

STATE OF NEW MEXICO  
COUNTY OF LINCOLN  
TWELFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,  
Plaintiff,

v.

ANDREW P. MAGILL,  
Defendant,

D-1226-CR-201700064  
Judge Daniel A Bryant

- ☐ JUDGMENT, SENTENCE, AND COMMITMENT TO THE
  - ☐ LINCOLN COUNTY DETENTION CENTER
  - ☐ DEPARTMENT OF CORRECTIONS
- ☒ JUDGMENT, SENTENCE, ORDER PARTIALLY SUSPENDING SENTENCE, AND COMMITMENT TO THE
  - ☐ LINCOLN COUNTY DETENTION CENTER
  - ☒ DEPARTMENT OF CORRECTIONS
- ☐ JUDGMENT, SENTENCE, AND ORDER SUSPENDING SENTENCE
- ☐ CONDITIONAL DISCHARGE
- ☐ ORDER DEFERRING SENTENCE

THIS MATTER having come before the Honorable Daniel A Bryant, District Court Judge, on September 5 and September 6, 2019, for sentencing, the State appearing and being represented by John P. Sugg and the Defendant appearing in person and represented by counsel, Raymond G. Conley, and the Defendant having been convicted on May 22, 2019, of the following crimes pursuant to:

- ☒ Guilty Plea(s) ☐ Pursuant to North Carolina v. Alford
- ☐ No Contest Plea(s)
- ☐ Verdict(s);

The Court orders that the Defendant shall serve his sentence in the following order: Begin sentence with Count 4, then serve Count 3, then serve Count 2, then Count 1.

Count 1: **Second Degree Murder (0004)**, a second degree felony resulting in the death of a human being, 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 filed in Cause No. D-1226-CR-201700064. State Tracking No. 140000170109.

The charge carries a basic sentence of fifteen (15) years and a fine of \$12,500, followed by two (2) years of parole.

<input type="checkbox"/> Conditional Discharge -Stop <input type="checkbox"/> Deferred Sentence -Stop <input checked="" type="checkbox"/> Sentence -Enter sentence Data Below				Fine	Concurrent to Count(s)	Consecutive to Count(s)	Enhancement	Serious Violent Offense
Years	Months	Days	Parole	<u>\$12,500</u>		<i>All</i>	Firearm Habitual Offender	<u>Yes</u>
20	0	0	<u>2</u> Years	<input checked="" type="checkbox"/> Suspended			Hate Years <u>1</u>	No

Count 2: **Assault With Intent to Commit a Violent Felony Upon a Peace Officer (0224)**, a second degree felony, contrary to §30-22-23, NMSA 1978, occurring on or about April 01, 2017, as charged in the filed in Cause No. D-1226-CR-201700064. State Tracking No. 140000170109

The charge carries a basic sentence of nine (9) years and a fine of \$10,000, followed by two (2) years of parole.

<input type="checkbox"/> Conditional Discharge -Stop <input type="checkbox"/> Deferred Sentence -Stop <input checked="" type="checkbox"/> Sentence -Enter sentence Data Below				Fine	Concurrent to Count(s)	Consecutive to Count(s)	Enhancement	Serious Violent Offense
Years	Months	Days	Parole	<u>\$10,000</u>		<i>All</i>	Firearm Habitual Offender	<u>Yes</u>
12	0	0	<u>2</u> Years	<input checked="" type="checkbox"/> Suspended			Hate Years <u>1</u>	No

Count 3: **Assault With Intent to Commit a Violent Felony Upon a Peace Officer (0224)**, a second degree felony, contrary to §30-22-23, NMSA 1978, occurring on or about April 01, 2018, as charged in the filed in Cause No. D-1226-CR-201700064. State Tracking No. 140000170109

The charge carries a basic sentence of nine (9) years and a fine of \$10,000, followed by two (2) years of parole.

<input type="checkbox"/> Conditional Discharge -Stop <input type="checkbox"/> Deferred Sentence -Stop <input checked="" type="checkbox"/> Sentence -Enter sentence Data Below				Fine	Concurrent to Count(s)	Consecutive to Count(s)	Enhancement	Serious Violent Offense
Years	Months	Days	Parole	<u>\$10,000</u>		<i>All</i>	Firearm Habitual Offender	<u>Yes</u>
12	0	0	<u>2</u> Years	<input checked="" type="checkbox"/> Suspended			Hate Years <u>1</u>	No

Count 4: **Receipt, Transportation or Possession of a Firearm or Destructive Device by a Felon (1512)**, a fourth degree felony, contrary to §30-07-16(A), NMSA 1978, occurring on or about April 01, 2017, as charged in the filed in Cause No. D-1226-CR-201700064. State Tracking No. 140000170109

The charge carries a basic sentence of eighteen (18) months and a fine of \$5,000, followed by one (1) year of parole.

