

MAY 25 2007

U. S. DISTRICT COURT
WEST'N DIST. KENTUCKY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT ~~BOWLING GREEN~~ Louisville

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL NO. 3:07CR-10-R

FREDDIE JOHNSON

DEFENDANT

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States of America, by David L. Huber, United States Attorney for the Western District of Kentucky, and defendant, Freddie Johnson, and his attorney, William Yesowitch, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Superseding Indictment in this case with violations of Title 18, United States Code, Sections 1343 and 1028A.

2. Defendant has read the charges against him contained in the Superseding Indictment, and that the charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crimes with which he has been charged.

3. Defendant will enter a voluntary plea of guilty to Counts 1, 2, and 4 in this case. Defendant will plead guilty because he is in fact guilty of the charges. The parties agree to the following factual basis for this plea:

In November of 2006 **Freddie Johnson**, while posing as Terrence Brown, conspired with others to fraudulently apply for residential mortgage loans in the Louisville, Kentucky, area. As part of the scheme, **Johnson** recruited other co-conspirators to pose as sellers of property and to cash a check from one of the fraudulent transactions.

More particularly, **Johnson** was involved in two fraudulent loans on real estate located at 2411 Longest Avenue in Louisville, Kentucky. In each instance, **Johnson's** co-conspirators stole the identity of individuals for the purpose of posing as a buyer and seller of property in order to obtain a fraudulent mortgage loan.

On November 21, 2006, **Johnson** and his co-conspirators obtained a mortgage loan from Homecoming Financial for \$303,704.57. Before the closing on November the 21st the closing funds were wired across state lines by Homecoming Financial into an escrow account of Associated Title located in Louisville, Kentucky. To obtain the loan **Johnson** and his co-conspirators stole the identity of S.R. and J.B. in order to fraudulently close on this transaction. Following the closing, \$290,927 was wire transferred from Associated Title's escrow account to a bank account controlled by **Johnson's** co-conspirators.

On November 27, 2006, **Johnson** and his co-conspirators obtained a second mortgage loan for the property located at 2411 Longest Avenue. **Johnson** and his co-conspirators applied for and received a residential mortgage loan from Wells Fargo Bank to fund this purchase. The closing funds were wired across state lines by Wells Fargo Bank into an escrow account of Associated Title located in Louisville, Kentucky. To obtain the loan **Johnson** and his co-conspirators stole the identity of S.R. and J.B. in order to fraudulently close on the transaction. Following the closing Rels Title issued a cashier's check payable to S.R. in the amount of \$294,567.22. These funds were eventually deposited into a B.B. & T checking account that was opened by a co-conspirator. The account was opened using the stolen identity of J.F. **Johnson's** co-conspirators were never able to successfully withdraw the funds from the \$294,567.22 deposit.

In each instance of stolen identity, **Johnson** and his co-conspirators used the name, address, and social security number of the individual. This included the use of the following stolen identities: S.R., J.B., and J.F.

4. Defendant understands that the charges to which he will plead guilty carry a combined maximum term of imprisonment of 34 years, a combined maximum fine of \$1,500,000, and a five-year term of supervised release. Defendant understands that an additional term of imprisonment may be ordered if the terms of the supervised release are violated, as explained in 18 U.S.C. § 3583.

5. Defendant understands that if a term of imprisonment of more than one year is imposed, the Sentencing Guidelines require a term of supervised release and that he will then be subject to certain conditions of release. §§5D1.1, 5D1.2, 5D1.3.

6. Defendant understands that by pleading guilty, he surrenders certain rights set forth below. Defendant's attorney has explained those rights to him and the consequences of his waiver of those rights, including the following:

A. If defendant persists in a plea of not guilty to the charge against him, he has the right to a public and speedy trial. The trial could either be a jury trial or a trial by the judge sitting without a jury. If there is a jury trial, the jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent and that it could not convict him unless, after hearing all the evidence, it was persuaded

of defendant's guilt beyond a reasonable doubt.

B. At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

C. At a trial, defendant would have a privilege against self-incrimination and he could decline to testify, without any inference of guilt being drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

7. Defendant understands that the United States Attorney's Office has an obligation to fully apprise the District Court and the United States Probation Office of all facts pertinent to the sentencing process, and to respond to all legal or factual inquiries that might arise either before, during, or after sentencing. Defendant admits all acts and essential elements of the Superseding Indictment counts to which he pleads guilty.

8. Defendant acknowledges liability for the special assessment mandated by 18 U.S.C. § 3013 and will pay the assessment

in the amount \$100 per count for felony offenses involving individuals the United States District Court Clerk's Office on the date of sentencing.

9. At the time of sentencing, the United States will

-recommend a sentence of imprisonment at the lowest end of the applicable Guideline Range, but not less than any mandatory minimum term of imprisonment required by law.

