

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal No. 08-30169-MJR-PMF
vs.)	
)	
STACIE M. GARY,)	
)	
Defendant.)	

PLEA AGREEMENT

The attorney for the Government and the attorney for the Defendant have engaged in discussions and have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. As a result of that agreement, the Defendant intends to plead guilty in this case. The full and complete Plea Agreement is as follows:

I.

1. Defendant will cooperate fully with the United States. Defendant agrees and acknowledges that her obligation to cooperate requires her to provide complete and truthful testimony under penalty of perjury before any Grand Jury or in any trial proceeding. Furthermore, the Defendant understands that this agreement requires her to testify concerning all criminal activity about which she knows, whether or not Defendant was herself involved.

2. Defendant also agrees and acknowledges that her obligation to cooperate requires her, upon request, to provide complete and truthful information to any Federal or State law enforcement agencies concerning any criminal activity about which she knows. Defendant agrees that any such information she provides law enforcement agencies will be complete and truthful.

3. Besides the foregoing, the Defendant will do all things deemed necessary by the United States Attorney and/or any law enforcement agents to assist law enforcement personnel in their investigations into activities in which the Defendant is involved or about which she knows.

4. Defendant further agrees that her obligation to cooperate includes providing information concerning her knowledge of criminal activity in the Southern District of Illinois, and elsewhere, including, but not limited to, all federal districts.

5. The Defendant and the Government both agree that, pursuant to the United States Sentencing Commission *Guidelines Manual*, § 1B1.8 [hereinafter "Sentencing Guidelines" or "U.S.S.G."], information that the Defendant provides pursuant to her obligation to cooperate fully under the terms of this agreement shall not be used in determining Defendant's applicable guideline range.

6. The United States will inform the Court of the extent of her voluntary cooperation; however, Defendant understands that the Court did not participate in this agreement, is not bound by any recommendations of the Government, and further, that she will not be allowed to withdraw her plea of guilty, once entered.

7. Defendant will not be prosecuted in the Southern District of Illinois for any other crimes now known to the Government or to become known to the Government by virtue of Defendant's cooperation.

8. In conjunction with the provisions of paragraphs 1, 2, 3, and 4, above, Defendant specifically agrees and acknowledges that if she does not cooperate fully or does not testify truthfully before the Grand Jury or at any trial in any federal district where she is called by the United States as a witness, then the United States is completely released from any obligation arising from this

agreement and the Defendant is subject to full prosecution and punishment for any crime known to the Government at this time. It is further understood that no action taken by the Government, pursuant to this paragraph, shall be grounds for the Defendant to withdraw her plea.

9. Defendant acknowledges that she has been advised and does fully understand the following:

(a) the nature of the charges to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;

(b) that she has the right to plead not guilty or to persist in that plea if it has already been made, and she has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against her, and the right not to be compelled to incriminate herself;

(c) that if she pleads guilty, there will not be a further trial of any kind, so that by pleading guilty, she waives the right to a trial;

(d) that if she pleads guilty, the Court may ask her questions about the offense to which she has pleaded, and if she answers these questions under oath, on the record, and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or false statement;

(e) that if she pleads guilty, she will waive her right to persist in her plea of not guilty, to be tried by a jury, to have assistance of counsel at the trial, and to confront and cross-examine witnesses against her at trial; and

(f) that if she pleads guilty, she is pleading guilty to a felony punishable by a term of imprisonment exceeding one year. Therefore, no matter what sentence the Court imposes (whether probation or any term of imprisonment), she will be forbidden by federal firearms laws from possessing any type of firearm in her lifetime, unless she obtains relief pursuant to 18 U.S.C. § 925, or other appropriate federal statute.

10. Defendant agrees that this Plea Agreement and Stipulation of Facts constitutes the entire agreement between her and the United States and that no promises, inducements or representations, other than those specifically set forth in this Plea Agreement and Stipulation of Facts, were made to induce her to enter into this Plea Agreement and Stipulation of Facts.

11. It is further understood that this agreement is limited to the Southern District of Illinois, and cannot bind other federal, state or local prosecuting authorities. It is further understood that this Plea Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving Defendant.

12. Defendant understands that this offense is subject to Title 28, United States Code, Section 994(a). Defendant has been advised and understands that the Sentencing Guidelines are advisory and that the Court will consider the applicable Sentencing Guidelines in conjunction with 18 U.S.C. § 3553(a), in determining the appropriate sentence.

