



U.S. Department of Justice

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District of New Jersey*

Organized Crime/Gangs

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July 6, 2011

The Honorable Katharine S. Hayden
United States District Judge
United States Courthouse & Post Office
Federal Square
Newark, New Jersey 07102

Re: United States v. Sung-Rok Joh
Criminal Number Pending
Plea Memorandum

Dear Judge Hayden:

The parties in the above-referenced case have entered an agreement where the defendant, Sung-Rok Joh (hereinafter "defendant"), will plead guilty to an Information that charges him with conspiracy to unlawfully produce an identification document, contrary to Title 18, United States Code, Sections 1028(a)(1) and 1028(c)(3)(A), and using, with intent to defraud, one or more unauthorized access devices during a one-year period for the purpose of obtaining things of value of \$1,000 or more, contrary to Title 18, United States Code, Section 1029(a)(2), in violation of Title 18, United States Code, Section 371.

The defendant is scheduled to enter his plea before Your Honor on July 7, 2011 at 3:00 p.m. I have enclosed copies of the plea agreement and Information.

Please note that the defendant requires a Korean interpreter.

I. Information

The Information charges the defendant as follows:

From in or around October 2008 through on or about September 15, 2010, in Bergen County, in the District of New Jersey and elsewhere, [the] defendant . . . knowingly and intentionally conspired and agreed with . . . others to commit offenses against the United States, namely: (a) unlawfully producing an identification document, contrary to Title 18, United States Code, Sections 1028(a)(1) and 1028(c)(3)(A); and (b) using, with intent to defraud, one or more unauthorized access devices during a one-year period for the purpose of obtaining things of value of \$1,000 or more, contrary to Title 18, United States Code, Section 1029(a)(2). . . . [i]n violation of Title 18, United States Code, Section 371.

II. Statutes, Maximum Sentence, & Relevant Sentencing Provisions

A. The Applicable Statutes, Maximum Penalties, & Elements

1. The Statutes

The Information charges the defendant with conspiracy in violation of Title 18, United States Code, Section 371. Section 371 states the following in pertinent part:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any matter or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be [subject to criminal penalties].

The Information alleges that the defendant conspired to violate two provisions of federal law, namely, Title 18, United States Code, Sections 1028(a)(1) and 1028(c)(3)(A) and Title 18, United States Code, Section 1029(a)(2). These statutes state the following in pertinent part:

18 U.S.C. §§ 1028(a)(1) and 1028(c)(3)(A)

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document. . . .

* * * *

(c) The circumstance referred to in subsection (a) of this section is that—

* * * *

(3) either—

(A) the production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce, including the transfer of a document by electronic means. . . .

18 U.S.C. § 1029(a)(2)

(a) Whoever—

* * * *

(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating \$1,000 or more during that period

b. Maximum Penalties

The violation of Title 18, United States Code, Section 371 carries a statutory maximum prison sentence of five years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

c. Elements of the Offense

The elements of Title 18, United States Code, Section 371 and the underlying offenses are as follows:

18 U.S.C. § 371

1. The conspiracy or agreement was formed, reached, or entered into by two or more persons;
2. At some time during the existence or life of the conspiracy, agreement, or understanding, the defendant knew the purpose or purposes of the agreement, and, with that knowledge, then deliberately joined the conspiracy, agreement, or understanding; and
3. At some time during the existence or life of the conspiracy, agreement, or understanding, one of its alleged members knowingly performed one of the overt acts as charged and did so to further or advance the purpose of the agreement.

Underlying Offenses

18 U.S.C §§ 1028(a)(1) and 1028(c)(3)(A)

1. The defendant knowingly produced an identification document, namely, a driver's license;
2. The defendant produced the identification document without lawful authority;
3. The production of the identification document was in or affected commerce between one state and another state.

18 U.S.C. § 1029(a)(2)

1. The defendant knowingly used or trafficked in an unauthorized access device during a one year period, and by such use obtained things of value totaling more than \$1,000 during that time period;
2. The defendant acted willfully, with knowledge of the unauthorized nature of the access device, and with the intent of defrauding or deceiving; and
3. The defendant's conduct affected interstate or foreign commerce.

The term "access device" means "any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds. . . ." 18 U.S.C. § 1029(e)(1).

The term "unauthorized access device" means "any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud." 18 U.S.C. § 1029(e)(3).