<input type="checkbox"/> Conditional Discharge -Stop <input type="checkbox"/> Deferred Sentence -Stop <input checked="" type="checkbox"/> Sentence -Enter sentence Data Below				Fine <u>\$5,000</u>	Concurrent to Count(s)	Consecutive to Count(s)	Enhancement Firearm Habitual Offender Hate Years <u>N/A</u>	Serious Violent Offense Yes <input checked="" type="radio"/> No
Years	Months	Days	Parole					
2	0	0	<u>1</u> Years	<input checked="" type="checkbox"/> Suspended		<u>All</u>		

☒ **Aggravation/Mitigation.** The sentence for count(s) 1, 2, 3, and 4 is ☒ Aggravated ☐ Mitigated for 1/3 of the basic sentence as to each count. Five (5) years as to Count 1, Three (3) years as to Counts 2 and 3, Six (6) Months as to Count 4.

As grounds in support of this finding, the following facts set forth: The Court accepts the stipulation of the parties that aggravating circumstances exist and adopts and incorporates all of the facts contained in the Stipulation of Facts filed on May 23, 2019 as additional grounds in support of these findings.

☐ **Enumeration of Discretionary Special Violent Offender Findings.** As to Counts(s) \_\_\_\_\_, the Court finds that due to the nature of the offense and the resulting harm, this crime(s) is a serious offense pursuant to §33-2-34. As grounds in support of this finding, the following facts set forth: \_\_\_\_\_

☐ **Defendant shall register as a sex offender** pursuant to Section 29-11A-1 et seq., as amended.

☐ **Conditional Discharge.** It is hereby ordered that, without adjudication of guilt, further proceedings be deferred for \_\_\_\_\_ years, \_\_\_\_\_ months \_\_\_\_\_ days pursuant to ☐ NMSA 1978 §31-20-13 (cum. Supp. 1996) or ☐ NMSA §30-31-28 (cum. Supp. 1996) (Controlled Substances Act), and the Defendant be placed on probation.

☐ **Deferred Sentence.** It is ordered that imposition of sentence as to Count(s) \_\_\_\_\_ be deferred for \_\_\_\_\_ years, \_\_\_\_\_ months \_\_\_\_\_ days on condition that the Defendant be placed on probation.

#### TOTAL SENTENCE TERMS

☒ The Defendant is hereby sentenced to the following terms of imprisonment:

☒ **Total term of imprisonment:** 51 years 0 months 0 days

☒ **Suspended Portion of Sentence:** 6 years 0 months 0 days

☒ **Actual Term of Incarceration:** 45 years 0 months 0 days 0 hours

☐ Consecutive to the sentence imposed in Case Number \_\_\_\_\_

☐ Concurrent to the sentence imposed in Case Number \_\_\_\_\_

**☑ Sentence for imprisonment shall be served in:**

☐ the Lincoln County Detention Center: ☐ Straight time (good time not authorized)

☐ Subject to good time at discretion of LCDC Administrator

**☑ the New Mexico Department of Corrections.**

- ☑ Pre-sentence Confinement Credit.** Defendant, if imprisoned at any time pursuant to the above conviction(s), shall be given credit for pre-sentence confinement in the amount of 2 years, 157 days as of this date, and post-sentence confinement credit until transported to the Department of Corrections shall also be awarded.

*Dates of Credit:* April 2, 2017 to September 6, 2019

- ☑ Parole.** Defendant, if imprisoned at any time pursuant to the above conviction in a facility designated by the Department of Corrections shall be placed on parole for 2 year(s) after release and be required to pay parole costs.

**PROBATION:**

**☑** Defendant is placed on probation for 5 years 0 months 0 days

☐ This period of probation shall be reduced by the Pre-sentence Confinement Credit listed above.

☒ Supervised by ☒ NMDOC - APPO ☐ Misdemeanor Compliance Program

☐ Unsupervised

☐ Probation may be transferred to: ☐ \_\_\_\_\_ County, New Mexico

☐ The State(s) of \_\_\_\_\_

☐ No Probation.

# **PROBATION CONDITIONS:**

In addition to all standard conditions of probation

☐ Defendant Shall Obtain and Maintain Full-time Employment (30 hours/week or more), or full-time education (at least 14 semester or trimester hours at an accredited college, university, or technical-vocational institute; or full-time high school or GED studies, or DVR program), or a combination of employment and education.

☐ Defendant Shall Enter, Attend, and Successfully Complete Counseling/Treatment Program(s) as required by the plea and disposition agreement and/or as recommended by probation authorities. These may include but are not limited to

- ☐ Alcohol/Substance Abuse Treatment
- ☐ Anger/Conflict Management
- ☐ Domestic Violence Counseling
- ☐ Victim Impact Program
- ☐ DWI Resource Center Program
- ☐ Parenting Classes

☐ Defendant shall submit to a substance abuse screening and any recommendations of that screening shall become conditions of probation.

☐ Defendant Shall Register as a Sex Offender pursuant to section NMSA 1978 §29-11A-1, et seq., as amended.

☒ Defendant Shall Pay Restitution

- ☐ in the amount of \$ \_\_\_\_\_
- ☒ to be determined by the probation authority in a payment plan chosen or approved by the probation authority.
- ☐ The Court authorizes the Department Of Corrections through its case workers to withhold \_\_\_\_\_ % of inmate's income while incarcerated.

