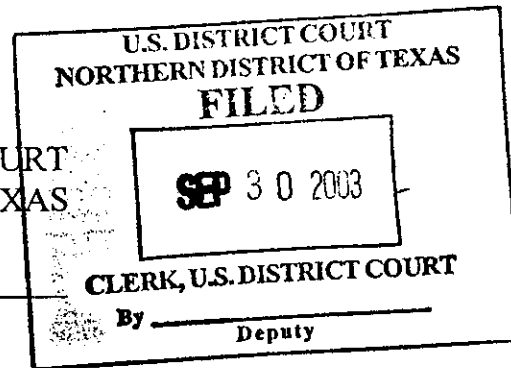


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA

§
§
§
§
§

v.

No. 4:03-CR-188-A

RICHARD MICHAEL SIMKANIN

PLEA AGREEMENT

Richard Michael Simkanin, Arch C. McColl, III, the defendant's attorney, and the United States of America (the government), agree as follows:

1. **Rights of the defendant:** Simkanin understands that he has the rights
 - a. to plead not guilty;
 - b. to have a trial by jury;
 - c. to have his guilt proven beyond a reasonable doubt;
 - d. to confront and cross-examine witnesses and to call witnesses in his defense; and
 - e. against compelled self-incrimination.

2. **Waiver of rights and plea of guilty:** Simkanin waives these rights and pleads guilty to the offense alleged in **Count Four** of the superseding indictment, charging a violation of 26 U.S.C. §7202, that is, failure to withhold federal taxes.

Simkanin understands the nature and elements of the crime to which he is pleading guilty, and agrees that the factual resume he has signed is true and will be submitted as evidence.

3. **Sentence:** The maximum penalties the Court can impose include:

- a. imprisonment for a period not to exceed 3 years;
- b. a fine not to exceed ~~\$100,000~~ ^{\$ 250,000}, or twice any pecuniary gain to the defendant or loss to the victim (s);
- c. a mandatory term of supervised release of not more than 1 year, which must follow any term of imprisonment. If Simkanin violates the conditions of supervised release, he could be imprisoned for the entire term of supervised release;
- d. a mandatory special assessment of \$100.00;
- e. restitution to victims or to the community, which may be mandatory under the law, and which Simkanin agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone; and
- f. costs of incarceration and supervision.

4. **Sentencing guidelines:** The sentence in this case will be imposed by the Court pursuant to the United States Sentencing Guidelines. Simkanin has reviewed the application of the guidelines with his attorney, but understands no one can predict with certainty what guideline range will apply in this case until after a presentence investigation has been completed and the Court has ruled on the results of that investigation. Simkanin will not be allowed to withdraw his plea if the applicable guideline range is higher than expected, or if the Court departs from the applicable guideline range.

5. **Court's discretion:** Simkanin understands that this plea agreement does not create a right to be sentenced within, or below, any particular guideline range, and

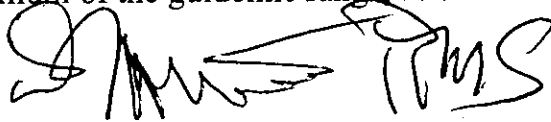
fully understands that determination of the guideline range, as well as the actual sentence imposed (so long as it is within the statutory maximum), are solely in the discretion of the Court

6. **Mandatory special assessment:** Prior to sentencing, Simkanin agrees to pay to the U.S. District Clerk the amount of \$100.00, in satisfaction of the mandatory special assessment in this case.

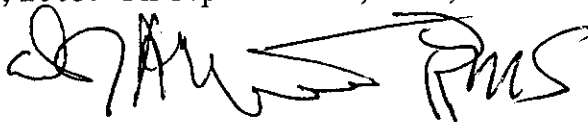
7. **Defendant's cooperation:** Simkanin shall cooperate with the government by truthfully debriefing as to his participation in the offense of conviction. Upon demand, Simkanin shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding his capacity to satisfy any fines or restitution. The government will advise the Court of the extent of Simkanin's cooperation. Within seven (7) days of the filing of the factual resume, plea agreement and judgment and commitment of this case with the United States District Clerk, Simkanin shall cause file-stamped copies of these documents to be posted on his Arrow Custom Plastics website.

