

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

VALERIE WYANT, CLERK
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FILED

STATE OF ARIZONA,

Plaintiff,

vs.

ADONIS ENCINAS-VELARDE,

Defendant.

Superior Court No. CR2018-00208

PLEA AGREEMENT

AEV

1. The Defendant agrees to plead guilty to the following:

Count 3: KIDNAPPING - DV, a Class 2 dangerous, non-repetitive felony, in violation of A.R.S. §§13-1304(A)(3), 13-1301, 13-301, 13-302, 13-303, 13-3601, 13-701, 13-702, 13-704, 13-714, 13-801, 13-804, committed on or about 2/28/2018.

Count 11 (Amended): ATTEMPTED DRIVE BY SHOOTING, a Class 3 dangerous, non-repetitive felony, in violation of A.R.S. §§13-1209(A), 13-1001, 13-301, 13-302, 13-303, 13-3601, 13-701, 13-702, 13-704, 13-714, 13-801, 13-804, committed on or about 2/28/2018.

Count 12: ASSISTING A CRIMINAL STREET GANG, a Class 3 non-dangerous, non-repetitive felony in violation of A.R.S. "13-2321(B), 13-701, 13-702, 13-301, 13-302, 13-303, 13-801, and 13-802. committed on or between 2/28/2018 and 3/1/2018.

Count 17: DISORDERLY CONDUCT WITH A WEAPON, a Class 6 dangerous, non-repetitive felony in violation of A.R.S. §§13-2904(A)(6), 13-3601, 13-301, 13-302, 13-303, 13-604, 13-607, 13-701, 13-702, 13-707, 13-801, 13-802 committed on or about 2/28/2018.

Count 18: MISCONDUCT INVOLVING WEAPONS, a Class 6, non-dangerous, non-repetitive felony in violation of A.R.S. §§13-3102(A)(7), 13-3101, 13-701, 13-702, 13-801, 13-804, committed on or about 2/28/2018.

AEV

2. A Non-Dangerous, Non-Repetitive Class 6 Felony carries a mitigated prison sentence of .33 years; a minimum prison sentence of .5 years; a presumptive sentence of 1 year; a maximum sentence of 1.5 years; and an aggravated sentence of 2 years. The maximum fine that can be imposed is \$150,000 plus an 83% surcharge. **PROBATION IS NOT AVAILABLE PURSUANT TO THIS PLEA.**

A Dangerous, Non-Repetitive Class 6 Felony carries a minimum prison sentence of 1.5 years; a presumptive sentence of 2.25 years; a maximum sentence of 3 years. The maximum fine that can be imposed is \$150,000 plus an 83% surcharge. **PROBATION IS NOT AVAILABLE PURSUANT TO THIS PLEA.**

A Non-Repetitive, Non-Dangerous, Class 3 Felony carries a mitigated prison sentence of 2 years; a minimum sentence of 2.5 years; presumptive sentence of 3.5 years; a maximum sentence of 7 years; and an aggravated sentence of 8.75 years. The maximum fine that can be imposed is \$150,000 plus an 83% surcharge. **PROBATION IS NOT AVAILABLE.**

A Non-Repetitive, Dangerous, Class 3 Felony with Gang Allegation under A.R.S. §13-714 carries a minimum sentence of 10 years; a presumptive sentence of 12.5 years; and a maximum sentence of 20 years. The maximum fine that can be imposed is \$150,000 plus an 83% surcharge. **PROBATION IS NOT AVAILABLE.**

A Dangerous, Non-Repetitive Class 2 Felony carries a minimum prison sentence of 7 years; a presumptive sentence of 10.5 years; a maximum sentence of 21 years. The maximum fine that can be imposed is \$150,000 plus an 83% surcharge. Waiver of extradition for probation violation is required. Restitution of economic loss is required. **PROBATION IS NOT AVAILABLE.**

AKW

3. Special conditions regarding sentence, parole or commutation imposed by statute are:
- Defendant must serve at least 85% of any prison sentence imposed by the Court on Counts 3, 12, 17, and 18.
 - Under A.R.S. §13-714, a person who is convicted of committing any felony offense with the intent to promote, further or assist any criminal conduct by a criminal street gang shall not be eligible for suspension of sentence, probation, pardon or release from confinement . . . until the sentence imposed by the court has been served The presumptive, minimum and maximum sentence for the offense shall be increased by . . . five years if the offense is a class 2 or 3 felony. The additional sentence imposed pursuant to this section is in addition to any enhanced sentence that may be applicable. Defendant must serve 100% of any prison sentence imposed under this section.

