

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

FILED  
2006 FEB 10 PM 4:29  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
DAYTON, OHIO

**UNITED STATES OF AMERICA,**

Case No.: 3:04-cr-140(13)-TMR

**Plaintiff,**

Case No.: 3:06CR0031-TMR

**PLEA AGREEMENT**

**vs.**

**KIM MCGINNIS,**

**Defendant.**

It is hereby agreed between **KIM MCGINNIS** (hereafter, "MCGINNIS" or "Defendant"), individually and through her attorney, Lynn Fleming, Esq., and the United States Attorney's Office for the Southern District of Ohio (hereafter, "USAO") (collectively, "the parties"), as follows:

1. Defendant will plead guilty to Count 2 of the Superseding Indictment filed in this action. Count 2 charges her with Conspiracy to Launder Money, in violation of 18 U.S.C. § 1956(h), which carries a maximum penalty of up to 20 years imprisonment, a fine of up to \$500,000 or twice the value of the property involved in the transaction (whichever is greater), up to a 3 year term of supervised release, and a \$100 mandatory special assessment. Defendant will also plead guilty to the one-count Information filed in this action, charging her with Willful Failure to File Return, in violation of Title 26, United States Code, Section 7203, which carries a maximum penalty of up to 1 year imprisonment, up to a \$100,000 fine, a term of supervised release of up to 1 year, costs of prosecution, and a mandatory \$25 special assessment. Defendant understands that the Court may order Defendant to pay taxes, interest and penalties that Defendant owes to the United States. Also, Defendant understands that the Court must order

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Defendant to pay the costs of prosecution for the tax charge, which may be in addition to the penalties for the Conspiracy to Launder Money charge. Defendant understands that she does not have the right to indictment by a grand jury as to the tax charge contained in the Information. Defendant admits that she is, in fact, guilty of these offenses, as described in Count 2 of the Superseding Indictment and in the one-count Information.

2. For the purpose of calculating an advisory Sentencing Guidelines range, the parties agree to recommend that any loss figure used in such calculation not exceed \$1.2 million. Subject to the foregoing, the parties reserve the right to argue particular Base Offense Levels, specific offense characteristics, adjustments and departures are appropriate. Defendant understands that the United States Probation Office ("Probation Office") will conduct a pre-sentence investigation and will recommend to the Court an advisory Sentencing Guidelines range, including, among other matters, a Base Offense Level, specific offense characteristics, adjustments and any departures, including any loss figure to be applied. Defendant understands that the Probation Office's recommendations are not binding on the Court. Defendant further understands that the Sentencing Guidelines range is an advisory range to be considered by the Court along with other appropriate sentencing factors. Defendant understands that the terms of this Plea Agreement, including, but not limited to, any recommendations made by the USAO or the Defendant, are not binding upon the Court or the Probation Office. Defendant understands that the Court alone will determine an appropriate sentence, which may or may not be consistent with any recommendations of the parties. Defendant understands that if the Court does not follow any recommendations made by the parties, she does not have the right to withdraw her pleas of guilty. Defendant understands and acknowledges that pursuant to Title 18, United States Code, Section 3553, and U.S.S.G. §§ 1B1.3, 1B1.4, and 5K2.21, among other provisions and

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authority, the Court could potentially consider uncharged conduct in determining the applicable Sentencing Guidelines range, where the sentence should fall within that range, the propriety and extent of any departure from that range, and the determination of the sentence to be imposed after consideration of the sentencing guidelines and all other relevant factors. Defendant understands and acknowledges that she could receive up to the maximum penalties provided by law if the Court so determines, and that the parties' agreement as to a recommended loss figure to be used in the Sentencing Guidelines range calculation has no bearing and does not impact Defendant's ultimate tax, interest or penalty liability to the Internal Revenue Service ("IRS").

DEFENDANT'S OBLIGATIONS

3. Defendant agrees that she will:

a) Not knowingly or willfully fail to: (i) appear as ordered for all court appearances, (ii) surrender as ordered for service of sentence, (iii) obey all conditions of any bond, and (iv) obey any other ongoing court order in this matter.

b) Not knowingly and willfully fail to be truthful at all times with Pretrial Services, the U.S. Probation Office, and the Court.

c) Pay to the United States Clerk of Court, prior to or at the time of sentencing, special assessments in the total amount of \$125 as required by Title 18, United States Code, Section 3013.

d) Prior to the date of sentencing, (1) file with the IRS complete and accurate personal tax returns for all tax years and periods up to and including the date of sentencing, which were required to be filed pursuant to the tax laws of the United States but which have not previously been filed; (2) file with the IRS complete and accurate amended returns for all previously-filed incomplete or inaccurate personal or employment tax returns, for all tax years

