

**U.S. District Court
DISTRICT OF ARIZONA (Tucson Division)
CRIMINAL DOCKET FOR CASE #: 4:10-cr-01036-BPV-1**

Case title: USA v. McCain

Date Filed: 05/14/2010
Date Terminated: 05/14/2010

Assigned to: Magistrate Judge
Bernardo P Velasco

Defendant (1)

Emil McCain
TERMINATED: 05/14/2010

represented by **Alfred S Donau , III**
Donau & Bolt
3505 N Campbell Ave
Ste 501
Tucson, AZ 85719-2033
520-795-8710
Fax: 520-795-0308
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ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

16:1538(a)(1)(B) PROHIBITED
TAKE OF AN ENDANGERED
SPECIES
(1)

Disposition

Probation for 5 years- unsupervised when dft out of
United States. S/A \$25.00 and fined \$1000

Highest Offense Level (Opening)

Misdemeanor

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

None

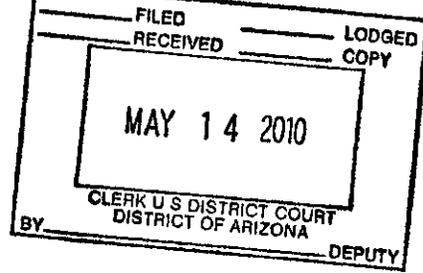
Disposition

Plaintiff

USA

represented by **Ryan Philip DeJoe**
US Attorneys Office
405 W Congress St
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Tucson, AZ 85701
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/14/2010	<u>1</u>	INFORMATION as to Emil McCain (1) count(s) 1. (LMF) (Entered: 05/14/2010)
05/14/2010	<u>2</u>	ORDER as to Emil McCain, CONSENT TO PROCEED BEFORE US MAGISTRATE JUDGE by Emil McCain. Signed by Magistrate Judge Bernardo P Velasco on 05/14/10.(LMF) (Entered: 05/14/2010)
05/14/2010	<u>3</u>	Minute Entry for proceedings held before Magistrate Judge Bernardo P Velasco: Initial Appearance as to Emil McCain held on 5/14/2010, Plea and Sentence Hearing held ; Emil McCain enters plea of guilty on count(s) Information. (Court Reporter COURTSMART). (LMF) (Entered: 05/14/2010)
05/14/2010	<u>4</u>	PLEA AGREEMENT as to Emil McCain (LMF) (Entered: 05/14/2010)
05/14/2010	<u>5</u>	JUDGMENT OF PROBATION ISSUED as to Emil McCain (1), Count(s) 1, Probation for 5 years- unsupervised when dft out of United States. S/A \$25.00 and fined \$1000. Signed by Magistrate Judge Bernardo P Velasco on 05/14/10.(LMF) (Entered: 05/14/2010)



DENNIS K. BURKE
United States Attorney
District of Arizona
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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Emil McCain

Defendant.

INFORMATION

CR 10-1036-TUC-BPV
Violations: 16 U.S.C. § 1538(a)(1)(B)
(Prohibited Take of an Endangered Species)
(Misdemeanor)

THE UNITED STATES ATTORNEY CHARGES:

On or about February 4, 2009, at or near Ruby, in the District of Arizona, **Emil McCain** did knowingly attempt to trap, capture and collect without lawful permit or authority a jaguar (*Panthera Onca*), an endangered species; in violation of Title 16, United States Code, Sections 1538 (a)(1)(B) and 1540(b)(1), and Title 50, Code of Federal Regulations, Section 17.11.

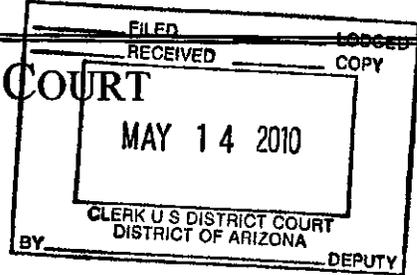
Date: May 14, 2010

DENNIS K. BURKE
United States Attorney
District of Arizona


RYAN P. DEJOE
Assistant U.S. Attorney

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AO 86A (Rev. 01/09) Consent to Proceed Before a Magistrate Judge in a Misdemeanor Case



UNITED STATES DISTRICT COURT

for the District of Arizona

United States of America v.

