

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

FILED
FIRST JUDICIAL
DISTRICT COURT
2018 JAN -2 AM 9:30

STATE OF NEW MEXICO,

Plaintiff,

vs.

DOMINIC FRIEDLEIN,

Defendant.

No. D-0101-CR-2017-00354

Judge T. Glenn Ellington

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:

Homicide by Vehicle (Driving While Under the Influence of Intoxicating Liquor or Any Drug), (7108), a second degree felony, an optional serious violent offense, resulting in the death of a human being, contrary to §66-08-101(A) and §66-8-102, NMSA 1978, occurring on or about April 09, 2017, as charged in Count 1 of the Grand Jury Indictment.

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

1. **Agreement as to sentence:**

At initial sentencing, the parties agree to a "CAP" of incarceration of three (3) years in the New Mexico Department of Corrections. Any "CAP" or other limitation on incarceration shall be a limitation on imprisonment only at initial sentencing. The Defendant shall not be eligible to receive a Conditional Discharge.

Subsequent to incarceration, the remainder of jurisdiction shall be suspended on the condition of supervised probation in accordance with NMSA 31-20-5. If the defendant violates any condition of parole or probation, the Court may sentence the defendant to imprisonment without considering the limitation of the original "CAP" and may be incarcerated for the balance of the sentence. Defendant shall not participate in Technical Violations Program (TVP). There are no other agreements as to sentence.

By signing this document Defendant further understands that if any conditions of release are violated prior to sentencing on this matter, neither the State nor the Court

will be bound by any cap on sentencing.

If the defendant is incarcerated on a “Serious Violent Offense” pursuant to §33-2-34, NMSA 1978, as amended, then the provisions of the statute as to earned meritorious deductions will apply.

REVOCAION OF DRIVER’S LICENSE: Defendant understands that upon notification of conviction in this matter, the Motor Vehicle Department of the State of New Mexico (MVD) will revoke Defendant’s license to drive and it will remain so until reinstated through MVD. Defendant further acknowledges that this plea and disposition may be used to demonstrate Defendant’s knowledge of such revocation should Defendant be subsequently charged with Driving While License Suspended or Revoked pursuant to §66-5-39, NMSA 1978.

The maximum penalties for these charges are:

Count 1: **Homicide by Vehicle (Driving While Under the Influence of Intoxicating Liquor or Any Drug)**, 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:

Great Bodily Harm by Vehicle (Driving While Under the Influence of Intoxicating Liquor or Any Drug), as charged in Count 2 of the Grand Jury Indictment;

Great Bodily Harm by Vehicle (Driving While Under the Influence of Intoxicating Liquor or Any Drug), as charged in Count 3 of the Grand Jury Indictment;

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 Santa Fe County, or if Defendant is arrested in any location outside of Santa Fe County 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.

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 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.

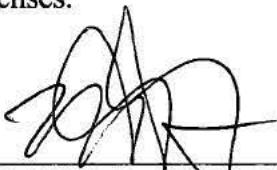
I understand that if the court grants me probation, a suspended sentence, a deferred sentence or a conditional discharge, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.



Dominic Friedlein

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.



Roderick T. Frechette
Defense Counsel

Date 12/18/17 ^{RTF} 1/2/18

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

Date 1/2/18

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: **Homicide by Vehicle (Driving While Under the Influence of Intoxicating**

Liquor or Any Drug), 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.

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



1/2/18

