

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FEB 05 2024

MITCHELL R. ELFERS
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cr. No. 22-CR-454-WJ

GILBERT JOHN JR, et. al.,

Defendant.

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, Gilbert John, and the Defendant’s counsel, Nicole Moss and Marshall Ray:

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 be prosecuted by indictment;
 - b. to plead not guilty, or having already so pleaded, to persist in that plea;
 - c. to have a trial by jury; and
 - d. 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 indictment, charging a violation of **18 U.S.C. §§ 1153 and 1111(a)**, that being second degree murder.

SENTENCING

4. The Defendant understands that the maximum penalty provided by law for this offense is:
- a. imprisonment for a period of not more than life imprisonment;
 - b. a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
 - c. a term of supervised release of not more than 5 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.

5. 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.

6. The parties are aware that the Court will decide whether to accept or reject this plea agreement. The Court may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the Defendant shall have the right to withdraw the Defendant's plea of guilty.

7. 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 U.S.S.G. § 1B1.3.

ELEMENTS OF THE OFFENSE

8. If this matter proceeded to trial, the Defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for violations of the charges listed below:

Count 1: 18 U.S.C. §§ 1153 and 1111(a), that being,

- First:* the defendant caused the death of John Doe;
- Second:* the defendant killed the victim with malice aforethought;
- Third:* the killing took place within the territorial jurisdiction of the United States, in Indian Country; and
- Fourth:* the defendant is an Indian.

DEFENDANT'S ADMISSION OF FACTS

9. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

Between on or about July 1, 2019 and July 16, 2019, I killed the decedent, John Doe, with malice aforethought by repeatedly stabbing him with a machete at Bass Lake, New Mexico within McKinley County, in the State and District of New Mexico. I killed him on Navajo Nation Trust Land, which is Indian Country for purposes of federal law. I am an enrolled member of the Navajo Nation and I am an Indian for purposes of federal law.

One night during the early part of the above date range, another individual brought a white four-door car to me at my apartment, in the Sunset Hills complex in Gallup, New Mexico to dispose of and to sell. That night, this person contacted me to tell me to come outside and look at a car. I was given the impression that the car had been stolen. We got in the car to drive around so I could test the vehicle. I planned to sell it, but we did not find a contact to sell it that night.

While driving the car, I heard John Doe from the trunk cry out for help. This is when I learned there was a person, John Doe, confined in the trunk. After this outcry, I looked at the individual who brought me the car, and this individual told me to “get rid of him.” I understood this statement to mean that I should kill John Doe. Nobody else was in the vehicle except for me, the individual, and John Doe. We kept driving around—through the night and into the next evening, for about a day—mostly inside the Navajo Nation until we stopped on the back roads to Bass Lake.

After I washed myself in the spring water near the lake, John Doe tried to escape after managing to open the trunk from inside. I slammed the trunk

back down on him, sat on the top of the trunk door and asked the other individual for a machete that had previously been shown to me inside of the car. The individual gave the machete to me. I then got off the trunk and John Doe again tried to escape. After John Doe opened the trunk, I finished him off and stabbed him repeatedly with the machete.

After the second stab, John Doe grabbed onto the machete. I then pulled the machete back and stabbed him several more times. In total, I stabbed him about five times. After I stabbed him, he was still moving. The other individual picked a large rock up from the ground and threw it at John Doe's head, hitting him and causing him to lay down in the trunk again. We then closed the trunk and sat together on top of the trunk. I could hear that John Doe was still moving. We remained on the trunk until we stopped hearing movement. We also saw that vehicles were driving by on the road and did not want to get caught. Because we did not want to get caught, we drove the car with John Doe's body inside of it to a relative's house in Standing Rock, New Mexico.

Prior to separating from the other individual, and after dropping the car off in Standing Rock, I told this individual "don't worry about it." About ten days later, I returned to retrieve the car. The car was inoperable because I had inadvertently disabled it when I was trying to find a GPS tracking device. I asked a friend to help me tow the car to a remote location north of Church Rock, NM. Once the car had been towed to this remote location, I released the car down a hill out of view of the road. I borrowed a gas can, which I used to pour gasoline onto the car. I lit the car on fire and left it burning with John Doe's body inside of it.

I did not know John Doe before I killed him. I later learned that his body was identified only because investigators were able to match serial numbers from John Doe's medical records to his metal hip replacement devices found in the trunk of the car. These hip replacement devices were the only significant remnants of John Doe's body after I burned the car.