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and periods up to the date of sentencing; (3) fully cooperate with the IRS in order to determine and calculate all taxes, interest and penalties due and owing by Defendant to the United States, including, but not limited to making Defendant's books and records available, and providing supporting documentation, to the IRS for examination and copying upon reasonable request; (4) pay to the IRS all taxes, penalties and interest due and owing by Defendant to the United States, including, but not limited to, all taxes, penalties and interest owed on all returns filed pursuant to this Plea Agreement, or, if financially unable to do so, make repayment arrangements with the IRS which are satisfactory to the IRS, and (5) comply with the tax laws of the United States. Defendant agrees that nothing in this agreement forecloses or limits the ability of the Internal Revenue Service to examine and make adjustments to any return filed pursuant to this agreement, and that Defendant will not, after filing the returns, file any claim for refund of taxes, penalties, or interest for amounts attributable to the returns filed in connection with this plea agreement.

4. Defendant further agrees to allow the contents of her IRS criminal file to be given to civil attorneys and support staff of the IRS to enable them to investigate any and all taxes and penalties that may be due and owing by Defendant. With respect to disclosure of the criminal file to the IRS, Defendant waives any rights under Title 26, United States Code, Section 7213, and any other right of privacy with respect to Defendant's tax returns and return information.

5. Defendant agrees to make full restitution for the losses caused by Defendant's activities. Defendant agrees that, in return for the USAO's compliance with its obligations under this agreement, the amount of restitution is not restricted to the amounts alleged in the counts to which Defendant is pleading guilty and may include losses arising from charges not prosecuted pursuant to this agreement as well as all relevant conduct in connection with those counts and charges.

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THE USAO'S OBLIGATIONS

6. If Defendant complies fully with all of her obligations under this agreement, the USAO agrees:

a) To abide by any sentencing stipulations contained in this agreement.

b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offenses up to and including the time of sentencing, to recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary, move for an additional one-level reduction if available under that section. Defendant acknowledges and understands that the Court, with the assistance of the Probation Office, will independently determine her sentence and whether she has accepted responsibility. Furthermore, Defendant acknowledges and understands that she will not be permitted to withdraw her guilty pleas if the Court determines that this reduction is not appropriate, in whole or in part.

c) If the USAO determines, in its exclusive judgment, that Defendant has both complied with her obligations under this Plea Agreement and provided substantial assistance to law enforcement in the prosecution or investigation of another ("substantial assistance"), to move the Court pursuant to U.S.S.G. § 5K1.1 to fix an offense level and corresponding guideline range below that otherwise dictated by the sentencing guidelines, and to recommend a sentence within this reduced range.

DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

7. Defendant further understands the following:

a) Any knowingly false or misleading statement by Defendant will subject Defendant to prosecution for false statement, obstruction of justice, and perjury and will

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constitute a breach by Defendant of this agreement.

b) Nothing in this agreement requires the USAO or any other prosecuting or law enforcement agency to accept any cooperation or assistance that Defendant may offer, or to use it in any particular way.

c) Defendant cannot withdraw her guilty pleas if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1, for a reduced guideline range, or if the USAO makes such a motion and the Court does not grant it, or if the Court grants such a motion but elects to sentence above the reduced range.

d) At this time the USAO makes no agreement or representation as to whether any cooperation that Defendant has provided or intends to provide constitutes substantial assistance. The decision whether Defendant has provided substantial assistance rests solely within the discretion of the USAO.

e) The USAO's determination of whether Defendant has provided substantial assistance will not depend in any way on whether the government prevails at any trial or court hearing in which Defendant testifies.

f) The USAO has no obligation to file a motion pursuant to U.S.S.G. § 5K1.1.

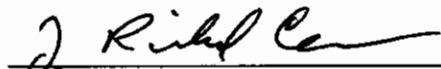
g) Federal Rule of Criminal Procedure 35(b) allows the USAO to file a "substantial assistance" motion generally within one year after the sentence is imposed. The Government will consider the filing of a Rule 35(b) "substantial assistance" motion if Defendant fails to provide substantial assistance prior to sentencing, but later satisfies the requirements of U.S.S.G. § 5K1.1. The USAO has no obligation to file a "substantial assistance" motion pursuant to Rule 35(b). The United States retains sole and complete discretion to determine whether a Rule 35(b) "substantial assistance" motion should or will be filed.

