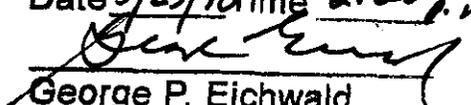


THIRTEENTH JUDICIAL DISTRICT COURT  
COUNTY OF SANDOVAL  
STATE OF NEW MEXICO

FILED IN OPEN COURT

Date 5/23/18 Time 2:20 p.m.

  
George P. Eichwald  
District Court Judge

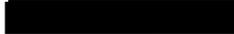
CR No. D-1329-CR-201700155

DA File No.: SV 17 0590

STATE OF NEW MEXICO,  
Plaintiff,

vs.

JOSEPH GABRIEL VARGAS,

Defendant.

**HABITUAL OFFENDER PLEA AND DISPOSITION AGREEMENT**

The State of New Mexico and the Defendant agree to this disposition of this cause number:

**PLEA**

**CHARGES:** The Defendant agrees to plead GUILTY to these crimes:

**1. SECOND DEGREE MURDER [0004],** On or about March 31, 2017, the above named Defendant did murder Kenneth Torres, and acted without sufficient provocation, and knew that his acts created a strong probability of death or great bodily harm, a 2<sup>nd</sup> Degree Felony offense contrary to §30-2-1(B), NMSA 1978. As charged in case D-1329-CR-201700155.

**2. AGGRAVATED BATTERY (Great Bodily Harm) [0071],** On or about on or about March 31, 2017, the above named defendant did touch or apply force to Julian Torres, intending to injure that person or another, and caused great bodily harm to Julian Torres, a 3<sup>rd</sup> Degree Felony offense contrary to §30-03-05(A), NMSA 1978. As charged in case D-1329-CR-201700155

**ADMISSION OF IDENTITY:** Defendant admits that Defendant was convicted of the prior felony offenses. The Defendant also agrees that the convictions are valid and free from error:

1. On or about March 5, 2016, The Defendant committed the felonies of **AGGRAVATED BATTERY UPON A PEACE OFFICER (NO GREAT BODILY HARM)** and **CONSPIRACY TO COMMIT AGGRAVATED BATTERY UPON A PEACE OFFICER (NO GREAT BODILY HARM)** and was convicted on this case on September 16, 2016, on a Plea and Disposition Agreement in Criminal Cause **D-202-CR-201600853**, in the 2<sup>nd</sup> Judicial District Court, Bernalillo County, New Mexico.

#### **TERMS**

This agreement is made according to the following conditions:

**SENTENCING AGREEMENT:** All counts in this case are to run concurrent to one another. At initial sentencing, the parties agree that the Defendant will be sentenced to fifteen (15) years. Seven (7) years are to be suspended and eight (8) years are to be served in the New Mexico Department of Corrections. Upon release from the Department of Corrections, Defendant shall be placed on supervised probation for a period of five (5) years. In addition, the State agrees to hold 1 year of habitual offender enhancement in abeyance. Restitution, if any is to be ordered by the Court and paid at the direction of Probation. There are no other agreements as to sentence.

**Any sentencing agreement is specifically conditioned on the Defendant appearing for sentencing; on the Defendant not violating any conditions of release while pending sentencing; not violating any Federal, State, or Local laws while pending sentencing; on the Defendant complying with any court orders.**

**PENALTIES:** The maximum penalties for these crimes are:

**1. SECOND DEGREE MURDER**, 2<sup>nd</sup> degree felony: Basic sentence of up to fifteen (15) years imprisonment and \$10,000 fine.

**2. AGGRAVATED BATTERY(Great Bodily Harm)**, 3<sup>rd</sup> degree felony: Basic Sentence of up to thirty-six (36) months imprisonment and \$5,000 fine.

**POTENTIAL INCARCERATION:** If the court accepts this agreement, the Defendant may be ordered to serve a period of incarceration and/or a period of probation at initial sentencing. If the Defendant later violates that probation, the Defendant may be incarcerated for the balance of the sentence.

