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FEB 26 2018	
CLERK U S DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	DEPUTY

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
 13 Plaintiff,

CR- 16-08238-PCT-DGC

14 vs.
 15 TN stated: Andre Virrell Hinton
 16 Andre Hinton,
 17 Defendant.

PLEA AGREEMENT

18 Plaintiff, United States of America, and the defendant, ANDRE HINTON, hereby
 19 agree to dispose of this matter on the following terms and conditions:

20 1. **PLEA**

21 The defendant will plead guilty to Involuntary Manslaughter, a lesser included
 22 offense of Count 1 of the Indictment in violation of Title 18, United States Code (U.S.C.)
 23 § 1153 and 1112, a Class D felony offense.

24 2. **MAXIMUM PENALTIES**

25 a. A violation of 18 U.S.C. §1112, is punishable by a maximum fine of
 26 \$250,000.00, a maximum term of imprisonment of 8 years, or both, and a term of
 27 supervised release of not more than 3 years. The maximum term of probation is 5 years.

1 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
2 Reform Act of 1984, the Court shall order the defendant to:

3 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
4 § 3663 and/or 3663A, unless the Court determines that restitution would not be
5 appropriate;

6 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
7 fine is not appropriate;

8 (3) serve a term of supervised release when required by statute or when a
9 sentence of imprisonment of more than one year is imposed (with the understanding that
10 the Court may impose a term of supervised release in all other cases); and

11 (4) pay upon conviction a \$100.00 special assessment for each count to
12 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

13 c. The Court is required to consider the Sentencing Guidelines in determining
14 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
15 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
16 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
17 the Court accepts.

18 **3. AGREEMENTS REGARDING SENTENCING**

19 a. Stipulation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and
20 the defendant stipulate that the defendant shall serve a term of imprisonment, the length of
21 which shall be determined by the Court at the time of sentencing.

22 b. Acceptance of Responsibility. If the defendant makes full and complete
23 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
24 commission of the offense, and if the defendant demonstrates an acceptance of
25 responsibility for this offense up to and including the time of sentencing, the United States
26 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
27 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
28 the United States will move for an additional one-level reduction in the applicable

1 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

2 c. Non-Binding Recommendations. The defendant understands that
3 recommendations are not binding on the Court. The defendant further understands that the
4 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
5 recommendation.

6 d. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
7 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no
8 event more than \$500,000.00, to all victims directly or proximately harmed by the
9 defendant's "relevant conduct," including conduct pertaining to any dismissed counts or
10 uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct
11 constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant
12 understands that such restitution will be included in the Court's Order of Judgment and that
13 an unanticipated restitution amount will not serve as grounds to withdraw the defendant's
14 guilty plea or to withdraw from this plea agreement.

15 e. Assets and Financial Responsibility. The defendant shall make a full
16 accounting of all assets in which the defendant has any legal or equitable interest. The
17 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
18 transfer any such assets or property before sentencing, without the prior approval of the
19 United States (provided, however, that no prior approval will be required for routine, day-
20 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
21 Office to immediately obtain a credit report as to the defendant in order to evaluate the
22 defendant's ability to satisfy any financial obligation imposed by the Court. The
23 defendant also shall make full disclosure of all current and projected assets to the U.S.
24 Probation Office immediately and prior to the termination of the defendant's supervised
25 release or probation, such disclosures to be shared with the U.S. Attorney's Office,
26 including the Financial Litigation Unit, for any purpose. Finally, the defendant shall
27 participate in the Inmate Financial Responsibility Program to fulfill all financial obligations
28 due and owing under this agreement and the law.

1 If the defendant is a member of a Native American tribe that provides “per capita”
2 payments to its members, the defendant agrees that any such “per capita” payment shall be
3 paid over to the Clerk of the Court and applied to the defendant’s restitution obligation
4 until restitution to all victims is paid in full.

5 **3. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

6 a. None.

7 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

8 a. If the Court, after reviewing this plea agreement, concludes that any
9 provision contained herein is inappropriate, it may reject the plea agreement and give the
10 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
11 11(c)(5).