13. Defendant understands that pursuant to Title 18, United States Code, Section 3013, the Court will assess a "Special Assessment" of \$100 per felony count. Defendant agrees that she will pay the full amount of the special assessment prior to or at the time of sentencing.

14. Defendant understands that the Court will impose a term of "supervised release" to follow incarceration. See 18 U.S.C. § 3583; U.S.S.G. § 5D1.1.

15. Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision and that the Government will recommend the imposition of a fine. The estimated costs of such incarceration or community confinement or supervision, pursuant to an advisory notice from the Administrative Office of the United States Courts dated May 6, 2008, are: for imprisonment: \$2,076.83 per month; for community confinement: \$1,905.92 per month; and for

supervision: \$301.80 per month. The Defendant agrees to make complete financial disclosure by truthfully filling out, at the request of the United States Attorney, a Financial Statement (OMB-500).

16. The Defendant states that she has read this agreement and has discussed it with her attorney, and understands it.

17. The Defendant understands and agrees that if she commits any offense in violation of federal, state, or local law, or violates any condition of release, or violates any term or condition of this agreement, the Government is not bound by the provisions herein and may request that the Court impose on the Defendant any penalty allowable by law, including the filing of additional charges or sentencing enhancement notices, in addition to any sanctions that may be imposed for violation of the Court's order setting the conditions of release. No action taken or recommendation made by the Government pursuant to this paragraph shall be grounds for the Defendant to withdraw her plea.

II.

1. The Defendant states that she is actually guilty and will enter a plea of guilty to the following:

Count	Charge	Penalty
1	Bankruptcy Fraud - Concealment of Spouse's Assets	5 years imprisonment, \$250,000 fine, 3 years supervised release, costs of prosecution
3 & 4	Bankruptcy Fraud - False Statement	5 years imprisonment, \$250,000 fine, 3 years supervised release, costs of prosecution
5	Bankruptcy Fraud - False Oath	5 years imprisonment, \$250,000 fine, 3 years supervised release, costs of prosecution
6	Mail Fraud of Unemployment Insurance	20 years' imprisonment; a \$250,000 fine, and not more than 5 years supervised release, costs of prosecution

2. The Government and the Defendant agree that the following constitutes the essential elements of the offense:

Count	Charge	Essential Elements
1	Bankruptcy Fraud - Concealment of Spouse's Assets	<p>To sustain the charge of Concealment of Assets, the government must prove the following propositions:</p> <ul style="list-style-type: none"> (1) the bankruptcy case existed; (2) the defendant knowingly and fraudulently conceals; (3) from a trustee or other office of the Court charged with the control or custody of property from creditors; (4) any property; (5) belonging to the estate of a debtor.
3 & 4	Bankruptcy Fraud - False Statement	<p>To sustain the charge of False Declarations, the government must prove the following propositions:</p> <ul style="list-style-type: none"> (1) the bankruptcy case existed; (2) the defendants knowingly and fraudulently made; (3) a declaration, certificate, verification, or other statement in relation to the bankruptcy proceeding as permitted under 28 U.S.C. § 1746; (4) which was false; (5) as to a material matter
5	Bankruptcy Fraud - False Oath	<p>To sustain the charge of False Oaths, the government must prove the following propositions:</p> <ul style="list-style-type: none"> (1) the bankruptcy case existed; (2) the defendants made a statement under oath therein; (3) as to a material fact; (4) that was false; (5) that was made knowingly (defendants knew it was false when made) and fraudulently (made with intent to defraud).

6	Mail Fraud of Unemployment Insurance	<p>To sustain the charge of Mail Fraud, the government must prove the following propositions:</p> <p>(1) having devised or intending to devise a scheme to defraud (or to perform specified fraudulent acts), and</p> <p>(2) use of the mail for the purpose of executing, or attempting to execute, the scheme (or specified fraudulent acts).</p>
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The Defendant agrees and admits that her conduct violated these essential elements of the offense.