EMIL MCCAIN Defendant

Case No. CR 10-01036-TUC-(BPV)

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE IN A MISDEMEANOR CASE

A United States magistrate judge has explained to me the nature of the charges against me and the maximum penalty that may be imposed on each charge if I am found guilty. The magistrate judge has also informed me of my right to a lawyer, my right to a jury trial, and my right to be tried, judged, and sentenced before either a United States district judge or a United States magistrate judge.

I consent to being tried before a United States magistrate judge, and I waive my rights to trial, judgment, and sentencing by a United States district judge.

Emil McCain Defendant's signature

Waiver of a Right to Trial by Jury

I waive my right to a jury trial.

Emil McCain Defendant's signature

The United States consents to the jury-trial waiver:

R.O.F Government representative's signature

Ryan DeJoe, AUSA Government representative's printed name and title

Waiver of a Right to Have 30 Days to Prepare for Trial

I waive my right to have 30 days to prepare for trial.

Emil McCain Defendant's signature

Alfred Donau Printed name of defendant's attorney (if any)

Signature of defendant's attorney (if any)

Date: May 14, 2010

Approved by:

Judge Leonardo P. Velasco, United States Magistrate Judge

DISTRICT OF ARIZONA - TUCSON

DATE: 5/14/2010 CASE NUMBER: CR 10-01036-TUC-(BPV)

USA vs. EMIL MCCAIN

DEFENDANT: PRESENT NOT PRESENT RELEASED CUSTODY

U.S. MAGISTRATE JUDGE: BERNARDO P. VELASCO Judge #: 70BJ

U.S. Attorney Ryan Philip DeJoe INTERPRETER REQ'D N/A

Attorney for Defendant Alfred Donau (Retained)

- Consent to be tried by Magistrate Judge signed Misdemeanor Offense Petty Offense
- Initial Appearance held/Plea of Guilty entered as to the Information.
- Court accepts defendant's plea and finds plea to be freely and voluntarily given.
- Court finds factual basis insufficient to accept defendant's plea of guilty to Ct(s) ___ of ___
- Order Videotape Deposition set for _____, vacated.
- PSI ORDERED** Time waived for passage of sentence Probation violation
- Matter continued for sentencing to at before .
- Attorney for defendant waives the 10-day requirement within which to review the presentence report.

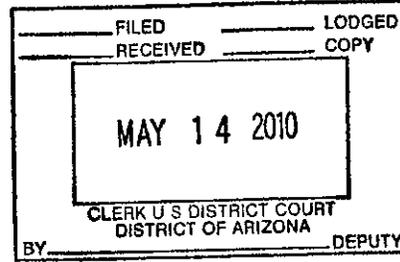
SENTENCING: Defendant committed to Bureau of Prisons for _____
 jail type institution for a period of _____

- Defendant is placed on a period of **five (5) years** supervised probation (unsupervised only if defendant outside of the United States) on the condition that defendant violate no law of the United States of America and no law of any state of the United States of America; that the defendant shall make the required reports and carry out the directions of the probation officer tending toward defendant's rehabilitation.
- If the Immigration & Naturalization Services authorities cause the defendant to leave the United States of America, no reports shall be required of defendant.
- Additional conditions of probation: _____

- Defendant is fined the sum of \$ 1,000.00 Defendant is assessed the sum of \$ 25.00. Assessment is payable IMMEDIATELY.
- Pursuant to the plea agreement, there being no objection by the deft/atty for the defendant IT IS ORDERED that the Complaint/Ct(s) ___ be dismissed.
- Order bond be exonerated. Bond _____

