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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

MATTHEW M RODRIGUEZ,

Defendant.

No. D-0101-CR-201700311
Judge T. Glenn Ellington

REPEAT OFFENDER PLEA AND DISPOSITION AGREEMENT

The State of New Mexico and the defendant hereby agree to the following disposition of this case:

Plea: The defendant agrees to plead guilty to the following offense:

Second Degree Murder, (0004), a serious violent offense pursuant to §33-2-34 and a second degree felony resulting in the death of a human being, contrary to §30-02-01(B), NMSA 1978, occurring on or about March 25, 2017, as charged as an included offense in Count 1 of the Grand Jury Indictment.

Admission of Identity: The defendant also agrees to admit that the defendant is the person who was convicted of the following crime, that there are no substantial and compelling reasons for suspending or deferring the enhancements and that the conviction for this crime is valid as defined below in the section labeled "Habitual Offender Proceedings":

- 1a. On August 2, 2004, the Defendant was convicted of AUTO BURGLARY, a felony, occurring on or about August 25, 2001, in Cause No. D-0101-CR-2002-319, in the First Judicial District, Santa Fe County, New Mexico.
- 1b. On August 2, 2004, the Defendant was convicted of CRIMINAL DAMAGE TO PROPERTY, a felony, occurring on or about August 25, 2001, in Cause No. D-0101-CR-2002-319, in the First Judicial District, Santa Fe County, New Mexico.

Terms: This agreement is made subject to the following conditions:

1. **Agreement as to sentence.** The jurisdiction for this offense is fifteen (15) years. The parties agree to an imposed sentence of ten (10) years, minus any pre-sentence confinement as afforded by law, in the department of corrections with the remaining five (5) years suspended

[Handwritten Signature] 10/19/18

on supervised probation, which shall be on intensive supervised probation. As part of probation, Defendant shall undergo, if necessary, additional mental health evaluations at the time of his release from New Mexico Department of Corrections, and Defendant shall follow the requirements and recommendations of his medical professionals. Defendant is forever prohibited under federal law from owning a firearm.

There are no other agreements as to sentencing.

The maximum penalties for these charges are:

Count 1: Second Degree Murder, a second degree felony resulting in the death of a human being with a basic sentence of fifteen (15) years and a fine of \$12,500, followed by two (2) years parole. The Court must also impose a \$5.00 Domestic Violence Treatment Fee.

The defendant shall provide a sample of biological material sufficient for DNA Testing and pay a \$100.00 fee to the New Mexico Department of Corrections for the combined DNA Index System (CODIS), pursuant to §29-16-1, et seq., NMSA 1978.

Any basic sentence shall be enhanced pursuant to §31-18-17, NMSA 1978 as an habitual criminal offender, if the defendant has any undisclosed prior felony convictions.

2. **Additional charges.** The following charges will be dismissed, or if not yet filed, shall not be brought against the defendant:

Aggravated Burglary (Deadly Weapon), as charged in Count 2 of the Grand Jury Indictment;

Tampering with Evidence, as charged in Count 3 of the Grand Jury Indictment;

The State agrees not to bring additional habitual offender proceedings against the defendant except as outlined in the following paragraph and in the section below labeled "Habitual Offender Proceedings".

The State may bring habitual offender proceedings as provided by law based on any conviction not admitted in this plea agreement. The State may also, at its option, withdraw this plea agreement if it discovers any such undisclosed conviction.

3. **Restitution.** The defendant agrees to pay restitution as follows: Restitution will be ordered in accordance with §31-17-1, NMSA 1978. The defendant agrees to make restitution on all charges whether or not dismissed or not filed pursuant to this agreement.

4. **Effect on charging document.** That this agreement, unless rejected or withdrawn, serves to amend the complaint, indictment or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.
5. **Waiver of defenses and appeal.** Unless this plea is rejected or withdrawn, the defendant gives up any and all motions, defenses, objections or requests which the defendant has made or raised, or could assert hereafter, to the court's entry of judgment and imposition of a sentence consistent with this agreement. The defendant waives the right to appeal the conviction that results from the entry of this plea agreement.
6. **Withdrawal permitted if agreement rejected.** If after reviewing this agreement and any presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement will be void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.
7. **Waiver of In-Person Confrontation at Future Probation Revocation Hearing.** If the Court grants Defendant probation, and if, at any time, Defendant transfers probation to any location outside of the First Judicial District, or if Defendant is arrested in any location outside of First Judicial District as a fugitive, Defendant agrees and stipulates that the State's witness(es) may appear at any probation hearing through any telephonic, webcam, or voice over internet protocol (VoIP) service at any future probation violation hearing, including any future adjudicatory hearing. Defendant gives up any rights, objections, or requests for an in-person confrontation of any of the State's witness(es) in such a hearing. The Parties agree that the discretion to appear through said alternative means will rest solely with the State.

