

No. \_\_\_\_\_

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In The  
Supreme Court of the United States

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REBA MARCELLE MYERS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit

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APPENDIX

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**UNPUBLISHED**  
UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT

**No. 17-4231**  
(3:16-cr-00052-GMG-RWT-1)

UNITED STATES OF AMERICA, Plaintiff -  
Appellee,  
v.  
REBA MARCELLE MYERS,  
Defendant - Appellant.

Appeal from the United States District Court for  
the Northern District of West Virginia, at  
Martinsburg. Gina M. Groh, Chief District Judge.

Submitted: September 7, 2017      Decided:  
September 14, 2017

Before SHEDD, FLOYD, and THACKER, Circuit  
Judges.

Affirmed by unpublished per curiam opinion.

Robert C. Stone, Jr., ROBERT C. STONE, JR.,  
PLLC, Martinsburg, West Virginia, for Appellant.  
Randolph J. Bernard, Shawn, M. Adkins,  
Assistant United States Attorneys, Wheeling,  
West Virginia, for Appellee.

Unpublished opinions are not binding precedent  
in this circuit.

PER CURIAM:

Reba Marcelle Myers pleaded guilty to tax  
evasion, in violation of 26 U.S.C. § 7202 (2012).  
The district court sentenced Myers to one year

and one day of imprisonment, and she now appeals. For the reasons that follow, we affirm. On appeal, Myers argues that her counsel rendered ineffective assistance during the plea negotiations and at sentencing. To prove a claim of ineffective assistance of counsel, a defendant must show (1) “that counsel’s performance was deficient,” and (2) “that the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under the second prong of the test in the context of a conviction following a guilty plea, a defendant can show prejudice only by demonstrating “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

However, we will address a claim of ineffective assistance on direct appeal only if the lawyer’s ineffectiveness conclusively appears on the record. *United States v. Faulls*, 821 F.3d 502, 507-08 (4th Cir. 2016). Here, there is no conclusive evidence of ineffective assistance on the face of the record and we conclude that Myers’ claims should not be addressed at this time.

Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid in the decisional process.

*AFFIRMED*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA

Case Number: 3:16CR52  
USM Number: 12050-087

UNITED STATES OF AMERICA  
v.  
REBA MARCELLE MYERS

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

Pleaded guilty to count(s) Count One

Title & Section: 26 U.S.C. § 7202

Nature of Offense: Failure to Pay Tax

Offense Ended: 07/31/2010

Count: One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant

must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Judgment: April 3, 2017

/s/ Honorable Gina M. Groh, Chief United States District Judge

Date: 4/6/2017

#### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of Twelve (12) months and One (1) day.

The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated at an FCI or a facility as close to Berkeley County, West Virginia as possible.

That the defendant be allowed to participate in any educational or vocational opportunities while incarcerated, as determined by the Bureau of Prisons.

Pursuant to 42 U.S.C. § 14135A, the defendant shall submit to DNA collection while incarcerated in the Bureau of Prisons, or at the direction of the Probation Officer.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of

Prisons on May 3, 2017 as directed by the United States Marshals Service.

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: One (1) year.

## SPECIAL CONDITIONS OF SUPERVISION

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation officer may share financial information with the U. S. Attorney's Office.

If the judgment imposes a financial penalty, you must pay the financial penalty in accordance with the Court ordered Schedule of Payments contained in the judgment. You must also notify the court of any changes in economic circumstances that might affect your ability to pay this financial penalty.

You must immediately begin making financial penalty payments of \$325 per month, due by the fifth of each month, after you are released from incarceration.

Unless excused for legitimate reasons, if not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, you may be required to perform up to 20 hours of community service per week until employed, as approved by the probation officer.

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

### TOTALS:

Assessment: \$100.00

JVTA Assessment: \$0.00

Fine: \$3,000.00

Restitution: \$10,864.60

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below.

However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

The victim's recovery is limited to the amount of their loss and the defendant's liability for restitution ceases if and when the victim receives full restitution.

Name of Payee: Victim No. 1

Total Loss: 10,864.60

Restitution Ordered: 10,864.60

Priority or Percentage: 100%

TOTALS: \$10,864.60

Restitution amount ordered pursuant to plea agreement: \$10,864.60

The court determined that the defendant does not have the ability to pay interest and it is ordered that: the interest requirement is waived for the fine and restitution.

#### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

Lump sum payment of \$13,964.60 due immediately in accordance with:

Special instructions regarding the payment of criminal monetary penalties: Special Assessment Fee has been paid in full. Restitution has been paid in full.

Special instructions regarding the payment of criminal monetary penalties: Following release from incarceration, the defendant shall immediately begin making fine payments of \$325 per month, due by the fifth of each month.

June 27, 2016  
Via U.S. Mail & Email  
Reba and David Myers  
145 Curry Court  
Clearbrook, Virginia 22624

Dear Reba and David:

I appreciate meeting with Reba on June 16, 2016. As I discussed with her, I will need to meet with you again after I return from vacation and the July 4th holiday which I understand is a very busy time for both of you.

After explaining the request from the government for a "Tolling Agreement," Reba agreed that both of you will sign such an agreement which will effectively extend any alleged charge from 2010 for a period of time. As I mentioned to Reba, I was advised by AUSA Stein that if the Tolling Agreement was not signed, a grand jury would meet and a charge would be forthcoming by the end of July. The signing of the Agreement will give us additional time to address the allegations.

As I also mentioned to Reba, the Government is willing to meet with us on July 26, 2016 in Winchester. I understand that meeting will involve the IRS Agents laying out what they believe to be the case against you. In the interim, it is obviously important for the two of you to go over the Investigative Report that I provided to Reba and get back to me by the time of our meeting concerning any inconsistencies or corrections that need to be made. As I explained, I also sent the Report to Fred Hollida at Cox Hollida for his review. It is my

recommendation that we have Fred or his designee attend the IRS meeting with us.

Upon being advised by Reba that materials seized in the search warrant included "tax releases," I again made a formal request of Mr. Stein to return those documents. I emphasize again that it is important for you to meet with whatever accountants you choose to get whatever current tax situation you have resolved and returns properly and correctly filed.

Again, I anticipate the meeting with the IRS will be on July 26, 2016 in Winchester. Please put it on your calendars. I do not yet know the time of the meeting, but also ask that you plan to come see me on the 5<sup>th</sup> or 6<sup>th</sup> of July to discuss this matter further. Please get with Charlotte regarding your availability on those days so that we can schedule something.

Very truly yours,  
/s/ William J. Powell

William Powell, Esq.  
Jackson Kelly PLLC  
POB 1068  
Martinsburg WV 25402

In re: United States v. Reba Marcelle Myers

Dear Mr. Powell:

Conditioned on the subsequent approval of the Tax Division of the Department of Justice, the United States extends the following plea offer to the defendant. This offer will expire on October 28, 2016 at 4:00 p.m. unless a written acceptance is received by the United States Attorney's Office before then.

1. The defendant waives the right to have this case presented to a federal grand jury, and waives all applicable statutes of limitation for all purposes.
2. The defendant will plead guilty to Count One of an Information charging Failure to pay a Tax, in violation of Title 26, United States Code, Section 7202.
3. The maximum penalty to which the defendant will be exposed by virtue of the plea of guilty is imprisonment for a term of not more than 5 years, a fine up to \$250,000 and 3 years of supervised release for this class D felony. A special mandatory assessment of \$100.00 (18 U.S.C. § 3013) must be paid before the date of sentencing by money order or certified check, made payable to the United States District Court. It is understood that the defendant

may be required by the Court to pay the costs of incarceration, probation or supervised release.

4. There have been no representations whatsoever by any agent or employee of the United States, any other law enforcement agency, or defendant's counsel as to what the final disposition in this matter will be. This agreement includes nonbinding recommendations by the United States, pursuant to Fed. R. Crim. P. Rule 11(c)(1)(B); however, the defendant understands that the Court is not bound by these sentence recommendations, and that the defendant has no right to withdraw a guilty plea if the Court does not follow the sentencing recommendations set forth in this plea agreement.

5. If a signed copy of this plea agreement is emailed, faxed or hand-delivered to the United States Attorney's Office not later than 4 p.m. on October 28, 2016, and provided the defendant pays the special assessment fee on or before the day of sentencing, the United States will make the following nonbinding recommendations:

a. If, in the sole opinion of the United States Attorney's Office, the defendant accepts responsibility, and if the Probation Office also concurs, then the United States will recommend a two-level reduction for "acceptance of responsibility," and three levels, if applicable, as provided by USSG § 3E1.1; and,

b. The United States will recommend a sentence of imprisonment at the lowest end of the Guideline range.