OTHER: _____

Recorded by Courtsmart	COP: <u>4min</u>
BY: Cassidy James	Sent: <u>0</u>
Deputy Clerk	IA: <u>0</u>



1 DENNIS K. BURKE
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2 District of Arizona
RYAN P. DEJOE
3 Assistant United States Attorney
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4 Tucson, Arizona 85701-4050
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5 E-mail: ryan.dejoe@usdoj.gov
Attorneys for Plaintiff
6

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF ARIZONA

9 United States of America,)
10 Plaintiff,) CR 10-1036-TUC-BPV
11 v.) PLEA AGREEMENT
12 Emil McCain,)
13 Defendant.)

14 Pursuant to Rule 11(c)(1) of the Federal Rules of Criminal Procedure, the United
15 States, by and through Dennis K. Burke, United States Attorney for the District of Arizona,
16 and Ryan P. DeJoe, Assistant United States Attorneys, and the defendant, by and through
17 his attorney, Alfred S. Donau, agree to the following disposition of this matter:

18 PLEA

19 The defendant agrees to plead guilty to an Information charging him with a violation
20 of 16 U.S.C. § 1538(a)(1)(B), Prohibited Take of an Endangered Species within the United
21 States, a misdemeanor. The elements of the offense are:

- 22 (1) The defendant knowingly harassed, harmed, pursued, hunted, shot, wounded, killed,
23 trapped, captured, or collected; or attempted to harass, harm, pursue, hunt, shoot,
24 wound, kill, trap, capture or collect
25 (2) An endangered species within the United States
26

1 U.S.C. § 2255, or any other collateral attack. If defendant files a notice of appeal,
2 notwithstanding this agreement, defendant agrees this case shall be remanded to the District
3 Court to determine whether defendant is in breach of this agreement and, if so, to permit the
4 United States to withdraw from the plea agreement.

5 Reinstitution of Prosecution

6 Nothing in this agreement shall be construed to protect the defendant in any way from
7 prosecution for perjury, false declaration or false statement, or any other offense committed
8 by the defendant after the date of this agreement. In addition, if the defendant commits any
9 criminal offense between the date of this agreement and the date of sentencing, the
10 government will have the right to withdraw from this agreement. Any information,
11 statements, documents and evidence which the defendant provides to the United States
12 pursuant to this agreement may be used against the defendant in all such proceedings.

13 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any court
14 in a later proceeding, the government will be free to prosecute the defendant for all charges
15 as to which it has knowledge, and any charges that have been dismissed because of this plea
16 agreement will be automatically reinstated. In such event, the defendant waives any
17 objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment
18 to the Constitution as to the delay occasioned by the later proceedings.

19 Disclosure of Information to the U.S. Probation Office

20 Defendant fully understands and agrees to cooperate fully with the United States
21 Probation Office in providing all criminal history information, i.e., all criminal convictions
22 as defined under the Sentencing Guidelines, all financial information (i.e., present financial
23 assets or liabilities) that relate to the ability of the defendant to pay a fine or restitution, all
24 history of drug abuse which would warrant a treatment condition as part of sentencing, and
25 all history of mental illness or conditions which would warrant a treatment condition as part
26 of sentencing.

1 Effect on Other Proceedings

2 There no agreement precluding the United States from seeking other criminal charges
3 against the defendant for any other past or future conduct, or the conduct listed above as
4 part of another case for a violation of federal law. This agreement does not preclude the
5 United States from instituting any civil or administrative proceedings as may be appropriate
6 now or in the future.

7 WAIVER OF DEFENDANT'S RIGHTS

8 I have read each of the provisions of the entire plea agreement and understand its
9 provisions. I am aware of my constitutional rights. I understand that by entering my plea
10 of guilty I will be giving up my right to plead not guilty; to trial by jury; to confront, cross-
11 examine, and compel the attendance of witnesses; to present evidence in my defense; to
12 remain silent and refuse to be a witness against myself by asserting my
13 privilege against self-incrimination; to be presumed innocent until proven guilty beyond a
14 reasonable doubt, and to appeal.