Habitual Offender Proceedings:

1. **Upon Violation.** The defendant understands that the defendant will be subject to habitual offender proceedings based on the convictions listed under "Admission of Identity" if the defendant violates the law before completing the defendant's sentence in this case. The State may bring additional habitual offender proceedings against the defendant if the defendant violates any municipal, county, state or federal law of any jurisdiction after entry of this plea. The State may also bring additional habitual offender proceedings against the defendant if the defendant in any way violates any of the conditions of any probation or parole which the defendant is serving after entry of this agreement. The State may bring additional habitual offender proceedings if the violation is admitted or proven, regardless of whether the probation or parole is revoked or whether the defendant is convicted of the new crime. The defendant agrees to allow the District Attorney's Office or the Court to inspect the defendant's probation or parole records to determine whether the defendant has violated any

condition of probation or parole.

2. **Proof.** The State will use the defendant's admission of identity on the prior felony convictions in any additional habitual offender proceedings. The defendant understands and agrees that the admission alone will be sufficient to prove the existence of the convictions and the defendant's identity.
3. **Validity of Conviction.** The defendant also agrees that the convictions listed in the section labeled "Admission of Identity," as well as those to which the defendant is pleading guilty in this agreement, are valid. Valid means that the defendant is the person who was convicted of the crimes, that the crimes were felonies and that the defendant's constitutional rights, including the right to counsel, were explained to the defendant at the time the conviction was obtained. The defendant waives any collateral attack on the validity and effectiveness of the above convictions, including those to which the defendant is pleading guilty under this agreement. The defendant agrees not to contest the validity of the convictions as defined above if additional habitual offender proceedings are brought under the terms of this agreement. If the defendant contests the validity of the convictions as defined above, the State may, at its option, reinstate any charges dismissed or not filed as a result of this agreement.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register.

I understand that entry of this plea agreement prohibits me from owning firearms under both federal and state law

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading guilty I will be giving up my right to a trial by jury, to confront, cross-examine and compel the attendance of witnesses and my privilege against self-incrimination.

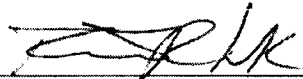
I understand that if the court grants me probation, a suspended sentence, a deferred sentence

or a conditional discharge, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.


Matthew M Rodriguez

DEFENSE COUNSEL REVIEW

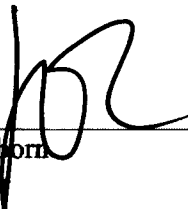
I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client's constitutional rights and possible defenses.


Robert R Work
Defense Counsel

9-18-18
Date

PROSECUTOR REVIEW

I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.


John Osborn
Prosecutor

9/18/18
Date

DISTRICT COURT APPROVAL

The defendant personally appearing before me and I have concluded as follows:

1. That the defendant understands the charges set forth in the Grand Jury Indictment.
2. That the defendant understands the range of possible sentences for the offense charged, from probation to a maximum of:

Count 1: **Second Degree Murder**, a second degree felony resulting in the death of a human being with a basic sentence of fifteen (15) years and a fine of \$12,500, followed by two (2)

years parole. The Court must also impose a \$5.00 Domestic Violence Treatment Fee.

The defendant shall provide a sample of biological material sufficient for DNA Testing and pay a \$100.00 fee to the New Mexico Department of Corrections for the combined DNA Index System (CODIS), pursuant to §29-16-1, et seq., NMSA 1978.

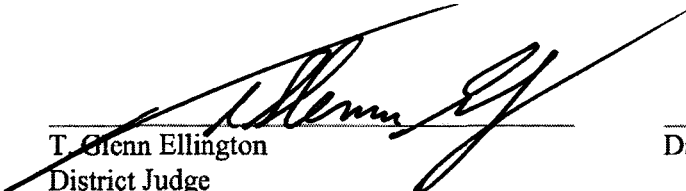
Any basic sentence shall be enhanced pursuant to §31-18-17, NMSA 1978 as an habitual criminal offender, if the defendant has any undisclosed prior felony convictions.

3. That the defendant understands the following constitutional rights which the defendant gives up by pleading guilty:
 - (a) the right to trial by jury, if any;
 - (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
 - (c) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
 - (d) the right to present evidence on the defendant's own behalf, and to have the state compel witnesses of the defendant's choosing to appear and testify;
 - (e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.
4. That the defendant wishes to give up the constitutional rights of which the defendant has been advised.
5. That there exists a basis in fact for believing the defendant is guilty of the offense charged and that an independent record for such factual basis has been made.
6. That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms.
7. That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.
8. That under the circumstances, it is reasonable that the defendant plead guilty.
9. That the defendant understands that a conviction may have an effect upon the defendant's immigration or naturalization status and that, if the defendant is represented by counsel, the

defendant has been advised by counsel of the immigration consequences of the plea.

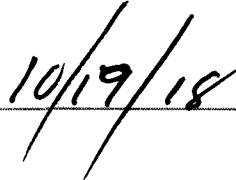
10. That the defendant understands that a conviction may require the defendant to register as a sex offender under the Sex Offender Registration and Notification Act and that if the defendant is represented by counsel, the defendant has been advised by counsel of the requirement to register.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently plead guilty to the above charges and accepts such plea. These findings shall be made a part of the record in the above-styled case.



T. Glenn Ellington
District Judge

Date



10/19/18

