



U.S. Department of Justice

*United States Attorney
Western District of Pennsylvania*

*U.S. Post Office & Courthouse
700 Grant Street
Suite 400
Pittsburgh, Pennsylvania 15219*

412/644-3500

April 27, 2007

James A. Wymard, Esquire
220 Grant Street
Pittsburgh, PA 15219

Re: United States of America v. Scott P. Winovich

CR 7-330

Dear Mr. Wymard:

This letter sets forth the agreement by which your client, Scott P. Winovich, will enter a plea of guilty in the above-captioned case. The letter represents the full and complete agreement between Scott P. Winovich and the United States Attorney for the Western District of Pennsylvania. The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

Upon entering a plea of guilty, Scott P. Winovich will be sentenced under the Sentencing Reform Act, 18 U.S.C. §3551, et seq. and 28 U.S.C. §991, et seq. The Sentencing Guidelines promulgated by the United States Sentencing Commission will be considered by the Court in imposing sentence. The facts relevant to sentencing shall be determined initially by the United States Probation Office and finally by the United States Court by a preponderance of the evidence.

A. The defendant, Scott P. Winovich, agrees to the following:

1. He will waive Indictment by a grand jury and will plead guilty to a two count Information in which he will be charged with one count of violating Title 18, United States Code, Section 1344 (Bank Fraud), and one count of violating Title 26, United States Code, Section 7201 (Income Tax Evasion) pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

LIMITED OFFICIAL
USE

GOVERNMENT
EXHIBIT
1

A draft copy of the Information is attached hereto as "Exhibit A".

2. He acknowledges his responsibility for tax losses for the year 2004, in addition to tax losses for 2003, which are specifically charged in Count 2 of the Information. He stipulates that the tax losses for both 2003 and 2004 may be considered by the Probation Office or by the Court in imposing sentence.
3. He will assist law enforcement agencies in investigating violations of Title 18, United States Code, Sections 371, 1341, 1343, and 1344 during the period from 1999 to 2003, committed by himself and others, hereinafter "the investigation".
4. He will be fully debriefed by personnel of the United States Attorney's Office and/or Special Agents of the Federal Bureau of Investigation, Internal Revenue Service, Criminal Investigation, and/or representatives of other federal, state or local law enforcement agencies as may be determined by the United States Attorney.
5. He will provide all information and evidence within his knowledge or control concerning the investigation. All such information will be full, complete, accurate, and truthful. The determination of the United States Attorney as to the completeness, accuracy, and truthfulness of the information and evidence provided shall be final and conclusive.
6. He will provide all documents and/or physical evidence within his possession concerning the investigation.
7. He will submit to a polygraph examination administered by an agent of the federal government if requested to do so by the United States Attorney.
8. He will, when requested, testify in grand jury, pretrial, trial, sentencing and post-conviction proceedings in this district and elsewhere.
9. He will pay mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and

3664, to the victims and/or other persons or parties authorized by law in such amounts, at such times, and according to such terms as the court shall direct. The amount of restitution may not necessarily be the same as the amount of loss for the purpose of determining the offense level under the Sentencing Guidelines.

10. He will immediately notify the court and the United States Attorney of any improvement in his economic circumstances that might increase his ability to pay restitution and that occurs from the date of this agreement until the completion of his sentence, including any term of supervised release.
11. Upon request of the United States, he agrees to provide all information regarding his income, assets and financial status. He agrees to submit to interviews and complete a financial statement under oath as to these matters.
12. He will not object to the introduction in evidence by the United States of the report prepared by Internal Revenue Service, Criminal Investigation, which will, inter alia, supplement the factual basis for the guilty plea and sentence.
13. He stipulates to the release of the report prepared by Internal Revenue Service, Criminal Investigation together with any and all accompanying exhibits, to the Examination Division of the Internal Revenue Service. He understands that the information contained in the report will be utilized in the determination of his civil tax liability.
14. If the Court imposes a fine or restitution as part of a sentence of incarceration, Scott P. Winovich agrees to participate in the United States Bureau of Prisons' Inmate Financial Responsibility Program, through which 50% of his prison salary will be applied to pay the fine or restitution.
15. At the time Scott P. Winovich enters his plea of guilty, he will deposit a special assessment of \$200 in the form of cash, or check or money order payable to "Clerk, U.S. District Court". In the event that sentence is not ultimately imposed, the special assessment deposit will be returned.

- (a) If the United States appeals from the sentence, Scott P. Winovich may take a direct appeal from the sentence.
- (b) If (1) the sentence exceeds the applicable statutory limits set forth in the United States Code, or (2) the sentence unreasonably exceeds the guideline range determined by the Court under the Sentencing Guidelines, Scott P. Winovich may take a direct appeal from the sentence.

Scott P. Winovich further waives the right to file a motion to vacate sentence, under 28 U.S.C. §2255, attacking his conviction or sentence, and the right to file any other collateral proceeding attacking his conviction or sentence.

B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania agrees to the following:

1. Pursuant to Section 1B1.8 of the Sentencing Guidelines, the United States Attorney will not use against Scott P. Winovich any information or evidence provided by him in the course of his assistance in the investigation.
2. The United States Attorney retains the right of allocution at the time of sentencing to advise the sentencing court of the full nature and extent of the involvement of Scott P. Winovich in the offenses charged in the Information and of any other matters relevant to the imposition of a fair and just sentence.
3. Prior to sentencing, the United States Attorney will, orally or in writing, move that, pursuant to

Section 3E1.1 of the Sentencing Guidelines, the court reduce the offense level by three levels for acceptance of responsibility, on the grounds that the offense level prior to application of Section 3E1.1 is 16 or greater, and Scott P. Winovich timely notified authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently.

