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DISTRICT COURT CLERK

2019 JUN 17 PM 2: 59

THIRTEENTH JUDICIAL DISTRICT COURT  
COUNTY OF SANDOVAL  
STATE OF NEW MEXICO

STATE OF NEW MEXICO,  
Plaintiff,

vs.

NO: D-1329-CR-201800063

DA# SV 17 2539

ST: Not Available

Kimsey D Barboan,  
DOB: [REDACTED] 1984  
SSN: [REDACTED]  
Defendant.

### 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(s):

Count 1:

**Voluntary Manslaughter**, (0005), a lesser included offense of Count 1, on or about December 18, 2017, the above-named defendant did kill Anthony Martinez, as a result of sufficient provocation, and knew that his acts created a strong probability of death or great bodily harm, a third degree felony resulting in the death of a human being, contrary to NMSA 1979, Section 30-2-3(A) (1994). *16/18/19*

Count 2: **Unlawful Taking of a Motor Vehicle**, (5140), on or about December 16, 2017, the above-named defendant took a vehicle or motor vehicle intentionally and without consent of the owner, a fourth degree felony, contrary to NMSA 1978, Section 30-16D-1 (2009).

*16/18/19*  
Count 4: **Driving While Under the Influence of Intoxicating Liquor (third offense)**, (4203), on or about December 17, 2017, the above-named defendant did operate a motor vehicle while under the influence of intoxicating liquor, a Motor Vehicle Code misdemeanor, contrary to Section 66-8-102(A), NMSA 1978.

### ADMISSION OF IDENTITY

The Defendant also agrees that he was convicted of the following crime(s):

1. Driving While Intoxicated, a misdemeanor offense occurring on or about August 30, 2014, and was convicted on December 16, 2014, in Criminal Cause No. T-4-DW-2014002437, in the Second Judicial District, State of New Mexico.
2. Driving While Intoxicated, a misdemeanor offense occurring on or about March 3, 2012, and was convicted on October 17, 2012, in Criminal Cause No. T-4-DW-2012000876, in the Second Judicial District, State of New Mexico.

### TERMS

1. **Sentence.** The following disposition will be made of the charges:
  - a. Count 2 shall run consecutive to Count 1 for 7 years 6 months. 3 years 6 months shall be suspended for 4 years incarceration in the New Mexico Corrections Department. Upon release from the Corrections Department, the Defendant shall be placed on supervised probation for 3 years 6 months and shall be required to enter and successfully complete a year long inpatient alcohol/drug treatment program if he hasn't completed a similar program at NMCD. The inpatient program will be followed by intensive outpatient drug/alcohol treatment. There are no other agreements as to sentence.
  - b. Any agreement as to terms is specifically conditioned on defendant not committing any crimes, violating any conditions of release, or willfully missing any future court hearings.
  - c. If any of the above charge(s) to which Defendant pleads is or could be a statutorily defined "serious violent offense," pursuant to NMSA 1978 § 33-02-34(L)(4), then the Defendant agrees that the nature of the offense and the resulting harm are such that the crime is a serious violent offense for the purpose of § 33-02-34(L)(4), and that the provisions of that statute as it relates to earned meritorious deductions will apply.
  - d. If the Indictment / Information charged any crimes pursuant to the Controlled Substances Act, NMSA 1978 §30-31-1 et seq., the Defendant must pay a \$75.00 Crime Lab fee.
  - e. The maximum penalties for these charges are:
    - i. First degree felony resulting in the death of a child -- life imprisonment and \$17,500 fine.
    - ii. First degree felony -- eighteen (18) years imprisonment and \$15,000 fine.
    - iii. Second degree felony resulting in death -- fifteen (15) years imprisonment and

- iv. \$12,500 fine.
- v. Second degree felony sexual offense against a child – fifteen (15) years imprisonment and \$12,500 fine.
- vi. Second degree felony – nine (9) years imprisonment and \$10,000 fine.
- vii. Third degree felony resulting in death – six (6) years imprisonment and \$5,000 fine.
- viii. Third degree felony sexual offense against a child – six (6) years imprisonment and \$5,000 fine
- ix. Third degree felony – three (3) years imprisonment and \$5,000 fine.
- x. Fourth degree felony – eighteen (18) months imprisonment and \$5,000 fine.
- xi. Special Fourth degree felony – one (1) year imprisonment and \$5,000 fine.
- xii. Misdemeanor – three hundred sixty-four (364) days imprisonment and \$1,000.
- xiii. Petty misdemeanor – six (6) months and \$500 fine.
- xiv. Traffic misdemeanor -- ninety (90) days imprisonment and \$300 fine.]