15 I agree to enter my guilty plea as indicated above on the terms and conditions set forth
16 in this agreement. I am aware of the nature of the charge to which I am entering my guilty
17 plea. I am aware of the nature and range of the possible sentence.

18 ~~My guilty plea is not the result of force, threats, assurance or promises other than the~~
19 ~~promises contained in this agreement. I agree to the provisions of this agreement as a~~
20 ~~voluntary act on my part, rather than at the direction of or because of the~~
21 ~~recommendation of any other person, and I agree to be bound according to its provisions.~~

22 I agree that this written plea agreement contains all the terms and conditions of my plea
23 and that promises made by anyone that are not contained within this written plea agreement
24 are without force and effect and are null and void.

25 I am not now on or under the influence of any drug, medication, liquor, or other
26 intoxicant or depressant, which would impair my ability to fully understand the terms and
conditions of this plea agreement.

1 FACTUAL BASIS AND SENTENCING FACTORS

2 I agree that the following facts accurately describe my conduct in connection with the
3 offense to which I am pleading guilty and that if this matter were to proceed to trial the
4 government could prove these facts beyond a reasonable doubt:

5 On February 4, 2009, at or near Ruby, in the District of Arizona, Emil McCain placed
6 jaguar scat or directed a female person to place jaguar scat at three (3) snare sites in an
7 attempt to capture and trap an endangered species, to wit, a jaguar (*Panthera onca*).
8 McCain knew that there had been recent evidence of a jaguar in the area of the snares.
9 The snares had been set solely for the purpose of capturing and placing tracking collars
on mountain lions and bears; there was no authorization to intentionally capture a
jaguar. A jaguar known as Macho B was caught at one of those snare sites on February
18, 2009.

10 5-14-2010
11 Date


11 EMIL MCCAIN

12 DEFENSE ATTORNEY'S APPROVAL

13 I have discussed this case and the plea agreement with my client in detail and have
14 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the
15 constitutional and other rights of an accused, the factual basis for and the nature of the
16 offense to which the guilty plea will be entered, possible defenses, and the consequences
17 of the guilty plea, including the defendant's waiver of the right to appeal. No assurances,
18 promises, or representations have been given to me or to the defendant by the government
19 or by any of its representatives which are not contained in this written agreement. I concur
20 in the entry of the plea as indicated above and on the terms and conditions set forth in this
21 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure
22 the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R. Crim.

23 P.

24 5/14/10
25 Date


26 ALFRED S. DONAU, Esq.
Attorney for Defendant

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GOVERNMENT'S APPROVAL

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

DENNIS K. BURKE
United States Attorney
District of Arizona

5-14-10
Date

R.P.D.
RYAN P. DEJOE
Assistant U.S. Attorney

CR 10-01036-001-TUC-(BPV)
USA vs. EMIL MCCAIN

- licensed medical practitioner. 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.
 - 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:

The defendant is not permitted to be employed or in any way involved in any large cat or large carnivore project or study in the United States during the five (5) year probation term.

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 supervise 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.

UNLESS PREVIOUSLY WAIVED, THE DEFENDANT IS ADVISED OF THE RIGHT TO APPEAL THE IMPOSED SENTENCE BY FILING A NOTICE OF APPEAL WITHIN 14 DAYS FROM THE IMPOSITION OF SENTENCE.

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

The Court orders commitment to the custody of the Bureau of Prisons and recommends:

Date of Imposition of Sentence: **Friday, May 14, 2010**


 _____ Date 5/14/2010
 BERNARDO P. VELASCO, U. S. MAGISTRATE JUDGE

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.

 United States Marshal
 CR 10-01036-001-TUC-(BPV) -

By: _____
 Deputy Marshal