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DISCUSSION, UNDERSTANDING, COMPLETE AGREEMENT, USAO

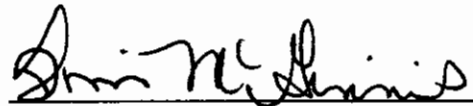
8. By signing this agreement, the Defendant acknowledges that she has discussed its terms with her attorney and understands and accepts those terms. Further, Defendant acknowledges that this document contains the entire plea agreement between the Defendant and the USAO through its undersigned attorney. No other agreements, promises, deals, bargains or understanding exist which modify or alter these terms. This agreement binds only the United States Attorney's Office for the Southern District of Ohio and does not bind any other federal, state or local prosecuting authority.

GREGORY D. LOCKHART  
United States Attorney

  
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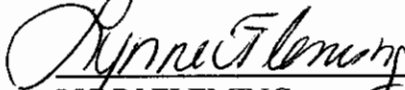
J. RICHARD CHEMA  
Assistant United States Attorney

2/10/06  
Date

  
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KIM MCGINNIS  
Defendant

2-10-06  
Date

  
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LYNN FLEMING  
Attorney for KIM MCGINNIS

2-10-06  
Date

**STATEMENT OF FACT**  
**U.S. v. Kim McGinnis**

Count 2 of Superseding Indictment (Conspiracy to Launder Money)

Between on or about August 15, 1997, and March 10, 2004, in the Southern District of Ohio, defendant **KIM MCGINNIS** did knowingly, willfully and intentionally combine, conspire, confederate and agree with **EARL MARSHALL, TICO HILL, JEFF PARKER, TRACY MARSHALL, CLARENCE PARKER, CECILE MARSHALL, LYNETTE DAVIS, GLEN HURST, DEBRA HURST, CHARLES GOFF, JR., BRYANT BRIGGS, JANELL STEPHENS, THERESA JONES**, and others, to unlawfully, knowingly and willfully conduct and attempt to conduct financial transactions affecting interstate commerce, which involved the proceeds of specified unlawful activity, namely, the unlawful distribution of controlled substances and conspiracy to do the same, knowing that the transactions were designed in whole and in part to conceal and disguise, the nature, location, source, ownership, and control of the proceeds of said specified unlawful activities, and that while conducting and attempting to conduct such financial transactions, **MCGINNIS** and the others knew that the property involved in the financial transactions, represented the proceeds of some form of unlawful activity.

**MCGINNIS** worked for **GLEN HURST** and **DEBRA HURST**, at American Funding Group, a mortgage loan business. **EARL MARSHALL, TICO HILL, JEFF PARKER, TRACY MARSHALL, CLARENCE PARKER, CECILE MARSHALL, LYNETTE DAVIS, BRYANT BRIGGS, JANELL STEPHENS, THERESA JONES**, and others, were clients of American Funding. **EARL MARSHALL** would secure, either for himself or others, mortgage loans through American Funding. **EARL MARSHALL** would provide information (much of it false)

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to American Funding, and from that information, **MCGINNIS** and other employees, including **GLEN HURST** and **DEBRA HURST**, would create fraudulent documents in support of the loan requests. **MCGINNIS** was aware that these created documents were based, in at least in part, on the false information provided by **EARL MARSHALL**. These requests would then be submitted to lenders and approved, based in part on the fraudulent information. Each of these loans would at one time or another require the use of interstate wire communication facilities, either through facsimile transmissions, transfer of funds, or other similar activity.

Financial resources needed for the loans would come from **EARL MARSHALL** even if he was not otherwise connected on paper to the transaction. **MCGINNIS** was aware that these financial transactions were done in part to conceal **EARL MARSHALL**'s financial involvement in the real estate financial transactions and that the money used was coming from an illegal source. One of the objectives of creating the fraudulent loan packages was to obtain funds for people who were not qualified to receive those funds and to obtain commissions for American Funding employees.

The allegations set out in overt acts 2, 4-8 of Count 2, and overt acts 1-2 of Count 6, of the Superseding Indictment filed in this action are true and accurate statements of fact, are admitted to by **MCGINNIS** and are incorporated into this Statement of Facts by reference.

A transaction for the purposes described above was completed by **MCGINNIS** regarding a loan obtained for the purchase of the residence at 1410 Passport Lane in Dayton, Ohio.

Count 1 of Information (Willful Failure to File Tax Return, in violation of 26 U.S.C. § 7203)

In 2003, **MCGINNIS** earned in excess of \$10,050 in gross income. By virtue of her

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receipt of this income, MCGINNIS was required by law, following the close of the calendar year 2003, and on or before April 15, 2004, to file an income tax return with the IRS, stating specifically the items of her gross income and any deductions and credits to which she was entitled. With full knowledge of these requirements, **MCGINNIS** willfully failed to file any income tax return with the IRS for the calendar year 2003, within the time period allowed by law.

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