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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 03-CR-0023-MK

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. SCOTT LEE KIMBALL,
aka BRETT KIMBALL,

Defendant.

**PLEA AGREEMENT AND STIPULATION OF FACTS
RELEVANT TO SENTENCING**

The United States of America (hereinafter "Government"), by and through its undersigned Assistant United States Attorney, and the Defendant, Scott Lee Kimball, personally, and by and through his attorney, Kenneth F. Eichner, submit the following Plea Agreement and Stipulation of Facts Relevant to Sentencing, pursuant to D.C.COLO.LCrR 11.1:

I. PLEA AGREEMENT

1. The Defendant agrees to plead guilty to Counts One and Two of the Information which was previously filed in the District of Alaska pursuant to the Waiver of Indictment which he executed there and which was transferred here for the entry of a plea of guilty pursuant to Rule 20, F.R.Cr.P. Counts One and Two charge violations of Title 18, United States Code, Section 513(a) [making, uttering and possessing a counterfeited security, i.e., a check].

2. The Defendant agrees to fully and truthfully cooperate with the Government and law enforcement authorities, which cooperation will include debriefings and testifying before Grand

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Juries and petit juries whenever called upon or subpoenaed to do so.

3. The Government agrees that any information and testimony given by the Defendant pursuant to this agreement will not be used, either directly or indirectly, against him in any criminal case except prosecutions for perjury or making a false statement, and for impeachment. This, of course, also means that the information and testimony will not be used against the Defendant at sentencing pursuant to §1B1.8. Information and testimony relating to involvement in crimes of violence, if any, are excluded from this agreement. "Crimes of violence," as the term is used here, refers to the traditional, Common Law meaning of the term.

4. The Office of the United States Attorney for the District of Colorado agrees that it will not seek to prosecute the Defendant for any other offenses presently known to it or any offenses based upon information provided by the Defendant.

5. Provided that the Defendant continues to fully and truthfully cooperate with the Government and law enforcement authorities as contemplated above, before or at the time of the sentencing of the Defendant, the Government agrees that it will evaluate the nature and extent of the Defendant's cooperation and, in its discretion, will consider the filing of a motion pursuant to § 5K1.1 of the Sentencing Guidelines for a downward departure.

6. The Government agrees to recommend that the Court sentence the Defendant at the lowest-end of the applicable sentencing range.

7. This plea agreement is made pursuant to Rule 11(e)(1)(B), F.R.Cr.P.

II. MAXIMUM STATUTORY PENALTIES

8. The maximum statutory penalty for each of the offenses charged in the Information is a term of imprisonment of not more than 10 years; a fine not to exceed \$250,000.00; or both; a term

of supervised release of 3 years; a mandatory \$100 Special Assessment Fee; plus restitution.

9. The conviction may cause loss of civil rights, including but not limited to possess firearms, vote, hold elected office, and sit on a jury.

10. A violation of the conditions of probation or supervised release may result in a separate prison sentence.

III. STIPULATION OF FACTUAL BASIS AND FACTS RELEVANT TO SENTENCING

11. The parties agree that there is no dispute as to the material elements which establish a factual basis of the offenses of conviction.

12. Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties believe are relevant, pursuant to § 1B1.3 for computing the appropriate guideline range. To the extent the parties disagree about the facts relevant to sentencing, the statement of facts identifies which facts are known to be in dispute at the time of the plea. (§ 6B1.4(b))

13. The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the guideline computation (§ 1B1.3) or to sentencing in general (§ 1B1.4). In "determining the factual basis for the sentence, the court will consider the stipulation [of the parties], together with the results of the presentence investigation, and any other relevant information." (§ 6B1.4 Comm.)

14. The parties agree that the Government's evidence would show that the date on which conduct relevant to the offense (§ 1B1.3) began is November 5, 2001.

15. The parties agree that the Government's evidence would be:

On November 7, 2001, Clara Popelka, an employee of the Wells Fargo Bank in Cordova,

Alaska, reported to police officers of the Cordova (Alaska) Police Department that a person who identified himself as "Brett Kimball" deposited two checks into his checking account at the Wells Fargo Bank in Cordova, Alaska. These two checks were written on the account of a business known as "Fisherman's Finest," which account was at a branch of the U. S. Bank located in Seattle, Washington. One of the checks was deposited on November 5, 2001, in the amount of \$4,287.95, payable to "Brett Kimball;" the other check was deposited on November 6, 2001, in the amount of \$4,000.00, payable to "Brett Kimball."

On November 7, 2001, the person who identified himself as "Brett Kimball" wrote and cashed a check for cash in the amount of \$7,500.00 at the Wells Fargo Bank in Cordova, Alaska.

On November 7, 2001, Clara Popelka of the Wells Fargo Bank was contacted by officials of the U. S. Bank in Seattle, Washington, and those officials told her that the two checks, referred to above, written on the "Fisherman's Finest" account had been forged. Ms. Popelka reported this information to law enforcement authorities in Cordova, Alaska. The law enforcement authorities then began an investigation, which included contacting officials at a branch of the Wells Fargo Bank in Seattle, Washington; and those officials advised them that the above-referenced checks were forgeries and had been returned to the Cordova, Alaska, branch of the Wells Fargo Bank. The law enforcement authorities also contacted the Controller and an authorized check signer for Fisherman's Finest; these persons confirmed to the law enforcement authorities that the checks were forgeries and not signed or authorized by anyone at Fisherman's Finest.