4. The United States Attorney agrees that criminal charges will not be pursued against Kelly Winovich, wife of the defendant, Scott P. Winovich, for any participation by her in the offenses charged in the Information, or any criminal conduct arising from the same scheme of criminal conduct involving her husband, Scott P. Winovich, which give rise to the charges in the Information.
5. At the time of sentencing, if his cooperation has been completed, or within one year of the imposition of sentence, the United States Attorney will review the timeliness, nature, extent, completeness, accuracy, and truthfulness of the assistance and testimony of Scott P. Winovich. If the United States Attorney determines Scott P. Winovich has provided substantial assistance in the investigation or prosecution of other persons, the United States Attorney may, in her discretion, file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines or under Rule 35(b), Federal Rules of Criminal Procedure, advising the District Court of the assistance to law enforcement authorities. Scott P. Winovich has no right to compel, require or expect that the United States Attorney will file such a motion, however, and the decision to reduce the sentence of Scott P. Winovich below the applicable guideline range or any mandatory minimum sentence is solely in the discretion of the District Court.
6. The United States Attorney will take any position she deems appropriate in the course of any appeals from the sentence or in response to any post-sentence motions.

C. Scott P. Winovich and the United States Attorney further understand and agree to the following:

1. The maximum penalties that may be imposed upon Scott P. Winovich on Count One are:
 - (a) A term of imprisonment of not more than 30 years;
 - (b) A fine of not more than \$1,000,000;
 - (c) A term of supervised release of five years;
 - (d) A special assessment under 18 U.S.C. §3013 of \$100;
 - (e) Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.
2. (a) The maximum penalties that may be imposed upon Scott P. Winovich on Count Two are:
 - (b) A term of imprisonment of not more than 5 years;
 - (c) A fine of not more than \$250,000;
 - (d) A term of supervised release of three years;
 - (e) A special assessment under 18 U.S.C. §3013 of \$100;
3. Because the offenses of conviction were part of a scheme of criminal activity, restitution is not limited to the offenses of conviction. The district court may order that restitution be paid to any victim, person, or party directly harmed by Scott P. Winovich's criminal conduct in the course of the scheme. Restitution will be paid in an amount and in a manner to be directed by the Court at the time of sentencing.
4. The parties agree that as to Count One, Scott P. Winovich derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the bank fraud offense, and that his offense level is therefore level 24 pursuant to Guidelines §2B1.1(b)(13)(A), and that as to Count Two the tax loss in this case is between \$80,000 and \$200,000, resulting in an offense level of 16. The parties further agree that pursuant to the

Guidelines Grouping rules, including §3D1.4, the bank fraud offense level of 24 is increased by 1 level, to level 25. The stipulation is not binding on the District Court and does not preclude the parties from bringing to the attention of the United States Probation Office or the District Court any information not within their knowledge at the time this agreement is executed.

5. The parties further agree that the offense level of 25 should be lowered by a total of 3 levels, to level 22, under Section 3E1.1 of the Sentencing Guidelines, for acceptance of responsibility.
6. The parties agree that Scott P. Winovich has 0 criminal history points and a criminal history category of I.
7. The parties agree that, with an offense level of 22 and a criminal history category of I, Scott P. Winovich has a final Guideline range of imprisonment of 41 to 51 months.
8. If, at any time, the United States Attorney determines that Scott P. Winovich has provided any information or evidence that is not full, complete, accurate, and truthful, or that Scott P. Winovich has not provided assistance or testimony upon request, the obligations of the United States Attorney under this agreement are terminated. In that event, the government may prosecute Scott P. Winovich on charges it has agreed to dismiss or has dismissed, and it may use against Scott P. Winovich information and/or evidence obtained from him. The government may also prosecute Scott P. Winovich for perjury or obstruction of justice. Any plea of guilty previously entered will stand, however, and Scott P. Winovich will not have the right to withdraw the plea of guilty by virtue of his breach of this agreement.
9. This agreement does not preclude the government from pursuing any civil or administrative remedies against Scott P. Winovich or his property.

This letter sets forth the full and complete terms and conditions of the agreement between Scott P. Winovich and the United States Attorney for the Western District of Pennsylvania, and there are no

other agreements, promises, terms or conditions, express or implied.

Very truly yours,



MARY BETH BUCHANAN
United States Attorney

I have received this letter from my attorney, James A. Wymard, Esquire, have read it and discussed it with him, and I hereby accept it and acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Western District of Pennsylvania. I affirm that there have been no additional promises or representations made to me by any agents or officials of the United States in connection with this matter.

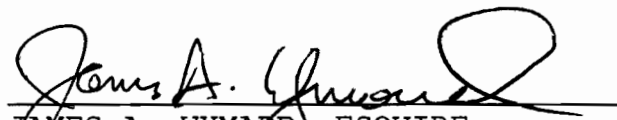


Scott P. Winovich

4/27/07

Date

Witnessed by:



JAMES A. WYWARD, ESQUIRE
Counsel for Scott P. Winovich