I feel remorseful for what I did to John Doe in killing him and burning his body.

10. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) 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.

RECOMMENDATIONS

11. The United States and the Defendant recommend as follows:
- a. The Defendant and the United States have made an AGREEMENT pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that a specific sentence of no less than 210 months of imprisonment and no more than 252 months of imprisonment is the appropriate disposition in this case. This agreement takes into account the Defendant's acceptance of responsibility, with no further reduction to occur.
 - b. The remaining components of the Defendant's sentence, including but not limited to any fine or restitution and the length and conditions of supervised release, shall be imposed by the Court after the presentation of evidence and/or argument by the parties.
 - c. If the Court accepts the plea agreement, it must inform the Defendant that the agreed upon disposition will be included in the judgment, and the Court is bound by the terms of the plea agreement once the Court accepts the plea agreement.

DEFENDANT'S ADDITIONAL AGREEMENT

12. 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.

13. The Defendant agrees that any financial records and information provided by the Defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

14. Except under circumstances where the Court, acting on its own, rejects this plea agreement (or functionally rejects it, as described below under the heading Violation or Rejection of Plea Agreement), 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. The Court has not acted on its own if its rejection of the plea agreement occurs after the Defendant has expressly or implicitly suggested to the Court a desire or willingness to withdraw his or her plea or not to be bound by the terms of this plea agreement.

15. By signing this plea agreement, the Defendant waives the right to withdraw the Defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d) unless (1) the court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5) or (2) the Defendant can show a fair and just reason as those terms are used in Rule 11(d)(2)(B) for requesting the withdrawal.

16. The Defendant recognizes that this plea agreement has already conferred a benefit on the Defendant. Consequently, in return for the benefit conferred on the Defendant by entering

into this agreement, the Defendant agrees not to seek any sentence other than the specific sentence of a sentence in the range of no less than 210 months of imprisonment and no more than 252 months of imprisonment as agreed to by the parties pursuant to Rule 11(c)(1)(C) of the Federal rules of Criminal Procedure.

RESTITUTION

17. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A if applicable; if § 3663A is not applicable, the Court will enter an order of restitution pursuant to 18 U.S.C §§ 3663 and 3664.]

WAIVER OF APPEAL RIGHTS AND POST-CONVICTION RIGHTS

18. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford 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 imposed in conformity with this Fed. R. Crim. P. 11(c)(1)(C) plea agreement, as well as any order of restitution entered by the Court. This waiver extends to any challenge to the manner in which the sentence was determined or imposed, including the district court's authority to make findings supporting the sentence.

19. The Defendant also waives the right to appeal any sentence imposed below or within the Guideline range upon a revocation of supervised release in this cause number but may nonetheless appeal the determination of the revocation Guideline range.

20. The Defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a).

21. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence 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

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

- a. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

23. 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

24. 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). The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OR REJECTION OF PLEA AGREEMENT

25. The Defendant agrees that if the Court finds that the Defendant has violated any provision of this agreement, the United States may declare this agreement null and void. In such a case, or where the Court has rejected the plea agreement or has functionally rejected it by failing to accept the agreement within six months of its entry (except where the United States, in its sole discretion, agrees to an extension of that time) the United States is released from its obligations under the plea agreement 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

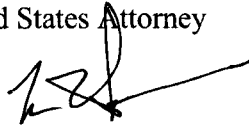
26. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100 in payment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

ENTIRETY OF AGREEMENT

27. 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.

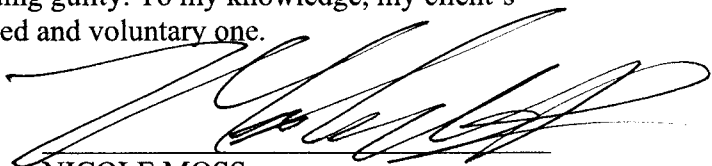
AGREED TO AND SIGNED this 5th day of February, 2024.

ALEXANDER M.M. UBALLEZ
United States Attorney



MARK A. PROBASCO
ALEXANDER FLORES
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

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. In addition, I have explained to my client the elements to each offense to which she/he is pleading guilty. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



NICOLE MOSS
MARSHALL RAY
Attorney for the Defendant

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.



GILBERT JOHN, JR.
Defendant