**CAP:** Any "cap" or other limitation on incarceration shall be a limitation on imprisonment only at initial sentencing. **If the Defendant violates any condition of parole or probation, the Court may sentence the Defendant to imprisonment without considering the limitation.**

**CHARGES TO BE DISMISSED:** The following charges will be dismissed or will not be filed: **Balance of charges in case D-1329-CR-201700155**

**RESTITUTION:** Restitution will be ordered in accordance with §31-17-1. The Defendant, in cooperation with the Probation Office, will prepare a restitution plan to be incorporated into the Court's sentence. The Defendant agrees to make restitution payments on all charges arising out of these DA Files, even if those charges are dismissed or not filed because of this agreement. The Defendant agrees not to discharge the restitution obligation in bankruptcy.

**UNDISCLOSED PRIOR CONVICTIONS:** The State may bring habitual offender proceedings, as provided by law, based on any convictions not admitted in this plea. The State may also choose to *withdraw this plea agreement if it discovers any such convictions.*

### **STIPULATIONS**

**TIME LIMITS:** By entering this agreement with the State, the Defendant waives Defendant's rights under the rules governing time of commencement of trial until the agreement is either accepted or rejected by the court.

**IMMIGRATION CONSEQUENCES:** 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.

**WAIVER OF DEFENSES AND APPEAL:** Unless this plea is rejected or withdrawn, the Defendant gives up all motions, defenses, objections, or requests which Defendant has made or could make concerning the Court's entry of judgment against the Defendant if that judgment is consistent with this agreement. The Defendant specifically waives Defendant's right to appeal as long as the court's sentence is imposed according to the terms of this agreement.

**REJECTION OF PLEA:** If the Court finds the provisions of this agreement unacceptable, after reviewing it and any pre-sentence report, 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 proceeding shall be admissible against the Defendant in any criminal proceedings.

I have read and I understand this agreement. I understand that being convicted may affect my immigration or naturalization status. I have discussed the case and my constitutional rights with my lawyer. I understand that when I plead guilty I give up the following rights: my right to a trial by jury, my right to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination.

I agree that the State may void any sentencing agreement, including any cap on incarceration, OR the state may withdraw this plea agreement if I:

- 1) violate any laws while pending sentencing; OR
- 2) violate any condition of release; OR
- 3) fail to appear for the pre-sentence report interview as scheduled; OR
- 4) fail to appear for a scheduled court hearing, including but not limited to a sentencing hearing; OR
- 5) fail to turn myself in to begin serving any period of incarceration as court ordered.

I agree to enter my plea according to the terms and conditions set forth in this agreement. I understand that if the court grants me probation, a suspended sentence, a deferred sentence or a conditional discharge, the terms and conditions of the sentence are subject to modification if I violate any of the terms or conditions imposed.

5.18.18  
DATE

  
\_\_\_\_\_  
JOSEPH GABRIEL VARGAS  
DEFENDANT

I have discussed this case with my client in detail and have advised the Defendant of Defendant's constitutional rights and all possible defenses. I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I agree with the plea outlined in this agreement and its terms and conditions.

May 18, 2018  
DATE

  
\_\_\_\_\_  
STEPHEN TAYLOR  
COUNSEL FOR DEFENDANT

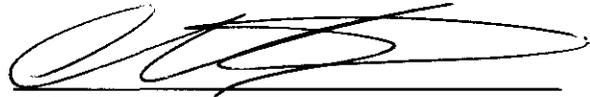
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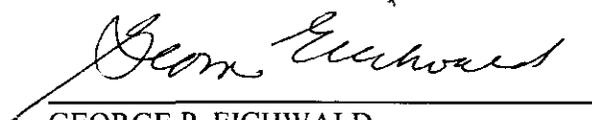
I have reviewed this matter and agree that the plea and disposition are appropriate and are in the interest of justice.

5/23/18  
DATE

  
ANDONI GARROTE  
ASSISTANT DISTRICT ATTORNEY

APPROVED:

5/23/18

  
GEORGE P. EICHWALD  
DISTRICT COURT JUDGE