

IN THE FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff,

vs.

No. D-0101-CR-201300538

WILLIAM KALINOWSKI

DOB: [REDACTED] 1945

SSN: xxx-xx-[REDACTED]

Defendant.

**AMENDED JUDGMENT AND PARTIALLY SUSPENDED SENTENCE AND
ORDER OF COMMITMENT TO THE DEPARTMENT OF CORRECTIONS**

On August 3, 2020, this cause came before the Honorable T. Glenn Ellington, District Judge, for re-sentencing after receiving a Mandate from the Court of Appeals. The State appeared via telephone by Patrick Schaefer, Assistant District Attorney. The Defendant appeared telephonically by and through his attorney, Damian Horne.

The Defendant was convicted by jury on December 1, 2016, of the following offenses:

Count 1: **EMBEZZLEMENT (over \$20,00), (0605)**, a second degree felony offense, occurring on or about or between November 7, 2007 and November 14, 2007, in Santa Fe County, New Mexico, the above-named defendant did embezzle or convert to his own use a thing of value, to wit: over \$20,000, with which he had been entrusted, with fraudulent intent to deprive Robert and Janice Sostrin, the owners of said item, and said item having a value over \$20,000, contrary to NMSA 1978, Section 30-16-8(F), as charged in Count 1 of the Grand Jury Indictment filed herein.

Count 2: **FRAUD (over \$20,00), (0556)**, a second degree felony offense, occurring on or about March 5, 2008, in Santa Fe County, New Mexico, the above-named defendant did intentionally misappropriate or take a thing of value or convert to his own use a thing of value, to wit: over \$20,000 in currency, belonging to Century Bank, by means of fraudulent practices, conduct or representations, and said thing having a value over \$20,000, contrary to NMSA 1978, Section 30-16-6(F), as charged in Count 2 of the Grand Jury Indictment filed herein.

Count 3: **EMBEZZLEMENT (over \$20,00), (0605)**, a second degree felony offense, occurring on or about or between May 20, 2008 and May 22, 2008, in Santa Fe County, New Mexico, the above-named defendant did embezzle or convert to his own use a thing of value, to wit: over \$20,000, with which he had been entrusted, with fraudulent intent to deprive Hawks Holdings, LLC, the owner of said item, and said item having a value over \$20,000, contrary to NMSA 1978, Section 30-16-8(F), as charged in Count 3 of the Grand Jury Indictment filed herein.

Count 4: **FRAUD (over \$20,00), (0556)**, a second degree felony offense, occurring on or about October 3, 2008, in Santa Fe County, New Mexico, the above-named defendant did intentionally misappropriate or take a thing of value or convert to his own use a thing of value, to wit: over \$20,000 in currency, belonging to Hawks Holdings, LLC, by means of fraudulent practices, conduct or representations, and said thing having a value over \$20,000, contrary to NMSA 1978, Section 30-16-6(F), as charged in Count 4 of the Grand Jury Indictment filed herein.

Count 5: **FRAUD (over \$20,00), (0556)**, a second degree felony offense, occurring on or about October 14, 2008, in Santa Fe County, New Mexico, the above-named defendant did intentionally misappropriate or take a thing of value or convert to his own use a thing of value, to wit: over \$20,000 in currency, belonging to Hawks Holdings, LLC, by means of fraudulent practices, conduct or representations, and said thing having a value over \$20,000, contrary to NMSA 1978, Section 30-16-6(F), as charged in Count 5 of the Grand Jury Indictment filed herein.

Count 6: **EMBEZZLEMENT (over \$20,00), (0605)**, a second degree felony offense, occurring on or about October 3, 2008, in Santa Fe County, New Mexico, the above-named defendant did embezzle or convert to his own use a thing of value, to wit: over \$20,000, with which he had been entrusted, with fraudulent intent to deprive Hawks Holdings, LLC, the owner of said item, and said item having a value over \$20,000, contrary to NMSA 1978, Section 30-16-8(F), as charged in Count 6 of the Grand Jury Indictment filed herein.

Count 7: **EMBEZZLEMENT (over \$20,00), (0605)**, a second degree felony offense, occurring on or about September 15, 2008, in Santa Fe County, New Mexico, the above-named defendant did embezzle or convert to his own use a thing of value, to wit: over \$20,000, with which he had been entrusted, with fraudulent intent to deprive Wells Fargo, the owner of said item, and said item having a value over \$20,000, contrary to NMSA 1978, Section 30-16-8(F), as charged in Count 7 of the Grand Jury Indictment filed herein.

Count 8: **EMBEZZLEMENT (over \$20,00), (0605)**, a second degree felony offense, occurring on or about or between September 30, 2008 and October 1, 2008, in Santa Fe County, New Mexico, the above-named defendant did embezzle or convert to his own use a thing of value, to wit: over \$20,000, with which he had been entrusted, with fraudulent intent to deprive Wells

Fargo, the owner of said item, and said item having a value over \$20,000, contrary to NMSA 1978, Section 30-16-8(F), as charged in Count 8 of the Grand Jury Indictment filed herein.

Count 9: **EMBEZZLEMENT (over \$20,00), (0605)**, a second degree felony offense, occurring on August 5, 2008, in Santa Fe County, New Mexico, the above-named defendant did embezzle or convert to his own use a thing of value, to wit: over \$20,000, with which he had been entrusted, with fraudulent intent to deprive Wells Fargo, the owner of said item, and said item having a value over \$20,000, contrary to NMSA 1978, Section 30-16-8(F), as charged in Count 9 of the Grand Jury Indictment filed herein.

This Court dismissed Count 10 of the Grand Jury Indictment prior to trial.