6. The defendant understands that the United States Sentencing Guidelines are now advisory and no longer mandatory. It is understood that the sentencing Court may impose a sentence below or above the applicable Guideline range, so long as that sentence is reasonable and within the statutory maximum specified for the offense.

7. The defendant understands that the Court is not bound by stipulations, and with the aid of the presentence report will determine the facts relevant to sentencing.

a. Pursuant to section 6B1.4 of the Guidelines, the parties stipulate that the relevant conduct to the offense of conviction is more than \$40,000 and less than \$100,000.

b. While agreeing to the above stipulation, and its utilization in arriving at the advisory Guideline range, the defendant preserves the right to argue for a sentence below the advisory range.

8. The United States reserves the right to provide relevant information to the Court and the United States Probation Office in connection with any presentence investigation that may be ordered pursuant to Fed.R.Crim.P. Rule 32 concerning the relevant conduct, the defendant's background, criminal record, and other pertinent data that will enable the Court to exercise its sentencing discretion. The United States also retains the right to respond to any questions raised by the Court, to correct any inaccuracies or inadequacies in the

anticipated presentence report, and to respond to any written or oral statements made by the Court, by the defendant or counsel.

9. The defendant agrees to provide all requested financial information to the United States and the U.S. Probation Office and, if requested, agrees to participate in a pre-sentence debtor examination to be conducted by the United States under oath and before a court reporter. After sentencing, any unpaid restitution and any criminal monetary penalty will be due and payable immediately and subject to immediate enforcement under 18 U.S.C. § 3613. Until it is paid, the defendant agrees to voluntary garnishment of 25% of all nonexempt net disposable earnings from any employment, without prior demand under the Federal Debt Collection Procedures Act (28 U.S.C. § 3205). To this end, the defendant waives any exceptions under the Consumer Credit Protection Act ( 15 U.S.C. § 1673). Further, the United States may submit any unpaid penalty to the United States' Treasury for offset, regardless of the defendant's payment history.

10. Defendant agrees to pay full restitution in the amount of \$10,864.60. If paid before sentencing, unless directed otherwise, restitution will be paid to the IRS Collection Manager, 11 Chenoweth Dr., Bridgeport, WV 26330.

a. In the event the defendant has not already done so, the defendant agrees to sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate assessment of that portion of the tax and interest that the defendant agrees to pay as

restitution. Defendant also agrees to sign IRS Form 8821, "Tax Information Authorization."

b. Defendant agrees not to file any claim for refund of taxes or interest represented by any amount of restitution or forfeiture paid pursuant to this agreement.

c. The parties understand that defendant will receive proper credit for the payments made pursuant to this agreement. Nothing in this agreement shall limit the IRS in its lawful examination, determination, assessment, or collection of any taxes, penalties, or interest due from the defendant for the time periods covered by this agreement or any other time period.

d. The defendant agrees that this agreement, or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil liabilities, including tax, additional tax, additions to tax, interest, and penalties, owed to the IRS for the time period(s) covered by this agreement or this agreement or any other time period.

e. The defendant is not entitled to credit with the IRS for any payment sent to an incorrect address or accompanied by incomplete or inaccurate information, unless and until any payment is actually received by the Internal Revenue Service and identified by it as pertaining to this particular liability.

f. The defendant agrees that unless the Director of the Administrative Office of the United States' Courts directs otherwise, all payments made after sentencing pursuant to the Court's restitution order are to be sent only to the Clerk of the Court. With each payment to the Clerk of the Court made pursuant to the District Court's restitution order, defendant will provide the following information.

- i. Defendant's name and Social Security number;
- ii. The District Court docket number assigned to this case;
- iii. Tax year and period for which restitution has been ordered;

11. Defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, and in exchange for the concessions made by the United States in this plea agreement, the defendant waives the right:

a. to appeal any order, the conviction and any sentence that is within the maximum provided in the statute of conviction or the manner in which that sentence was determined on any ground whatsoever, including those grounds set forth in 18 U.S.C. § 3742.

b. to challenge the conviction or the sentence or the manner in which it was determined in any post-conviction proceeding, including any proceeding under Title 28, United States Code, Section 2255. Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack

respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct.