3. The Government and Defendant submit to the Court that it appears that under the Sentencing Guidelines, after all factors have been considered, Defendant will have an Offense Level of 19 and a Criminal History Category of zero, where the sentencing range is 21-27 months. The Defendant and the Government further submit that it appears that under the Sentencing Guidelines, after all factors have been considered, the Defendant's fine range will be \$10,000 to \$100,000 according to U.S.S.G. § 5E1.2. The Government and Defendant also submit to the Court that this submission is not intended to be binding on the Court and that the Court ultimately will determine the guideline range after receiving the Presentence Report and giving both parties the opportunity to comment thereon. The Defendant expressly recognizes that, regardless of the guideline range found or the sentence imposed by the Court, she will not be permitted to withdraw her plea. The Government and the Defendant agree that the offense level and the criminal history category calculations submitted by the parties herein constitute the parties' good faith efforts to inform the Court of their beliefs as to the applicable sentencing range and acknowledge that it is the Court which is ultimately responsible for determining the applicable Guideline range and determining the sentence which will be imposed. The Government agrees to recommend a sentence and fine that is at the low end of the range ultimately found by the Court. Based upon the

concessions made by the Government in this agreement, the Defendant agrees not to seek any sentence below the lowest range of the advisory sentence recommended by the guidelines after all guideline factors have been considered by the Court. The Government specifically reserves the right to argue for, present testimony, or otherwise support the Probation Office's or the Court's findings as to Offense Level and Criminal History Category (which may be in excess of the calculations set forth herein by the Defendant and the Government). The Defendant understands that the Sentencing Guidelines are advisory only and that the Court has the discretion to sentence the Defendant anywhere up to the statutory maximum sentence after consideration of the Sentencing Guidelines, and the factors set forth in 18 U.S.C. § 3553(a), including the nature and circumstances of the offense(s) and the criminal history and characteristics of the Defendant.

4. Defendant and the Government agree that the initial Guideline Offense Level in this case is six (6) pursuant to U.S.S.G. § 2B1.1(a)(2).

5. The Defendant and the Government further agree that the specific offense characteristic of amount of loss applies, thus the Defendant's initial Guideline Offense level should be increased six (6) levels, creating a base offense level of twelve (12) levels pursuant to U.S.S.G. § 2B1.1(b)(1)(D).

6. The Defendant and the Government agree that the victim-related adjustment applies to this offense, thus the Defendant's initial Guideline Offense level should be increased four (4) levels, creating a base offense level of sixteen (16) levels pursuant to U.S.S.G. § 2B1.1(b)(2)(B).

7. The Defendant and the Government agree that the misrepresentation in a bankruptcy proceeding adjustment applies to this offense, thus the Defendant's initial Guideline

Offense level should be increased two (2) levels, creating a base offense level of eighteen (18) levels pursuant to U.S.S.G. § 2B1.1(b)(8)(B).

8. The Defendant and the Government agree that the multiple-count grouping adjustment applies to this offense, thus the Defendant's initial Guideline Offense level should be increased one (1) level, creating a base offense level of nineteen (19) levels pursuant to U.S.S.G. § 3D1.4 (after considering the unemployment benefits count the base offense level under § 2B1.1(a)(2) and the amount of loss under § 2B1.1(b)(1)(D)).

9. Defendant and the Government agree that her role in the offense was such that her offense level should be neither increased (under § 3B1.1) nor decreased (under § 3B1.2).

10. Defendant and the Government agree that Defendant has not obstructed justice in this case and therefore, pursuant to U.S.S.G. § 3C1.1, the Defendant's base offense level should not be increased.

11. Defendant and the Government agree that Defendant has voluntarily demonstrated a recognition and affirmative acceptance of personal responsibility for this criminal conduct, and the Government will recommend a reduction of three (3) levels, reducing the Offense Level to sixteen (16) (from an offense level of 19). See U.S.S.G. § 3E1.1.

12. Defendant and the Government submit to the Court that it appears that the Defendant has amassed one (1) Criminal History points and that, therefore, her Sentencing Guideline Criminal History Category is I. The Defendant and the Government arrived at this Category based upon the following information:

<u>Date</u>	<u>Charge</u>	<u>Guideline</u>	<u>Score</u>
1998	misdemeanor conviction but did not serve time Another conviction is more than 10 years old and another arrest for Contempt of Court is pending	§ 4A1.1(c)	1 point

Defendant expressly recognizes that the final calculation will be determined by the Court after considering the Presentence Report, the views of the parties and any evidence submitted prior to sentencing. Defendant recognizes that, regardless of the criminal history found by the Court, she will not be able to withdraw her plea.

13. The Defendant understands that the Government may recommend the imposition of a fine. The Defendant understands that the Government's recommendation may be based in part on the Defendant's projected earnings through the Inmate Financial Responsibility Program.

