

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:03-MC-67-MU

FILED  
CHARLOTTE, N.C.

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U.S. DISTRICT COURT  
W. DIST. OF N.C.

IN RE PLEA AGREEMENTS IN CASES )  
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PENDING BEFORE CHIEF JUDGE MULLEN )  
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**ORDER**

THIS MATTER is before the Court on its own Motion to Reconsider.

On 5 June 2003, the Court entered an Order informing all parties in criminal cases pending before the undersigned that plea agreements containing absolute waivers of appellate review by any Defendant would no longer be accepted by the Court. The Court has entered two successive Orders reaffirming the 5 June 2003 Order. After the Court's Order of 7 August 2003, which denied the Government's Motion to Reconsider, this Court has met with representatives of the defense bar for the Western District of North Carolina and the Office of the United States Attorney for the Western District of North Carolina.

After reconsidering this Matter, the Court finds that plea agreements which contain the following specific language will be accepted by the undersigned.

Defendant and Defendant's counsel warrant that they have discussed:  
(1) Defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and/or sentence through an appeal or post-conviction after entering a plea agreement;  
(2) whether or not there are potential issues which might be relevant to an appeal or post-conviction action; and (3) the possible impact of any such issue on the desirability to the Defendant of entering into this plea agreement.

Defendant, in exchange for the concessions made by the United States in this plea agreement, waives all such rights to contest the conviction and/or the sentence except for: (1) claims of ineffective assistance of

counsel; (2) prosecutorial misconduct; or (3) the sentence, but only to the extent Defendant contests the sentence on the basis that one or more findings on guideline issues were inconsistent with the explicit stipulations contained in any paragraph in the plea agreement filed herein, or on the basis of an unanticipated issue that arises during the sentencing hearing and which the District Judge finds and certifies to be of such an unusual nature as to require review by the Fourth Circuit Court of Appeals.

Also, in exchange for the concessions made by the United States, Defendant agrees that the United States preserves all its rights and duties with respect to appeal as set forth in 18 U.S.C. § 3742(b), while the Defendant waives all rights to appeal or collaterally attack the sentence of conviction with the three exceptions set forth above. This agreement does not limit the United States in its comments in or responses to any post-conviction matters.

The Court finds that the limited waiver of appellate review contained in said language is consistent with the ends of justice.

This 22<sup>th</sup> day of September, 2003

  
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GRAHAM C. MULLEN  
CHIEF UNITED STATES DISTRICT JUDGE