2. **Aggravating or Mitigating Circumstances.** This agreement permits either party to request that the basic sentence be altered up or down one-third for aggravating or mitigating circumstances, pursuant to NMSA 1978 Section 31-18-15.1. The requesting party shall still be required to file a notice of intent to seek aggravation or mitigation of the basic sentence.

3. **Restitution.** Restitution will be ordered in accordance with NMSA 1978 Section 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 on all charges arising out of the files of the District Attorney even if those charges are dismissed or not filed because of this agreement. The Defendant agrees that restitution obligations shall not be discharged in bankruptcy.

The Defendant agrees to pay restitution in the amount of:

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

The balance of the charges in the Indictment or Information filed in this cause.

5. **Evidence of identity.** The defendant's fingerprints and photograph will be taken and will be recorded as those of the person entering into this agreement and will be recorded and made a part of the court records under these cause numbers. These fingerprint and photographic records will be made and recorded specifically for the purpose of introduction as evidence on the issue of identity, or any other issue, of the person convicted of any prior convictions listed above and the person convicted pursuant to this agreement.

6. **Waiver of Time Limits.** By entering into this agreement with the State, the Defendant waives his right, under Rule 5-604 and under any constitutional provision, governing time of commencement of trial until the agreement is either accepted or rejected by the Court. In addition, the defendant waives any and all time limits for the filing of additional habitual

offender proceedings in these cause numbers.

7. **Undisclosed prior convictions.** The State may bring habitual offender proceedings, as provided by law, based on any convictions not admitted in this plea.
8. **Effect on charging document.** This agreement, unless rejected or withdrawn, serves to amend the complaint, indictment or information to charges the offenses to which the defendant pleads, without the filing of additional pleadings. If the plea is rejected or withdrawn the original charges are automatically reinstated.
9. **Waiver of defenses and appeal.** Unless this plea is rejected or withdrawn, the defendant hereby gives up any and all motions, defenses, objections or requests which he/she 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.
10. **Withdrawal permitted if agreement is rejected.** If after reviewing this agreement and presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement shall be null and 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.
11. **Immigration or naturalization.** The Defendant understands that entry of this plea agreement may have an effect upon his/her immigration or naturalization status, and that his/her attorney has advised them as to the immigration consequences of entering into this agreement.
12. **Firearms. (Domestic Violence or Felony Cases only)** I understand that an entry of a plea to a felony or a crime of domestic violence 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 with a domestic violence or felony conviction.

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.

6/17/19  
Date

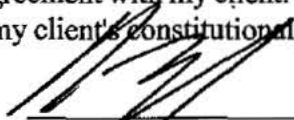
  
Kimsey O Barboan

Defendant

### DEFENSE COUNSEL REVIEW

I have reviewed this 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.

6/17/19  
Date

  
\_\_\_\_\_  
Michael L. Rosenfield  
Defense Counsel

### PROSECUTOR REVIEW

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

6/17/19  
Date

  
\_\_\_\_\_  
Amy Lopez Dooling  
Assistant District Attorney

### 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 Indictment / Information.
2. That the defendant understands the range of possible sentences for the offenses charged, from probation to the maximum period of incarceration as allowed under this agreement.
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 wished 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 committing 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 represented by counsel, the defendant has been advised as to the immigration consequences of entering into this agreement.
  10. The Defendant understands that a conviction may require him/her to register as a sex offender under the Sex Offender Registration and Notification Act and that the Defendant, if represented by counsel, has been advised as to the consequences of a conviction as a sex offender.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads **guilty/no contest** to the above charges and accepts such plea. These findings shall be made a part of the record in the above styled case.

Approved:

  
Louis P. McDonald