12 b. If the defendant’s guilty plea or plea agreement is rejected, withdrawn,
13 vacated, or reversed at any time, this agreement shall be null and void, the United States
14 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
15 any charges that have been dismissed because of this plea agreement shall automatically
16 be reinstated. In such event, the defendant waives any and all objections, motions, and
17 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
18 restrictions in bringing later charges or proceedings. The defendant understands that any
19 statements made at the time of the defendant’s change of plea or sentencing may be used
20 against the defendant in any subsequent hearing, trial, or proceeding subject to the
21 limitations of Fed. R. Evid. 410.

22 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

23 The defendant waives (1) any and all motions, defenses, probable cause
24 determinations, and objections that the defendant could assert to the indictment or
25 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
26 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
27 judgment against the defendant, or any aspect of the defendant’s sentence, including the
28 manner in which the sentence is determined, including but not limited to any appeals under

1 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
2 (habeas petitions), and any right to file a motion for modification of sentence, including
3 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
4 collateral attack, or other motion the defendant might file challenging the conviction, order
5 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
6 bar an otherwise-preserved claim of ineffective assistance of counsel or of “prosecutorial
7 misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

8 **7. DISCLOSURE OF INFORMATION**

9 a. The United States retains the unrestricted right to provide information and
10 make any and all statements it deems appropriate to the U.S. Probation Office and to the
11 Court in connection with the case.

12 b. Any information, statements, documents, and evidence that the defendant
13 provides to the United States pursuant to this agreement may be used against the defendant
14 at any time.

15 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
16 cooperation shall include providing complete and truthful responses to questions posed by
17 the U.S. Probation Office including, but not limited to, questions relating to:

18 (1) criminal convictions, history of drug abuse, and mental illness; and
19 (2) financial information, including present financial assets or liabilities
20 that relate to the ability of the defendant to pay a fine or restitution.

21 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

22 b. Nothing in this agreement shall be construed to protect the defendant from
23 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
24 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
25 monetary penalties, including restitution imposed by the Court, shall be due immediately
26 upon judgment, shall be subject to immediate enforcement by the United States, and shall
27 be submitted to the Treasury Offset Program so that any federal payment or transfer of
28 returned property the defendant receives may be offset and applied to federal debts (which

1 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
2 payments, the schedule of payments shall be merely a schedule of minimum payments and
3 shall not be a limitation on the methods available to the United States to enforce the
4 judgment.

5 **9. ELEMENTS**

6 **Involuntary Manslaughter**

7 On or between November 9 and November 16, 2006, in the District of Arizona:

- 8 1. The defendant committed an act that might produce death;
- 9 2. The defendant acted with gross negligence;
- 10 3. The defendant's act was the proximate cause of the death of the victim;
- 11 4. The killing was unlawful;
- 12 5. The defendant either knew that such conduct was a threat to the lives of others or knew of circumstances that would reasonably cause the defendant to foresee that such conduct might be a threat to the lives of others;
- 13 6. The offense took place on the Fort Apache Indian Reservation; and
- 14 7. The defendant was an Indian at the time of the crime. Specifically, at the time of the crime the defendant had some quantum of Indian blood and was a member of or was affiliated with a federally recognized tribe.

15 “**Gross Negligence**” means wanton or reckless disregard for human life.

16 “**Proximate Cause**” means one that played a substantial part in bringing about the death, so that the death was a direct result or a reasonably probable consequence of the defendant's act.

17 **10. FACTUAL BASIS**

- 18 a. The defendant admits that the following facts are true and that if this matter were to proceed to trial the United States could prove the following facts beyond a reasonable doubt:

19 On or between November 9 and November 15, 2006, while on the Fort Apache Indian Reservation, Indian County, I, Andre Hinton, caused the death of my girlfriend,

1 K.T. Specifically, on that date, K.T. and I were in the forest. We got into an argument and
2 I struck K.T. in the head, causing her to lose consciousness. I did not seek medical
3 assistance for K.T. and she passed away. When I realized she had died, I spoke to a friend,
4 Charles Jones. Charles Jones and I found shovels and buried K.T.'s body to prevent her
5 discovery. I acknowledge that it was later determined that the cause of K.T.'s death was
6 blunt force trauma to the head. I also acknowledge that the killing of K.T. was unlawful,
7 as K.T. never posed a threat to my safety. I further admit that I was an Indian at the time
8 of the crime. Specifically, at the time of the crime, I had some quantum of Indian blood
9 and was a member of or was affiliated with a federally recognized tribe, namely the White
10 Mountain Apache Tribe.