B. Relevant Sentencing Provisions

The defendant's plea agreement advises him that the Court must or may take the following actions at sentencing:

1. will order him to pay an assessment of \$100 under Title 18, United States Code, Section 3013, which assessment must be paid by the date of sentencing;
2. must order him to pay restitution under Title 18, United States Code, Section 3663 et seq.;
3. may order him to give notice to any victims of his offense under Title 18, United States Code, Section 3555; and
4. under Title 18, United States Code, Section 3583, may require him to serve a term of supervised release of up to three years, which supervision will begin at the expiration of any term of imprisonment imposed, and if placed on a term of supervised release and then violates any of the conditions of supervised release before the expiration of its term, that he may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment based on the charge of conviction and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Furthermore, the defendant's plea agreement advises him as follows:

1. the sentence that will be imposed on him is within the sole discretion of the Court, subject to the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines;
2. the Court is required to consider the maximum and minimum prison terms and the maximum and minimum fine recommended by the United States Sentencing Guidelines; and
3. that United States Sentencing Guidelines are advisory, not mandatory, on the Court.

Finally, in accordance with Rule 11(b)(1)(M) of the Federal Rules of Criminal Procedure (effective December 1, 2007), the defendant is advised that "in determining a sentence, the court [has an] obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a)."

III. Waiver of Appellate Rights

In his plea agreement, the defendant and the United States agreed to waive certain appellate rights. Therefore, the United States respectfully suggests that the Court ask the defendant the following questions related to his waiver of such rights:

1. Are you aware that the law permits every defendant, such as yourself, as well as the Government, to file an appeal of your sentence if either you or the Government believe that there has been an error?
2. Do you also know that you have a right, if you believe that there has been an error, to file a collateral challenge to your conviction or sentence under Title 28, United States Code, Section 2255?
3. Do you understand that you give up your right to appeal or otherwise challenge your sentence in the situations set forth in your plea agreement?

4. Specifically, do you understand that if I impose a term of imprisonment that falls within or below the Guideline ranges that result from a Guideline offense level of 13 or less, you cannot appeal challenging your sentence?
5. Do you understand that if I impose a term of imprisonment within or below those ranges, by whatever Guideline analysis I think appropriate, you will not be able to file an appeal, a § 2255 petition, writ, motion or collateral attack challenging your term of imprisonment or any other aspect of your sentence?
6. Do you understand that your plea agreement only allows you to challenge your sentence if I impose a prison term that is above those ranges, or to challenge my determination of your criminal history category?
7. Do you understand that the United States cannot appeal if your prison sentence is within or above those ranges?
8. Do you understand that neither you nor the United States can appeal claiming that I should not have accepted your stipulations in the plea agreement?
9. Did you discuss with your attorney this waiver of appeal and waiver of your right to file a collateral attack?
10. Are you satisfied with the explanation that your attorney provided?

IV. Immigration Consequences

The United States respectfully requests the Court to ask the defendant the following questions concerning the immigration consequences of his plea:

1. Do you understand that if you are not a citizen of the United States, your guilty plea to the charged offense may or will likely result in your being subject to immigration proceedings and removed from the United States?
2. Have you consulted with counsel about the possible immigration consequences of your plea?

V. Factual Basis

The United States respectfully suggests that the following questions be posed to the defendant to establish a factual basis for his guilty plea:

1. Beginning in or about September 2008, in Bergen County, New Jersey, did you conspire and agree with others, including Sang-Hyun Park, a/k/a "Jimmy," to violate federal law by using a fraudulently obtained identity belonging to other individual to commit fraud, such as credit card fraud?
2. Was a purpose of the scheme to obtain money to which you and others were not entitled?
3. On or before October 27, 2008, did you travel from Bergen County, New Jersey to Illinois and, without lawful authority, obtain a driver's license in the name of a person with the initials "L.Z."?
4. In Illinois, did you use a social security card beginning with the prefix 586, an altered Chinese passport, and other fictitious documents to obtain the driver's license in the name of L.Z. (hereinafter the "L.Z. Identity")?
5. Did Sang-Hyun Park, a/k/a "Jimmy," or his co-conspirators, assist you obtain the 586 social security card and fraudulent but genuinely issued Illinois driver's license in the name of L.Z.?

6. Thereafter, with the intent to commit fraud, did you use the L.Z. Identity to open bank accounts and obtain credit cards?
7. For example, beginning in or about April 2009, did you use the L.Z. Identity to apply for and obtain credit cards issued by Macy's, Bank of America, PNC Bank, GE Money Bank/Brooks Brothers, GE Money Bank/PC Richard, Home Depot, and HSBC/Saks Fifth Avenue, among others?
8. Did you and your co-conspirators obtain more than \$1,000 in cash and merchandise in a one-year period through the use of these fraudulently obtained credit cards?
9. Do you dispute any of the overt acts alleged in the Information?
10. Did you knowingly and intentionally join the conspiracy alleged in the Information, with knowledge of its illegal purpose, and with the intent to further that purpose?
11. Are you guilty or not guilty of the charge contained in the Information?

The United States submits that the defendant's answers to these questions will provide an adequate factual basis for the defendant's plea of guilty to the charge.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

/s

By: Anthony Moscato
Assistant U.S. Attorney

cc: Michele A. Adubato, Esq.