12. The United States waives its right to appeal the sentence.

13. If, in the sole opinion of the United States: the defendant engages in conduct defined under the Application Notes 4(A) through (K) of USSG § 3C1.1; or violates any postguilty plea bond condition; or violates any provision of this plea agreement, then the United States will not be bound to make the foregoing recommendations, and the defendant will not have the right to withdraw the plea. If the defendant's plea is not accepted by the Court or is later set aside, then this plea agreement is null and void, except to the waiver of any statutes of limitation that may be contained in this plea agreement.

14. David Myers will not be charged in the Northern District of West Virginia with having committed any offense that could, pursuant to Rule 8 F.R.C.R.P., have been charged in the Information filed in this case.

15. These 15 paragraphs constitute the entire agreement between the defendant and the United States of America in this matter. There are no agreements, understandings or promises between the parties other than those contained in this agreement.

Sincerely.

/s/ MICHAEL STEIN,  
United States Attorney

As evidenced by my signature at the bottom of all of these pages of this letter agreement, I have read and understand the provisions of each paragraph herein and, hereby, fully approve of each provision.

/s/ Reba Marcelle Myers, Defendant 10/26/16

/s/ William Powell, Esq., Counsel for Defendant  
10/26/16

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST  
VIRGINIA

Filed: Dec. 12, 2016

Criminal No. 3:16-CR-52  
Violation: 26 U.S.C. § 7202

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
REBA MARCELLE MYERS,  
Defendant

**INFORMATION**

The United States Attorney charges that:

**COUNT ONE**

1. At all times relevant to this Information, Demcorp, Inc. (hereinafter "Demcorp") was a corporation doing business in Inwood, West Virginia.
2. At all times relevant to this Information, defendant REBA MARCELLE MYERS was Demcorp's Vice President. Defendant REBA MARCELLE MYERS exercised shared control over every aspect of Demcorp's business affairs, including approving all payments by the company and controlling all of Demcorp's bank accounts.
4. At all times relevant to this Information, Demcorp withheld taxes from its employees'

paychecks, including federal income taxes, Medicare, and Social Security taxes (often referred to as Federal Insurance Contribution Act or "FICA" taxes). These income and FICA taxes will be referred to in this Information collectively as "payroll taxes."

5. At all times relevant to this Information, defendant REBA MARCELLE MYERS caused Demcorp to make expenditures for defendant's personal benefit while, at the same time, failing to pay over to the Internal Revenue Service payroll taxes withheld from Demcorp's employees' paychecks.
6. At all times relevant to this information, Demcorp was required to make deposits of the payroll taxes to the Internal Revenue Service on a periodic basis. In addition, Demcorp was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of Social Security and Medicare taxes due, and the total tax deposits.
7. As the Vice President of Demcorp, defendant REBA MARCELLE MYERS was a "responsible person," that is, she had the responsibility to collect, truthfully account for, and pay over Demcorp's payroll taxes.
8. On or about February 13, 2012, Demcorp filed an Employer's Quarterly Federal Tax Return (Form 941), stating that the total amount of payroll taxes

the company withheld from its employees for the calendar quarter ending on June 30, 2010 was \$10,864.60, comprised of \$1,924.37 for federal income taxes withheld and \$8,940.23 for employee Social Security and Medicare taxes.

9. On or about July 31, 2010, and thereafter, in Berkeley County, in the Northern District of West Virginia, defendant REBA MARCELLE MYERS and Demcorp (not a defendant herein) willfully failed to pay over said \$10,864.60 in withheld payroll taxes to the Internal Revenue Service in violation of Title 26, United States Code, Section 7202.

/s/ William J. Ihlenfeld, II  
United States Attorney

February 17, 2017  
VIA EMAIL  
Reba Myers  
145 Curry Court  
Clearbrook, Virginia 22624

Re: USA v. Reba Marcelle Myers, US District Court -  
Northern District of West Virginia, Case No. 3:16-  
CR-52

Dear Reba:

By now, you have received the preliminary Presentence Investigation Report prepared by the Probation Office. I am in the process of reviewing the same. You should review this carefully and note any incorrect information.

Though I have not concluded reviewing the report thoroughly, I am concerned about the prior criminal history I was unaware of, and the fact that the Probation Officer suggests that you have not provided financial disclosure information to allow a correct assessment of your ability to pay. This will not be a welcome event by the Court. That information needs to be provided to the Probation Officer. Please let me know if you have any questions. I will be more than happy to help you.

We will need to set up a meeting. Please get with Charlotte to set up a time and date prior to the deadline of March 1, 2017, when our objections are due.

Very truly yours,

/s/ William J. Powell/CA