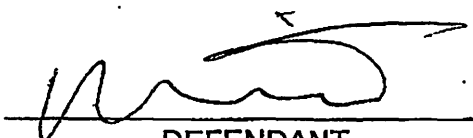
state "none") To be sentenced to Mississippi Department of Corrections - [redacted] [redacted] For a term of Twenty (20) years - with Ten (10) years suspended Ten (10) years to serve, Five (5) years Post Release Supervision and Five (5) years unsupervised PRS. Restitution of \$121,811.56 to National Wide Insurance Co. \$1,000.00 payable to Crime Victim Compensation Fund. plus exact cost, assessment and fees. Court of AZ Court III of the Judgment to be dismissed.

There are no other criminal prosecutions or charges currently pending against me except: (if none, state "none") NONE

_____ The State has made no agreement with me regarding those charges as expressly stated in paragraph 8 above or as stated in a separate guilty plea petition filed by me in that cause(s).

9. I have been convicted of no felonies in this or in any other State of the United States, except as follows: (if none, state "none") NONE

10. ~~I am~~ (am not) presently on probation or parole. I understand that pleading guilty in this case may cause revocation of my probation or parole. I further understand that if my probation or parole is revoked, any sentence in that case may be consecutive to or in addition to any sentence in this case.


DEFENDANT
Charles Myrick Winstead

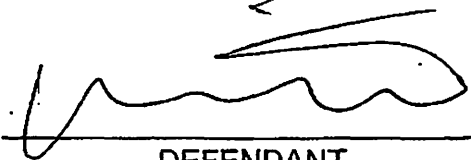
11. I understand that no one can assure me of parole or early release from prison. If this conviction is regarded a sex offense, I will likely be required to undergo psychiatric evaluation prior to being paroled, if parole is granted. If I am sentenced as an habitual criminal, I will not be eligible for parole or other early release.

12. I declare that no officer or agent of any branch of government, Federal, State, or Local, has made any promise or suggestion of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead guilty, and that I have not been threatened, forced, intimidated or coerced in any manner by anyone.

13. I believe that my attorney has done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVICE AND COUNSEL HE/SHE HAS GIVEN ME. I recognize that if I have been told by my attorney that I might receive probation or a light sentence, this representation is merely his opinion and that it is not binding on the Court or the District Attorney.

14. I understand that my plea of guilty may be withdrawn at any time during a hearing on this petition, prior to the acceptance of my plea by the Court.

15. I OFFER MY PLEA OF GUILTY FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT OR INFORMATION AND IN THIS PETITION AND WITH UNDERSTANDING OF THE CERTIFICATE OF MY ATTORNEY WHICH IS PART OF THIS PETITION.


DEFENDANT
Charles Myrick Weistead


16. HABITUAL CRIMINAL PARAGRAPH. If applicable, note the statute under which the plea of guilty is to be taken:

_____ MISS. CODE ANN. §99-19-81 (1972, as amended); or under

_____ MISS. CODE ANN. §99-19-83 (1972, as amended);

Neither

I understand that if my plea is accepted to the charge described in paragraph 3 above, the conviction of said crime may later be used against me for the purposes of enhanced sentencing and/or sentencing as an habitual offender, should I later be convicted of another criminal offense.

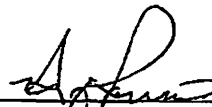


DEFENDANT
Charles Myrick Winstead


WHEREFORE, PREMISES CONSIDERED, the Defendant prays that this petition will be granted, that the plea of guilty will be accepted and that the Defendant will be convicted and sentenced for the crime of Embezzlement - Count II of the Indictment

_____, just as if the Defendant had been found guilty of that crime by the verdict of a jury.

SIGNED AND SWORN TO UNDER OATH on this, the 19th day of January, A.D., 2018, with full knowledge that if I willfully and corruptly swear, testify, or affirm falsely to any material matter under oath, affirmation or declaration legally administered in this Court I will, upon conviction, be punished additionally for the crime of perjury.



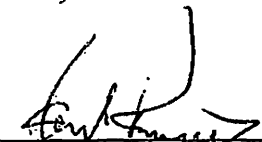
DEFENDANT'S ATTORNEY
Harry Rowenthal
STATE OF MISSISSIPPI
COUNTY OF MADISON



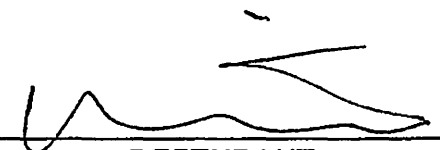
DEFENDANT
Charles Myrick Winstead

SWORN TO AND SUBSCRIBED before me on this, the 19th day of January, A.D., 2018.