At a sentencing hearing on February 24, 2017, this Court found and adjudged the Defendant guilty of Counts, 1, 2, 3, 5, 6, 7, 8, and 9, and dismissed Count 4 as mutually exclusive to Count 6.

The Defendant appealed these convictions to the Court of Appeals in A-1-CA-36403. The Court of Appeals vacated the convictions for Count 1 and Count 3, affirmed the remaining convictions, and remanded to this court for resentencing on Counts 2, 5, 6, 7, 8, and 9.

Amended Sentence. The Defendant is hereby found and adjudged GUILTY and CONVICTED of Counts 2, 5, 6, 7, 8, and 9 and is sentenced to the custody of the New Mexico Department of Corrections as follows:

Count 1: **EMBEZZLEMENT (over \$20,00)** is dismissed pursuant to mandate from the Court of Appeals in A-1-CA-36403.

Count 2: **FRAUD (over \$20,00)**: Nine (9) years of incarceration at the New Mexico Department of Corrections, with six (6) years suspended, for three (3) years of actual incarceration followed by five (5) years of supervised probation, with two (2) years of parole.

Count 3: **EMBEZZLEMENT (over \$20,00)** is dismissed pursuant to mandate from the Court of Appeals in A-1-CA-36403.

Count 4: **FRAUD (over \$20,00)** is dismissed as mutually exclusive to Count 6.

Count 5: **FRAUD (over \$20,00)**: Nine (9) years of incarceration at the New Mexico Department of Corrections, with four (4) years suspended, for five (5) years of actual incarceration followed by five (5) years of supervised probation, with two (2) years of parole.

Count 6: **EMBEZZLEMENT (over \$20,00)**: Nine (9) years of incarceration at the New Mexico Department of Corrections, with four (4) years suspended, for five (5) years of actual incarceration followed by five (5) years of supervised probation, with two (2) years of parole.

Count 7: **EMBEZZLEMENT (over \$20,00)**: Nine (9) years of incarceration at the New Mexico Department of Corrections, with six (6) years suspended, for three (3) years of actual incarceration followed by five (5) years of supervised probation, with two (2) years of parole.

Count 8: **EMBEZZLEMENT (over \$20,00)**: Nine (9) years of incarceration at the New Mexico Department of Corrections, with six (6) years suspended, for three (3) years of actual incarceration followed by five (5) years of supervised probation, with two (2) years of parole.

Count 9: **EMBEZZLEMENT (over \$20,00)**: Nine (9) years of incarceration at the New Mexico Department of Corrections, with six (6) years suspended, for three (3) years of actual incarceration followed by five (5) years of supervised probation, with two (2) years of parole.

IT IS ORDERED that the sentences for Counts 5 and 6 shall run concurrently to each other; that Counts 2, 7, 8, and 9 shall run concurrently to each other and consecutively to Counts 5 and 6, for a TOTAL SENTENCE of eighteen (18) years of incarceration at the New Mexico Department of Corrections, with ten (10) years suspended, for eight (8) years of actual incarceration followed by five (5) years of supervised probation, with two (2) years of parole.

IT IS ORDERED that as of the February 24, 2017 sentencing hearing, the Defendant shall receive one-thousand, two-hundred and thirty-six (1236) days of credit for presentence

confinement against his eight (8) years of incarceration, and credit for time served while awaiting transfer to place of imprisonment.

Probation. IT IS FURTHER ORDERED that the defendant shall be placed on probation until August 10, 2020, at which point his sentence will end, including the following terms and conditions:

1. The Defendant shall obey all federal, state and local laws or ordinances;
2. The Defendant shall obey all rules, regulations and orders of the Probation Authorities;
3. The Defendant shall not possess or use any alcohol or controlled substance without a valid prescription;
4. The Defendant shall pay all Adult Probation and Parole Office costs;
5. The Defendant shall pay \$5.00 Domestic Violence Offender Treatment Fee pursuant to §31-12-11, 1978 NMSA;
6. The Defendant shall pay \$75.00 Crime Victims Reparation Fee pursuant to §31-12-13(A)(1), 1978 NMSA;
7. The Defendant shall provide a sample of biological material sufficient for DNA testing and shall pay a fee of \$100.00 for the combined DNA Index System (CODIS) to the Probation and Parole Division of the New Mexico Corrections Department, pursuant to the DNA Identification Act, §29-16-1 et seq., NMSA 1978;
8. The Defendant shall pay reasonable restitution in accordance with §31-17-1, NMSA 1978. In particular, the Court finds the Defendant owes restitution in the amount of \$177,992.51 to Hawks Holding; \$194,394.87 to Wells Fargo Bank and \$9617.87 to Century Bank for a total of \$382,004.38; and any other victim pursuant to his convictions, with the above-mentioned sums subject to adjustments or off-sets as may be later determined by the Office of Adult Probation and

Parole and deemed in accordance with the ORDER OF THIS COURT and §31-17-1 NMSA 1978;
and,

9. The Defendant shall report to Adult Probation and Parole in Santa Fe by 5:00 pm on the next business day after the date of execution of this order. The terms and conditions of probation and parole are made terms and conditions of the suspended sentence.

All warrants remaining outstanding in the above-captioned cause number are hereby quashed (this is not intended to nor does it pertain to warrants previously served, whether a return on the warrants has or has not been filed in this matter), and any bond posted in the above-captioned cause number is hereby released.



Honorable T. GLENN ELLINGTON
District Judge

Submitted by:

/s/ Patrick Schaefer
Patrick Schaefer - ADA

Approved by:

/s/ Damian Horne
Damian Horne – Defense Counsel