

STATE OF NEW MEXICO
COUNTY OF LINCOLN
TWELFTH JUDICIAL DISTRICT

CAUSE NO. D-1226-CR-201700064
DIVISION III
rs

STATE OF NEW MEXICO,

Plaintiff,

vs.

ANDREW P. MAGILL,

Defendant.

REPEAT OFFENDER PLEA AND DISPOSITION AGREEMENT

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

PLEA

Charges: The defendant agrees to plead **GUILTY** to the following offenses:

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

Assault With Intent to Commit a Violent Felony Upon a Peace Officer (FIREARM ENHANCEMENT)(0224), a second degree felony, a serious violent offense, contrary to §30-22-23, NMSA 1978, occurring on or about April 01, 2017, as charged in Count 2 of the Grand Jury Indictment;

Assault With Intent to Commit a Violent Felony Upon a Peace Officer (FIREARM ENHANCEMENT)(0224), a second degree felony, a serious violent offense, contrary to §30-22-23, NMSA 1978, occurring on or about April 01, 2018, as charged in Count 3 of the Grand Jury Indictment;

Possession of a Firearm or Destructive Device by a Felon (1512), a fourth degree felony, contrary to §30-07-16, NMSA 1978, occurring on or about April 01, 2017, as charged in Count 4 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":

a. On May 3, 2010, the Defendant was convicted of Trafficking (By Distribution), a felony, occurring on or about September 8, 2009, in Cause No. D-504-CR-200900501, in the Fifth Judicial District, Chaves County, NM.

Supplemental Criminal Information: The defendant also agrees to admit the defendant's identity, and hereby does admit identity, as the same person convicted of the crime enumerated in the Supplemental Criminal Information filed in this cause number alleging that the defendant is an habitual criminal offender and is to be sentenced, pursuant to §31-18-17, NMSA 1978, to a **one year** enhancement.

TERMS

This agreement is made subject to the following conditions:

The Defendant stipulates that the basic sentence for each count will be aggravated by one-third of the basic sentence in accordance with Section 31-18-15.1, NMSA 1978.

There are no agreements as to sentencing.

Any sentencing recommendations are conditioned on the defendant not violating conditions of release pending sentencing or having any undisclosed prior felony convictions. The defendant understands that the Court is not bound to those recommendations or requests and may sentence the defendant to above or below said recommendations without rejecting the plea agreement.

The mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements are as follows:

Count 1: **Second Degree Murder**, a second degree felony resulting in the death of a human being which carries a basic sentence of fifteen (15) years and a fine of \$12,500, followed by two (2) years of parole. Pursuant to the stipulation of the parties, the basic sentence will be altered based on aggravating circumstance, by one-third of the basic sentence. As a result, the basic sentence will be **twenty (20) years**. This offense shall be enhanced by **one (1) year**, pursuant to the habitual offender statute, §31-18-17, NMSA 1978. Finally, the Court must also impose a Domestic Violence Treatment Fee of \$5, a Crime Victims Reparation Fee of \$75 for a felony or \$50 for a misdemeanor and any other fees required by law.

Count 2: **Assault With Intent to Commit a Violent Felony Upon a Peace Officer**, a second degree felony which carries a basic sentence of nine (9) years and a fine of \$10,000, followed by two (2) years of parole. Pursuant to the stipulation of the parties, the basic sentence will be altered based on aggravating circumstance, by one-third of the basic sentence. As a result, the basic sentence will be **twelve (12) years**. This offense shall be enhanced by **one (1) year**, pursuant to the habitual offender statute, §31-18-17, NMSA 1978. This offense shall be enhanced by **one (1) year**, pursuant to the firearm enhancement statute, §31-18-16, NMSA 1978. Finally, the Court must also impose a Domestic Violence Treatment Fee of \$5, a Crime Victims Reparation Fee of \$75 for a felony or \$50 for a misdemeanor and any other fees required by law.

Count 3: **Assault With Intent to Commit a Violent Felony Upon a Peace Officer**, a second degree felony which carries a basic sentence of nine (9) years and a fine of \$10,000, followed by two (2) years of parole. Pursuant to the stipulation of the parties, the basic sentence will be altered based on aggravating circumstance, by one-third of the basic sentence. As a result, the basic sentence will be **twelve (12) years**. This offense shall be enhanced by **one (1) year**, pursuant to the habitual offender statute, §31-18-17, NMSA 1978. This offense shall be enhanced by **one (1) year**, pursuant to the firearm enhancement statute, §31-18-16, NMSA 1978. Finally, the Court must also impose a Domestic Violence Treatment Fee of \$5, a Crime Victims Reparation Fee of \$75 for a felony or \$50 for a misdemeanor and any other fees required by law.

Count 4: **Possession of a Firearm or Destructive Device by a Felon**, a fourth degree felony which carries a basic sentence of eighteen (18) months and a fine of \$5,000, followed by one (1) year of parole. Pursuant to the stipulation of the parties, the basic sentence will be altered based on aggravating circumstance, by one-third of the basic sentence. As a result, the basic sentence will be **two (2) years**. Finally, the Court must also impose a Domestic Violence Treatment Fee of \$5, a Crime Victims Reparation Fee of \$75 for a felony or \$50 for a misdemeanor and any other fees required by law.