SEAL



(OFFICIAL TITLE)
NOTARY PUBLIC



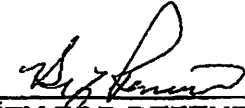
DEFENDANT
Charles Myrick Winstead

CERTIFICATE OF ATTORNEY OF RECORD

The undersigned, as attorney and counselor of record for the Defendant in this cause, hereby certifies:

1. I have read and fully explained to the Defendant the allegations contained in the indictment or bill of information in this case;
2. To the best of my knowledge and belief the statements, representations, and declarations made by the Defendant in the foregoing petition are in all respects accurate and true;
3. I have explained the minimum and maximum penalties for each charge or count to the Defendant, and consider him/her competent to understand the charge against him/her and the effect of his/her plea of guilty;
4. The plea of guilty offered by the Defendant in this petition accords with my understanding of the facts he/she has related to me, and is consistent with my advice to the Defendant;
5. In my opinion, the plea of guilty as offered by the Defendant in this petition is voluntarily and knowingly made. I recommend that the Court accept the plea of guilty;
6. Having discussed this matter carefully with the Defendant, I am satisfied that he/she is mentally competent and physically sound; there is no mental or physical condition of which I am aware which would affect his/her ability to understand these proceedings; further, I have no reason to believe that he/she is under the influence of drugs or intoxicants (any exception should be stated by counsel for the Record).

SIGNED BY ME IN THE PRESENCE OF THE DEFENDANT ABOVE NAMED AFTER FULL DISCUSSION OF THE CONTENTS OF THIS CERTIFICATE WITH THE DEFENDANT ON THIS, THE 19 DAY OF JANUARY, A. D., 2018.



ATTORNEY FOR DEFENDANT
Harry J. Rosenthal #5677



DEFENDANT
Charles Myrick Winstead

PLEA OFFER

DATE: January 18, 2018

DEFENDANT: Charles Myrick Winstead

CAUSE NUMBER: 17-0-386-C

OFFENSE: COUNTS I and II, Embezzlement; Count III, Wire Fraud

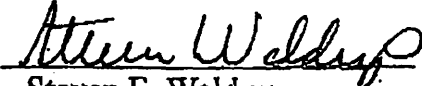
PLEA OFFER: Pleas guilty to Embezzlement in Count II. 20 year sentence as follows: 10 years to serve in custody of [REDACTED], followed by 5 years of Post Release Supervision and 5 years of unsupervised PRS.

\$121,811.56 in restitution to Nationwide Insurance company; \$1,000 to crime victim's compensation fund, Standard Court Costs and Fees and a \$25,000.00 Fine suspended, conditioned upon him paying the restitution in full along with other fees. All of this being a condition of his post release supervision.

Count I and Count II will be dismissed if he pleas.

This plea offer is valid for fifteen (15) days from the above date. This recommendation is conditioned upon him having no other felony convictions. After the expiration of fifteen days, this offer is automatically revoked. A counter offer will be considered as a rejection of this offer. This offer is automatically revoked if the defendant is charged with a subsequent crime.

Upon acceptance or rejection of this plea offer, please notify me at 601-359-3814 or email me at swald@ago.state.ms.us.


 Steven E. Waldrup
 Special Assistant Attorney General

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

FILED
MADISON COUNTY

JAN 22 2018

STATE OF MISSISSIPPI

VS.

ANITA WRAY, CIRCUIT CLERK

BY



CAUSE NO. 2017-0386 COUNT II

D.C.

CHARLES MYRICK WINSTEAD

DEFENDANT

JUDGMENT OF CONVICTION

THIS CAUSE came on to be heard on the sworn Petition(s) of the Defendant, whose legal name is CHARLES MYRICK WINSTEAD, whose date of birth is AUGUST 15, 1963, whose Social Security Number is [REDACTED] and whose Attorney of Record is HARRY ROSENTHAL to enter a plea(s) of guilty to the crime(s) of EMBEZZLEMENT IN COUNT II as charged in the Indictment(s) and/or Bill(s) of Information; and the Court, having heard the Petition(s) in the presence of the Defendant, the Defendant's Attorney, and the State's Attorney, and having considered the evidence, including the testimony of the Defendant, together with the statements and representations of Counsel, is of the opinion and finds that: 1) the allegations contained in the Petition(s) are supported by the evidence and are true and correct as set forth therein; 2) the Defendant's plea(s) of guilty is/are not induced by force, violence, threats, coercion, fear, deception, promises or misrepresentations; 3) the Defendant is competent to understand and does understand the nature of the criminal offense(s) to which the plea(s) of guilty is/are entered and understands the minimum and maximum punishments prescribed by law; 4) the Defendant understands that by entering a plea(s) of guilty certain constitutional rights are expressly waived; specifically, the right: a) against self-incrimination, b) to trial by jury, c) to confront and cross-examine the witnesses for the State, d) to testify as a witness, e) to subpoena, call and examine witnesses in defense, f) to appeal and if indigent, g) to a court-appointed



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attorney to prosecute an appeal; 5) the Defendant's plea(s) of guilty is/are freely, voluntarily and intelligently made, 6) there is a factual basis for the plea(s) which establishes the Defendant's guilt beyond any reasonable doubt; and 7) the Petition(s) should be granted and the Defendant's plea(s) of guilty should be accepted.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea(s) of guilty of the Defendant is/are accepted and entered and that based on the evidence presented and based on the testimony of the Defendant, the Defendant should be and is hereby found guilty and therefore convicted of the crime(s) of **EMBEZZLEMENT IN COUNT II** as charged in the Indictment(s) and/or Bill(s) of Information.