8. **Government's agreement:** The government will not bring any additional charges against Simkanin based upon the conduct underlying and related to Simkanin's plea of guilty. The government will dismiss, after sentencing, any remaining charges in the pending indictment. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local

prosecuting authorities, nor does it prohibit any civil or administrative proceeding against Simkanin or any property. Pursuant to Rule of Criminal Procedure 11(E)(1)(b), the government agrees to make a non-binding recommendation that the defendant be sentenced to the minimum of the guideline range, as such range is ultimately determined by the Court.

A handwritten signature in black ink, appearing to be "JAMES R. SIMS".

~~9. **Conditional Plea of Guilty:** Subject to the approval of the District Court, the United States Attorney for the Northern District of Texas agrees and consents that the defendant may enter a Conditional Plea of Guilty pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure, reserving the right, on appeal from the judgment, to raise jurisdictional issues, namely challenging the Court's personal and subject matter jurisdiction in this case. The scope of this challenge to jurisdiction will be limited to the matters raised in Defendant's Motion No. 14, entitled Defendant's Motion to Quash Indictment and Motion to Dismiss for Want or Personal and Subject Matter Jurisdiction which were filed on September 18, 2003. On September 26, 2003, this motion was denied by an order of the Court.~~

A handwritten signature in black ink, appearing to be "JAMES R. SIMS".

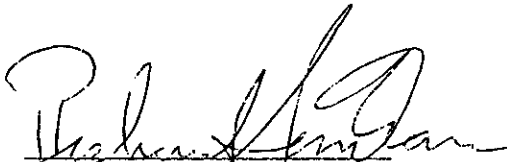
10. **Violation of agreement:** Simkanin understands that if he violates any provision of this agreement, or if his guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute Simkanin for all offenses of which it has knowledge. In such event, Simkanin waives any objections based upon delay in prosecution.

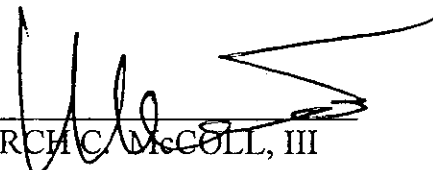
11. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

12. **Representation of counsel:** Simkanin has thoroughly reviewed all legal and factual aspects of this case with his lawyer and is fully satisfied with that lawyer's legal representation. Simkanin has received from his lawyer explanations satisfactory to him concerning each paragraph of this plea agreement, each of his rights affected by this agreement, and the alternatives available to him other than entering into this agreement. Because he concedes that he is guilty, and after conferring with his lawyer, Simkanin has concluded that it is in his best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

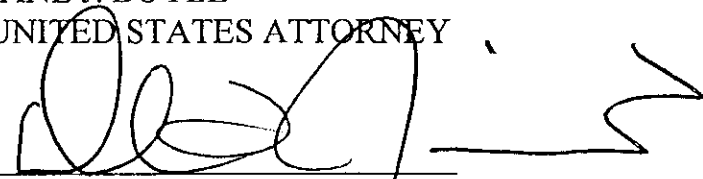
13. **Entirety of agreement:** This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties.

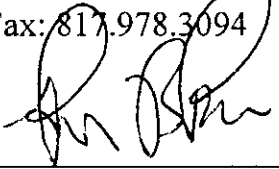
AGREED TO AND SIGNED this 21th day of September, 2003.


RICHARD MICHAEL SIMKANIN
Defendant


ARCH C. McCOLL, III
Attorney for Defendant

JANE J. BOYLE
UNITED STATES ATTORNEY


DAVID L. JARVIS
Assistant United States Attorney
Texas State Bar No. 10585500
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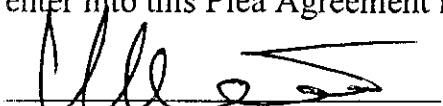

RICHARD B. ROPER
Deputy Criminal Chief

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


RICHARD MICHAEL SIMKANIN

9/29/03
Date

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


ARCH C. McCOLL, III
Attorney for Defendant

9/29/03
Date