14. The Defendant and the Government agree that based upon substantial assistance rendered through the complete and total cooperation of Defendant, the Government may, in the sole discretion of the United States Attorney, file either a motion under § 5K1.1 of the Sentencing Guidelines or a motion under Rule 35 of the Federal Rules of Criminal Procedure advising the Court of a recommended reduction in sentence. The Motion, if any, will only be filed if the assistance rendered by the Defendant is found to be complete and thoroughly truthful, regardless of the outcome of any trial or hearing at which the Defendant may testify. The Defendant understands that any reduction of sentence, and the extent of that reduction, lies in the discretion of the Court.

15. **The United States and the Defendant agree not to seek a sentence outside the applicable Guideline range.** The agreement by the parties to not seek a variance from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law.

16. Defendant will cooperate fully with the United States Probation Office in its collection of information and preparation of the Presentence Report in this matter. Said cooperation will include signing all releases, as requested.

17. The Defendant acknowledges that Title 18, United States Code, Section 3143(a)(2) requires that upon a plea of guilty in this case, the Court must order the Defendant detained pending sentencing, in the absence of exceptional circumstances as set forth in Title 18, United States Code, Section 3145(c).

III.

1. The Defendant understands that by pleading guilty, she is waiving all appellate issues that might have been available if she had exercised her right to trial. The Defendant states that she is fully satisfied with the representation she has received from her counsel, that they have discussed the Government's case, possible defenses and have explored all areas which the Defendant has requested relative to the Government's case and her defense.

2. The Defendant is aware that Title 18, Title 28 and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence. Acknowledging all this, and in exchange for the recommendations and concessions made by the United States in this plea agreement, the Defendant knowingly and voluntarily waives her right to contest any aspect of her conviction and sentence that could be contested under Title 18 or Title 28, or under any other provision of federal law, except that if the sentence imposed is in excess of the Sentencing Guidelines as determined by the Court (or any applicable statutory minimum, whichever is greater), the Defendant reserves the right to appeal the reasonableness of the sentence. The Defendant acknowledges that in the event such an appeal is taken, the Government reserves the right

to fully and completely defend the sentence imposed, including any and all factual and legal findings supporting the sentence, even if the sentence imposed is more severe than that recommended by the Government. Defendant knowingly and voluntarily waives her right to seek a pardon, whether before or after her release from custody.

3. Defendant's waiver of her right to appeal or bring collateral challenges shall not apply to the following: (1) any subsequent change in the interpretation of the law by the United States Supreme Court or the United States Court of Appeals for the Seventh Circuit, which is declared retroactive by those Courts, and which renders the defendant actually innocent of the charges covered herein, and (2) appeals based upon Sentencing Guideline amendments which are made retroactive by the United States Sentencing Commission (*see* U.S.S.G. § 1B1.10). The Government reserves the right to oppose such claims for relief.

4. Defendant's waiver of her appeal and collateral review rights shall not affect the Government's right to appeal Defendant's sentence pursuant to Title 18, United States Code, Section 3742(b). This is because United States Attorneys lack any right to control appeals by the United States, through plea agreements or otherwise; that right belongs to the Solicitor General. 28 C.F.R. § 0.20(b).

5. 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, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

6. Defendant waives all claims under the Hyde Amendment, Title 18, United States Code, Section 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

7. The Defendant acknowledges that the Government has provided complete discovery compliance in this case. Defendant states that she has reviewed said discovery compliance with her attorney.

IV.

No matters are in dispute.

A. COURTNEY COX
United States Attorney

STACIE M. GARY
Defendant

WILLIAM E. COONAN
Assistant United States Attorney

MARK D. SKAGGS
Special Assistant U.S. Attorney

JOHN D. STOBBS, II
Attorney for Defendant

Date: _____

Date: _____

FACSIMILE COVER SHEET

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DATE: DECEMBER 24, 2008

TO: John Stobbs

FAX NO: 618-462-8585

FROM: Liam Coonan

REMARKS:

PAGES: including cover

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December 24, 2008

Ms. Stacie Gary
214 South Charles
Edwardsville, Illinois 62025

RE: U.S.A. v. Gray
No. 08-CR-30169-MJR-PMF

Dear Ms. Gary:

Enclosed please find a copy of a proposed Plea Agreement and Stipulation of Facts.

If you have any questions regarding the foregoing, please contact me at your convenience.

Very truly yours,

STOBBS LAW OFFICES

BY:


John D. Stobbs II

JDSII:cw
Enclosures