If the Court accepts this agreement, the Defendant will be ordered to serve an incarceration period of up to **fifty-one (51) years**. The Defendant may also be ordered to serve a period of probation and/or parole. If at any point the Defendant violates probation or parole, the Defendant may be incarcerated for the balance of the sentence.

The defendant is to be incarcerated on "serious violent offenses" pursuant to §33-2-34, NMSA 1978, as amended, and the provisions of that statute as to earned meritorious deductions will therefore apply as to those counts.

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 not specifically set forth in this document.

WAIVER OF FACE-TO-FACE CONFRONTATION AT ANY FUTURE PROBATION REVOCATION HEARING: If the court grants Defendant probation, and if at any time the Defendant transfers his probation to any location outside of Otero County or Lincoln County or the Defendant is arrested in any location outside of Otero or Lincoln County as a fugitive, Defendant gives up any potential rights, objections, or requests for face-to-face confrontation of any of the State's witness(es) at any future probation violation hearing, which includes any future adjudicatory hearing. Defendant agrees and stipulates that State's witness(es) may appear telephonically or through a webcam voice over IP service such as SKYPE to any probation related hearing. Whether the State's witness(es) appear in-person, telephonically, or through a webcam voice over IP service will be at the sole discretion of the State.

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

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.

The defendant specifically waives the right to receive any further discovery in this matter.

3. **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.
4. **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.
5. **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.

Habitual Offender Proceedings:

1. **Proof.** The State will use the defendant's admission of identity on the prior felony conviction in any additional habitual offender proceedings. The defendant understands and agrees that the admission alone will be sufficient to prove the existence of the conviction and the defendant's identity.
2. **Validity of Conviction.** The defendant also agrees that the conviction 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 and any possible deportation consequences, 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 conviction, including those to which the defendant is pleading guilty under this agreement. The defendant agrees not to contest the validity of the conviction as defined above if additional habitual offender proceedings are brought under the terms of this agreement. If the defendant contests the validity of the conviction 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 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 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 also waive my right to a jury trial on the issue of whether the court should alter the basic sentence for aggravating circumstances pursuant to Section 31-18-15.1, NMSA 1978.

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, and if the State has withheld the filing of any habitual offender enhancement(s), I understand and expressly waive any and all time limits for filing habitual offender proceedings against me.

5-22-19

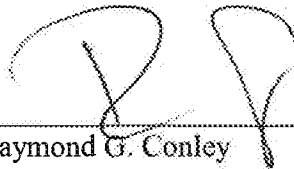
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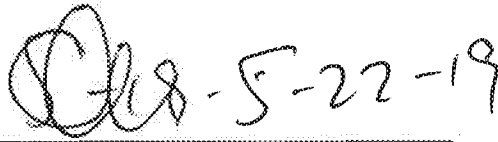
Andrew P. Magill

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.



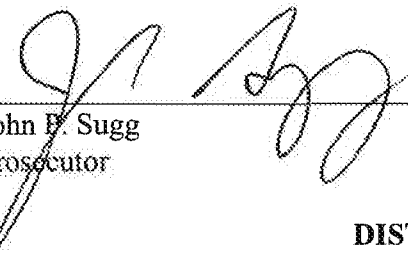
Raymond G. Conley
Defense Counsel



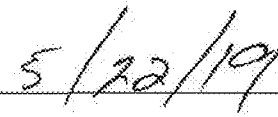
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PROSECUTOR REVIEW

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 E. Sugg
Prosecutor



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 offenses charged, from probation to a maximum of:

Count 1: **Second Degree Murder**, a second degree felony resulting in the death of a human being which carries a basic sentence of fifteen (15) years and a fine of \$12,500, followed by two (2) years of parole. Pursuant to the stipulation of the parties, the basic sentence will be altered based on aggravating circumstance, by one-third of the basic sentence. As a result, the basic sentence will be **twenty (20) years**. This offense shall be enhanced by one (1) year, pursuant to the habitual offender statute, §31-18-17, NMSA 1978. Finally, the Court must also impose a Domestic Violence Treatment Fee of \$5, a Crime Victims Reparation Fee of \$75 for a felony or \$50 for a misdemeanor and any other fees required by law.

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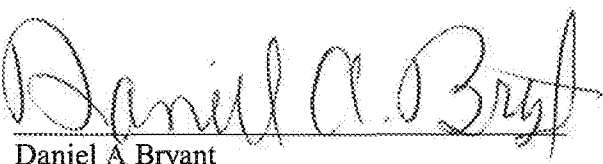
↙ 3. That the defendant understands the following constitutional rights which the defendant gives up by pleading guilty:

↙ (a) the right to trial by jury;

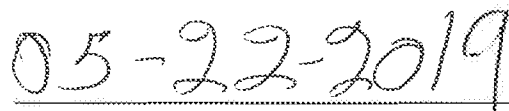
- (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
- (c) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
- (d) the right 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 offenses 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 an entry of a plea for a crime of domestic violence or felony will affect his 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.

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.



Daniel A Bryant
District Judge



Date