

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

SEP 22 2016

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CURTIS HUTCHINSON,)
)
Defendant.)

Case 1:15-cr-3766-MV

PLEA AGREEMENT

Pursuant to Federal Rule of Criminal Procedure 11, the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico and the Defendant, CURTIS HUTCHINSON, with the advice and counsel of his attorney, John F. Moon Samore.

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

- 2. The Defendant further understands the Defendant's rights:
 - a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury; and

c. at a trial:

- 1) to confront and cross-examine adverse witnesses,
- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Count 1 of the Superseding Indictment. More specifically, the Defendant will plead guilty to the felony charge in Count 1 that he knowingly and intentionally conspired with ROSENDO FLORES ANGULO to distribute 100 grams and more of a mixture and substance containing a detectable amount of heroin, resulting in the death of another person from the use of such substance, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(B).

DEFENDANT'S ADMISSION OF FACTS

4. By the Defendant's signature on this plea agreement, Defendant is acknowledging that he is pleading guilty because he is, in fact, guilty of the offense to which he is pleading guilty. The Defendant admits and accepts responsibility for that criminal conduct. Moreover, in pleading guilty, the Defendant acknowledges that if he chose to go to trial instead of entering a guilty plea, the United States could prove facts sufficient to establish his guilt of the offense to which he is pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties.

5. The Defendant specifically admits the following facts related to the charged offense and declares under penalty of perjury that all of these facts are true and correct:

- a. I, CURTIS HUTCHINSON, admit that I began selling heroin to support my own heroin habit. I sold small amounts of heroin to friends and acquaintances in Albuquerque, New Mexico, on a recurring basis. I typically sold one (1) gram packets of heroin for \$100, and smaller packets for proportionate prices. For example, I sold small packets containing two-tenths (0.2) of a gram for \$20 apiece. Many of my customers would purchase several grams of heroin per week.
- b. I, CURTIS HUTCHINSON, bought all of the heroin that I sold during the period from April 2015 (and earlier) through August 2015 from ROSENDO FLORES ANGULO (whom I then knew as "Luis"). ROSENDO FLORES ANGULO was my sole supplier of heroin during that period.
- c. I, CURTIS HUTCHINSON, knew, or it was reasonably foreseeable, that ROSENDO FLORES ANGULO, possessed and distributed additional heroin in furtherance of the conspiracy. I admit that my relevant conduct and the reasonably foreseeable acts of ROSENDO FLORES ANGULO in furtherance of the jointly undertaken criminal activity involved more than 100 grams of heroin.
- d. I, CURTIS HUTCHINSON, admit that I sold heroin to an acquaintance ("DJJ") on the night of April 29-30, 2015. I had previously supplied DJJ with heroin, and he contacted me that night seeking to purchase a small amount of heroin. I agreed to sell DJJ heroin, and he visited my apartment where I sold him twenty-dollars-worth (or approximately 0.2 of a gram) of heroin. That heroin had been supplied by ROSENDO FLORES ANGULO.
- e. I, CURTIS HUTCHINSON, acknowledge that the evidence shows that after DJJ

injected or ingested the heroin , he collapsed and died on the night of April 29-30, 2015, Further, I acknowledge that the evidence (including the expert opinion of a medical toxicologist) also shows that the heroin was a but-for cause of DJJ's death, that is, DJJ would not have died but for the heroin.

6. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime to which the Defendant is pleading guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

SENTENCING

7. The Defendant understands that the minimum and maximum penalties provided by law for this offense are:

- a. imprisonment for a period of not less than 20 years and not more than life;
- b. a fine not to exceed the greater of \$5,000,000 or twice the pecuniary gain to the Defendant or pecuniary loss to a victim;
- c. a term of supervised release of not less than 4 years to follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- d. a mandatory special penalty assessment of \$100.00; and
- e. restitution as may be ordered by the Court.

RECOMMENDATIONS

8. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

9. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the United States and the Defendant offer the following recommendations regarding the calculation of the Defendant's Offense Level under the advisory Sentencing Guidelines.

a. Base Offense Level: USSG § 2D1.1(a)(2): 38

Death resulted from use of the heroin distributed by the Defendant as part of the conspiracy alleged in Count 1. Defendant's Base Offense Level is therefore 38.

b. Specific Offense Characteristic - USSG § 2D1.1(b)(17) (safety-valve): N/A

The "safety-valve" provisions set forth in 18 U.S.C. § 3553(f) and Sentencing Guidelines § 5C1.2 are inapplicable here because the offense of conviction resulted in death of another person.

c. Mitigating Role - USSG § 3B1.2(b): -2

The parties agree that this Defendant was substantially less culpable than his co-conspirator. The parties accordingly recommend that a 2-level downward adjustment is appropriate under § 3B1.2 of the Sentencing Guidelines.

c. Acceptance of Responsibility – USSG 3E1.1: -3

As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Provided that the Defendant continues to accept responsibility, the Defendant will be entitled to a reduction of 2 levels from the

base offense level as calculated under the sentencing guidelines pursuant to USSG § 3E1.1(a). If the defendant fulfills his promises and responsibilities under this plea agreement and timely enters his guilty plea, the United States will move for an additional 1-Level reduction pursuant to USSG § 3E1.1(b).

Further, the United States is free to withdraw this recommendation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing.

Such conduct would include committing additional crimes, failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

- d. The parties are each free to present evidence and make recommendations regarding an appropriate sentence within the statutorily authorized sentencing range in light of the Sentencing Guidelines and 18 U.S.C. § 3553(a).
- e. The Defendant understands that the parties' recommendations are not binding on the Court and that whether the Court accepts these recommendations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. If the Court does not accept any one or more of the above recommendations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any of the parties' recommendations, the Defendant's final sentence is solely within the discretion of the Court.

10. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under USSG § 1B1.3.

DEFENDANT'S ADDITIONAL AGREEMENT

11. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

12. The Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

13. Apart from the recommendations set forth in this plea agreement, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

WAIVER OF APPEAL RIGHTS

14. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, at or under the maximum statutory penalty authorized by law. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241, 2255, or any other extraordinary writ, except on the issue of defense counsel's ineffective assistance.

GOVERNMENT'S ADDITIONAL AGREEMENT

15. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing, the United States will move to dismiss Counts 2, 5 and 16 as to Defendant CURTIS HUTCHINSON;
- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the pending indictment.

16. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

17. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set

forth in this agreement and any addenda). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

18. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

19. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100 in payment of the special penalty assessment described above.


ENTIRETY OF AGREEMENT

20. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement

is effective upon signature by the Defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 22nd day of September 2016.

Damon P. Martinez
United States Attorney




Timothy S. Vasquez
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

This agreement has been read to me in a language I understand. I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.



CURTIS HUTCHINSON
Defendant

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



John F. Moon Samore
Attorney for the Defendant