On or about November 8, 2001, law enforcement authorities contacted and interviewed Catherine Curtiss, who gave them information and evidence which confirmed that the person whom she knew as Brett Kimball had forged the above-referenced checks. She also gave them

evidence from which they learned that Scott Lee Kimball, the Defendant herein, was the true name and identity of the person who had identified himself as Brett Kimball and who had signed (forged) and uttered the above-referenced checks.

On or about November 8, 2001, Scott Lee Kimball was contacted by law enforcement officers in Cordova, Alaska, and they advised him of his Miranda rights, which he waived. Kimball agreed to be interviewed by the law enforcement officers and they interviewed him. During the interview, Scott Lee Kimball advised them that he had forged the two checks referred to above and that he had deposited them at the Wells Fargo Bank in Cordova, after which deposit he had written a check for and had received \$7,500.00 in cash based on the deposit of the two forged checks.

IV. SENTENCING COMPUTATION

16. The parties stipulate that the sentencing in this case will be determined by application of the sentencing guidelines, issued pursuant to Title 28, United States Code, Section 994(a)(1), and Title 18, United States Code, Section 3553.

17. Any estimation by the parties herein regarding the estimated appropriate guideline application does not preclude either party from asking the court to depart from the otherwise appropriate guideline range at sentencing, if that party believes that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines. (§5K2.0)

18. The parties understand that the court may impose any sentence, up to the statutory maximum, regardless of any guideline range computed, and that the Court is not bound by any position of the parties. (§6B1.4(d)) The Court is free, pursuant to §§6A1.3 and 6B1.4, to reach its

own finding of facts and sentencing factors considering the parties' stipulations, the presentence investigation, and any other relevant information. (§6B1.4 Comm.; §1B1.4) The parties have, however, submitted this Plea Agreement for the Court's consideration pursuant to Rule 11(e)(1)(B).

19. To the extent the parties disagree about the sentencing factors, the computations below identify the factors which are in dispute. (§6B1.4(b)) New facts which arise or are discovered may cause a party to change its position with regard to guideline computation or sentencing position.

20. The parties stipulate that the base offense level is 10. (§2B1.1(a) and (b)(8))

21. The parties stipulate that there are no specific offense characteristics.

22. The parties stipulate that there are no role-in-the-offense, obstruction or victim-related adjustments.

23. The parties stipulate that the Defendant should receive the 2-level downward adjustment for acceptance of responsibility, pursuant to §3E1.1(a). Therefore, the resulting offense level would be 8.

24. The parties stipulate that the career offender/career livelihood adjustments do not apply.

25. The parties understand that the stipulation regarding the criminal history of the Defendant is tentative, and that the final criminal history category is more completely and accurately determined by the U. S. Probation Department. But, based upon the best information available to the Government at this time, it is estimated that the Defendant is in Criminal History Category III or higher. However, this plea agreement is not conditioned on the Defendant's being in a particular criminal history category.

26. The Guideline range resulting from the offense level 8, above, and a Criminal History Category III is a term of imprisonment of 6-12 months. If the Defendant's Criminal History Category is lower or higher than III, then the applicable sentencing range would be adjusted accordingly. The parties have agreed, however, pursuant to Rule 11(e)(1)(B), F.R.Cr.P., to recommend that the Court sentence the Defendant at the lowest-end of the applicable sentencing range and, in the Government's discretion, after evaluating the nature and extent of the cooperation to be rendered by the Defendant, to consider the filing of a motion pursuant to §5K1.1, U.S.S.G..

27. Pursuant to Title 18, United States Code, Sections 513(a) and 3571(b)(3), the maximum fine for the offense is \$250,000.00. Pursuant to §5E1.2, the range for fines for offense level 8 is \$1,000.00 to \$10,000.00.

28. In addition, the Defendant is subject to the imposition of a term of supervised release of 3 years, a victim's fund assessment, and he may be required to pay costs of imprisonment and/or supervision.


V. WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE

29. Pursuant to General Order 1994-3, the parties believe that the sentencing range resulting from the proposed plea agreement is appropriate because all relevant conduct is disclosed and that the Sentencing Guidelines takes into account all pertinent sentencing factors with respect to this defendant.

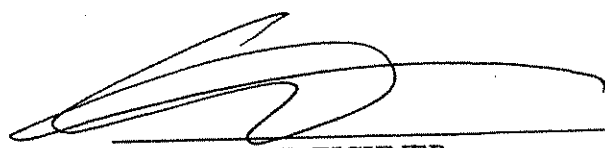
30. This document states the entire agreement between the parties. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the United States nor the defendant have

relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

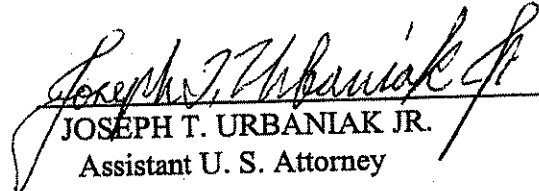
Date: 3-10-2003


SCOTT LEE KIMBALL
Defendant

Date: 3-10-03



KENNETH F. EICHNER
Attorney for Defendant

Date: 3/10/03


JOSEPH T. URBANIAK JR.
Assistant U. S. Attorney

I, the undersigned, Clerk of the United States District Court for the District of Colorado, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

WITNESS my hand and SEAL of said Court this 9 day of May 2006

GREGORY C. LANGHAM
By 
Deputy