☐ Defendant Shall Perform \_\_\_\_\_ Hours of Community Service in a program/facility approved by probation authority.

☐ Defendant Shall Make a Donation of \$ \_\_\_\_\_ to \_\_\_\_\_

☐ Defendant Shall Provide for the Financial Support of Legal Dependents.

☐ Defendant Shall Not Have Contact or Association with Any Street Gangs or their members.

☒ Defendant Shall Not Have or Use Any:

Alcoholic Beverages      Illegal Drugs  
Prescription Drugs or over the counter medications  
without a valid prescription from a licensed physician.

☒ Defendant Shall Not enter or remain in any tavern, bar, or Lounge.

☒ Defendant Shall be subject to random drug/alcohol testing and warrantless searches.

☒ Defendant Shall Not Possess Deadly Weapons.

☐ Defendant Shall Have No Contact with the Co-Defendants.

☒ Defendant Shall Not Have Contact with Victim(s) or Family(ies) of Victim(s). The defendant shall not contact in person, by phone, or through anyone other than the defendant's probation officer or attorney any of the following persons or their families: Mary Ann Moorhouse  
and Jason Green  
To include any indirect contact  
by third parties

☐ Defendant Shall Not Go to or Within \_\_\_\_\_ of above named persons or their families residences or work places.

☐ Defendant Shall Not Go to or Remain in Any of the Following Areas or neighborhoods except when physically accompanied by a police or probation officer: \_\_\_\_\_

☐ Defendant shall not drive without a valid New Mexico Driver's License.

☐ Defendant shall not operate any vehicle without an approved ignition interlock device.

☐ The Court recommend the defendant be screened for the RDAP or other appropriate program while incarcerated.

Other Special Conditions of probation as follows:

Court recommends Defendant be  
screened for treatment guardian.

**PROBATION COSTS:**

- ☒ Probation Costs shall be paid in an amount to be determined by probation authorities.
- ☐ Defendant shall pay \$ \_\_\_\_\_ per month.
- ☐ Probation Costs shall be waived.
- ☐ Probation costs shall be waived for any month that the defendant is paying for:
- ☐ Treatment
  - ☐ Restitution
  - ☐ Counseling
  - ☐ Other: \_\_\_\_\_

**FEES & FINES:**

**Defendant must pay the following:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li><input type="checkbox"/> Fine of \$ _____</li><li><input checked="" type="checkbox"/> Domestic Violence Treatment Fee of \$5 (for each offense) Total \$ 20.00.</li><li><input checked="" type="checkbox"/> CVRC fee of \$75 for felony offense (for each offense) Total \$300.00.</li><li><input checked="" type="checkbox"/> CVRC fee of \$50 for misdemeanor offense (for each offense) Total \$ _____</li><li><input checked="" type="checkbox"/> DNA Fee of \$100 and provide DNA sample.</li><li><input type="checkbox"/> DWI Lab Fee of \$85.</li><li><input type="checkbox"/> DWI Prevention Fee of \$75.</li><li><input type="checkbox"/> Crime Drug Lab Fee of \$75 (for each offense) Total \$ _____.</li><li><input type="checkbox"/> Crimestopper Donation of \$ _____</li></ul> | <ul style="list-style-type: none"><li><input type="checkbox"/> Mandatory Traffic fees:</li><li>\$ 20 Corrections Fee</li><li>\$ 10 Court Automation Fee</li><li>\$ 3 Traffic Safety Fee</li><li>\$ 3 Judicial Education Fee</li><li>\$ 5 Jury Witness Fee</li><li>\$ 1 Juvenile Adjudication Fee</li><li>\$ 5 Brain Injury fee</li><li>\$ 10 Court Facilities Fee</li></ul> |
|---|---|

☐ Defendant shall report to the LCDC on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, to begin his/her jail sentence. If the defendant does not report as scheduled, the Court reserves the right to reconsider the defendant's sentence with or without a motion.

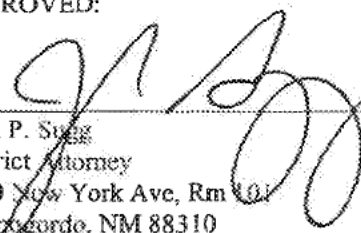
☒ **TRANSPORT:** The Lincoln County Sheriff, or his designee, is hereby ordered to transport the Defendant from the Lincoln County Detention Center to the Department of Corrections.

**DISMISSAL OF REMAINING CHARGES:** All other counts not disposed of herein are hereby dismissed.

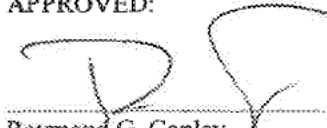
**IT IS SO ORDERED:**

  
Honorable Daniel A Bryant  
District Court Judge

APPROVED:

  
John P. Sugg  
District Attorney  
1000 New York Ave, Rm 101  
Alamogordo, NM 88310  
575-437-3640

APPROVED:

  
Raymond G. Conley  
Counsel for the Defendant  
505 S. Main Street, Suite 121  
Las Cruces, NM 88001  
575-541-3193