IT IS FURTHER ORDERED that sentencing is set for the **29TH DAY OF JANUARY, 2018 at 9:00 A.M.**, in the Circuit Courtroom in the **MADISON** County Courthouse in **CANTON, Mississippi**, and that a pre-sentence report be prepared and submitted to the Court and the Defendant and the Defendant's attorney at or before that date and time.

SO ORDERED AND ADJUDGED THIS THE 22ND DAY OF JANUARY, 2018.



CIRCUIT JUDGE

F I L E D
IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

JAN 29 2018

STATE OF MISSISSIPPI ANITA WRAY, CIRCUIT CLERK

VS.

BY _____ CAUSE NO. 2017-0386 COUNT II

CHARLES MYRICK WINSTEAD

DEFENDANT

ORDER OF SENTENCE

THIS CAUSE came on for hearing in open Court on the matter of sentencing the Defendant, **CHARLES MYRICK WINSTEAD**, under and pursuant to the Judgment(s) of Conviction for the crime(s) of **EMBEZZLEMENT COUNT II**, as charged in the Indictment(s) and/or Bill(s) of Information in Cause Number(s) **2017-0386**, and the Defendant having entered a plea(s) of guilty to the said crime(s) on the **22ND OF JANUARY, 2018**, and the Defendant and the Defendant's attorney, **HARRY ROSENTHAL**, and the State's attorney all being present and the Court, being fully advised in the premises finds and determines that: a) the victim(s) and the investigating officer(s) were notified in advance of these proceedings; b) the defendant's plea(s) of guilty was/were entered **WITHOUT** a recommendation of sentence from the State; c) questions and comments from all interested parties were invited and those submitted were received and considered; d) the Defendant and Defendant's Attorney were given an opportunity to address the court on all matters relevant to these proceedings including the presentation of circumstances in extenuation and mitigation; e) the recommendation of sentence, if made, by the State is hereby accepted and adopted by the Court as the sentence of the Court; and (f) sentence should now be imposed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant is sentenced as follows:

2017-0386 COUNT II CHARLES MYRICK WINSTEAD

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EXHIBIT 4

(1) To serve a term of **TWENTY (20)** year(s) in the custody of the Mississippi Department of Corrections in Cause Number(s) **2017-0386 COUNT II. PROVIDED, HOWEVER,** that pursuant to Section 47-7-33 **OR** pursuant to Section 47-7-34 of the Mississippi Code of 1972, **THE** execution of the last **TEN (10)** year(s) of the sentence(s) imposed herein is/are hereby stayed and that portion of the sentence(s) is/are suspended **AND** the Defendant shall be released and placed on **SUPERVISED PROBATION** under the direct supervision of the [REDACTED] on the terms, provisions and conditions prescribed elsewhere in this Order. The sentence imposed shall run **consecutively** to any and all other sentences.

(2) To serve a term of **FIVE (5)** year(s) on **SUPERVISED PROBATION** under the direct supervision of [REDACTED] which shall commence upon the Defendant's release from the custody of the [REDACTED]

During the term of **SUPERVISED PROBATION** or **POST-RELEASE SUPERVISION** the Defendant shall obey all orders of this Court and all the terms and conditions of probation or post-release supervision as may be imposed by this Court or the [REDACTED] [REDACTED]), including but not limited to those conditions set forth by Miss. Code Ann. §47-7-35 (1972, as amended), as well as any modification or alterations thereto made by either this Court or the [REDACTED]. It is further provided that, if the Defendant is adjudicated to be guilty of a material breach, violation or nonobservance of any of the terms, provisions or conditions of probation or post-release supervision, the probationary term may be revoked, the stay of execution and suspension of sentence terminated, and the Defendant's custody may be remanded to the [REDACTED] for incarceration until the unserved portion of his sentence is fully satisfied.

(3) To pay court costs, fees and assessments in the amount of **\$998.50**, and restitution to

Nationwide Insurance in the amount of \$121,811.56 both shall be paid within ninety (90) days after release from custody.

IT IS HEREBY ORDERED that time payments for any applicable court costs, fees and assessments, fine(s) or restitution paid by the Defendant shall be applied as follows: FIRST to court costs, fees and assessments; SECOND to fine(s); THIRD to restitution.

IT IS FURTHER ORDERED AND ADJUDGED that the payment of court costs, fees, assessments, fine(s) in the manner provided in this Order or by other Orders of the Court be made a special condition of parole or any other form of early release that may be granted to the Defendant.

IT IS FURTHER ORDERED that the time served in pretrial detainment on this charge is credited against this sentence.

SO ORDERED AND ADJUDGED THIS THE 29TH DAY OF JANUARY, 2018.



CIRCUIT JUDGE