11 b. The defendant shall swear under oath to the accuracy of this statement and,
12 if the defendant should be called upon to testify about this matter in the future, any
13 intentional material inconsistencies in the defendant's testimony may subject the defendant
14 to additional penalties for perjury or false swearing, which may be enforced by the United
15 States under this agreement.

16 I have read the entire plea agreement with the assistance of my attorney. I
17 understand each of its provisions and I voluntarily agree to it.

18 I have discussed the case and my constitutional and other rights with my attorney.
19 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
20 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
21 present evidence in my defense, to remain silent and refuse to be a witness against myself
22 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
23 to be presumed innocent until proven guilty beyond a reasonable doubt.

24 I agree to enter my guilty plea as indicated above on the terms and conditions set
25 forth in this agreement.

26 I have been advised by my attorney of the nature of the charges to which I am
27 entering my guilty plea. I have further been advised by my attorney of the nature and range
28

1 of the possible sentence and that my ultimate sentence shall be determined by the Court
2 after consideration of the advisory Sentencing Guidelines.

3 My guilty plea is not the result of force, threats, assurances, or promises, other than
4 the promises contained in this agreement. I voluntarily agree to the provisions of this
5 agreement and I agree to be bound according to its provisions.

6 I understand that if I am granted probation or placed on supervised release by the
7 Court, the terms and conditions of such probation/supervised release are subject to
8 modification at any time. I further understand that if I violate any of the conditions of my
9 probation/supervised release, my probation/supervised release may be revoked and upon
10 such revocation, notwithstanding any other provision of this agreement, I may be required
11 to serve a term of imprisonment or my sentence otherwise may be altered.

12 This written plea agreement, and any written addenda filed as attachments to this
13 plea agreement, contain all the terms and conditions of the plea. Any additional
14 agreements, if any such agreements exist, shall be recorded in a separate document and
15 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
16 be in the public record.

17 I further agree that promises, including any predictions as to the Sentencing
18 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
19 (including my attorney) that are not contained within this written plea agreement, are null
20 and void and have no force and effect.

21 I am satisfied that my defense attorney has represented me in a competent manner.

22 I fully understand the terms and conditions of this plea agreement. I am not now
23 using or under the influence of any drug, medication, liquor, or other intoxicant or
24 depressant that would impair my ability to fully understand the terms and conditions of this
25 plea agreement.

26 2/5/18
27 Date


ANDRE HINTON
Defendant

APPROVAL OF DEFENSE COUNSEL

2 I have discussed this case and the plea agreement with my client in detail and have
3 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
4 constitutional and other rights of an accused, the factual basis for and the nature of the
5 offense to which the guilty plea will be entered, possible defenses, and the consequences
6 of the guilty plea including the maximum statutory sentence possible. I have further
7 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
8 assurances, promises, or representations have been given to me or to the defendant by the
9 United States or any of its representatives that are not contained in this written agreement.
10 I concur in the entry of the plea as indicated above and that the terms and conditions set
11 forth in this agreement are in the best interests of my client. I agree to make a bona fide
12 effort to ensure that the guilty plea is entered in accordance with all the requirements of
13 Fed. R. Crim. P. 11.

2/5/18

Date


MARK PAIGE
Attorney for Defendant

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2 **APPROVAL OF THE UNITED STATES**

3 I have reviewed this matter and the plea agreement. I agree on behalf of the United
4 States that the terms and conditions set forth herein are appropriate and are in the best
5 interests of justice.

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ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona

DIMITRA H. SAMPSON
ANTHONY W. CHURCH
Assistant U.S. Attorney

12 **ACCEPTANCE BY THE COURT**

14 Date

15 HONORABLE DAVID G. CAMPBELL
United States District Judge