-recommend a reduction of 3 levels below the otherwise applicable Guideline for "acceptance of responsibility" as provided by §3E1.1(a) and (b), provided the defendant does not engage in future conduct which violates a condition of bond, constitutes obstruction of justice, or otherwise demonstrates a lack of acceptance of responsibility. Should such conduct occur and the United States, therefore, opposes the reduction for acceptance, this plea agreement remains binding and the defendant will not be allowed to withdraw his plea.

-recommend that Counts 2 and 4 run concurrently with one another pursuant to the Court's discretion under 18 USC § 1028A(b)4)

10. Both parties have independently reviewed the Sentencing Guidelines applicable in this case, and in their best judgment and belief, conclude as follows:

A. The Applicable Offense Level should be determined as follows:

USSG § 2B1.1(a)(1) [Base offense level]:	7
(b)(1)(H) [intended loss more than \$400,000]:	+14
3E1.1(a) & (b): [acceptance]	-3
Total Adjusted Offense Level (1):	18
3B1.1(c): [organizer of criminal activity]	+2
Total Adjusted Offense Level (2):	20

The parties agree to leave any enhancement under USSG § 3B1.1(c) up for argument at sentencing. Total Adjusted Offense Level (1) does not include the enhancement, (2) includes the enhancement.

B. The Criminal History of defendant shall be determined upon completion of the presentence investigation, pursuant to Fed. R. Crim. P. 32(c). Both parties reserve the right to object to the USSG §4A1.1 calculation of defendant's criminal history.

C. The foregoing statements of applicability of sections of the Sentencing Guidelines and the statement of facts are not binding upon the Court. The defendant understands the Court will independently calculate the Guidelines at sentencing and defendant may not withdraw the plea of guilty solely because the Court does not agree with either the statement of facts or Sentencing Guideline application.

11. The parties agree that whatever Guideline calculation the Court applies that the defendant may argue for a non-Guideline sentence.

12. Defendant is aware of his right to appeal his conviction and that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The Defendant knowingly and voluntarily waives the right (a) to directly appeal his conviction, but not the resulting sentence pursuant to Fed. R. App. P. 4(b) and 18 U.S.C. § 3742, if the sentence imposed is not imposed in accordance with this plea agreement, and (b) to contest or collaterally attack his conviction and the resulting sentence pursuant to 28 U.S.C. § 2255 or otherwise. Defendant understands and agrees that nothing in this plea agreement should be construed as a waiver by the United States of its right to appeal the sentence under 18 U.S.C. § 3742.

13. Defendant understands all financial matters, including restitution, are left to be addressed at sentencing.

14. It is understood that pursuant to Fed. R. Crim. P. 11(c)(1)(B), the recommendations of the United States are not binding on the Court. In other words, the Court is not bound by the sentencing recommendation and defendant will have no right to withdraw his guilty plea if the Court decides not to accept the sentencing recommendation set forth in this Agreement.

15. Defendant agrees that the disposition provided for within this Agreement is fair, taking into account all aggravating and mitigating factors. Defendant states that he has informed the United States Attorney's Office and the Probation Officer, either directly or through his attorney, of all mitigating factors.

16. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

17. Defendant agrees to interpose no objection to the United States transferring evidence or providing information concerning defendant and this offense, to other state and federal agencies or other organizations, including, but not limited to the Internal Revenue Service, other law enforcement agencies, and any licensing and regulatory bodies, or to the entry of an order under Fed. R. Crim. P. 6(e) authorizing transfer to the Examination Division of the Internal Revenue Service of defendant's documents, or documents of third persons, in possession of the Grand Jury, the United States Attorney, or the Criminal Investigation Division of the Internal Revenue Service.

18. This document states the complete and only Plea Agreement

between the United States Attorney for the Western District of Kentucky and defendant in this case, and is binding only on the parties to this Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that is signed by all parties or on the record in Court. No other promises or inducements have been or will be made to defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

AGREED:

DAVID L. HUBER
United States Attorney

By:

Bryan
Bryan R. Calhoun
Assistant U.S. Attorney

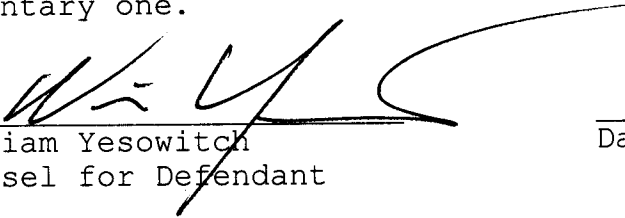
5/25/07
Date

I have read this Agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

Freddie Johnson
Freddie Johnson
Defendant

5/25/07
Date

I am the defendant's counsel. I have carefully reviewed every part of this Agreement with the defendant. To my knowledge my client's decision to enter into this Agreement is an informed and voluntary one.



William Yesowitch
Counsel for Defendant

Date 5/27/07

DLH:BRC:vlp:070514