AKW

4. The parties stipulate to the following terms (these stipulations are subject to Court approval at the time of sentencing): Sentence to the Court, except that:
- In Count 11, Defendant shall be sentenced to prison for 10 – 20 years, flat time. Defendant admits that Count 11 was committed to promote, further or assist a criminal street gang and is therefore subject to the sentencing provisions of A.R.S. §13-714.
 - In Counts 3, 12, 17, and 18, Defendant shall be sentenced to prison.
 - All counts shall run concurrently.

Defendant shall pay restitution to the victims in an amount not to exceed \$20,000. Restitution shall be joint & several w/ Co-Defendant Abraham parents or his.

*SLH
KS
AKW*

*The parties hereto fully and completely understand and agree that by entering into this plea agreement, the defendant consents to judicial fact-finding by preponderance of the evidence as to any aspect or enhancement of sentence. In making the sentencing determination, the court is not bound by the rules of evidence. Defendant understands that by pleading **GUILTY** he/she will also be waiving and giving up his/her right to a trial by jury to determine guilt and to determine any fact used to impose a sentence within the range stated above in paragraph two, above.*

AEV 5. The following charges will be dismissed or not be brought: **Any remaining counts and allegations. The State agrees not to charge or indict events arising out of DR#1717693.**

AEV 6. This plea agreement serves to amend the original charge(s) without the filing of any additional pleadings. However, if the plea agreement is rejected by the Court or is withdrawn by either party, or if the conviction is reversed, the original charge(s) and allegations (including dismissed counts and allegations) are automatically reinstated and the Defendant waives all claims of double jeopardy. If this plea agreement is withdrawn or rejected by the Court, the Defendant understands that he/she waives a preliminary hearing or other probable cause determination.

AEV 7. The Defendant agrees that this plea agreement shall not be binding on the State should the Defendant be charged with or commit a crime between the time of this plea agreement and the time for sentencing in this cause or if the Defendant fails to appear for sentencing. Should either occur the State is then entitled to withdraw from the plea agreement and the original charges, including all allegations, are automatically reinstated against the Defendant. This agreement shall not be binding on the State until the State confirms all representations made by the Defendant and his/her attorney, to wit: **Defendant avows he was not on felony probation or parole at the time of this offense. Defendant has no prior felony convictions.**

AEV 8. It is further understood that the Defendant waives and gives up any and all motions, defenses, objections, requests and rights to appeal as specified in Rule 17.1(e) of the Arizona Rules of Criminal Procedure.

AEV 9. Neither party can withdraw from this plea agreement as a matter of right except as otherwise noted herein. Defendant is entitled to withdraw from this plea agreement if and only if he/she presents objective evidence showing that he/she misunderstood a material term(s) of the plea agreement. The State is entitled to withdraw from this plea agreement if there are any material misrepresentations made by the Defendant.

AEV 10. The parties understand and agree that it is the Court's duty to impose sentence upon the Defendant, and that any sentence either stipulated to or recommended in paragraph 4 is not binding on the Court. If after accepting the plea agreement the Court concludes that any of the agreement's terms are inappropriate, it can reject the plea agreement. If the Court rejects the agreement's provisions regarding sentencing both the State and the Defendant have the right to withdraw from the plea agreement. If the plea agreement is

withdrawn, all the original charges and allegations will be automatically reinstated as specified in paragraph 6.

AEV 11. If the Court rejects the sentencing provisions of the plea agreement and neither the State nor the Defendant elects to withdraw, then any sentence stipulated to in paragraph 4 is not binding on the Court. The Court is bound only by the sentencing limits set forth in paragraph 2 and applicable statutes.

AEV 12. Even if this agreement was initially accepted by the Court, the Court has the right to reject the agreement at any time prior to entry of judgment and sentence. If the plea agreement is rejected by the Court, all original charges and allegations will be automatically reinstated as specified in paragraph 6.

AEV 13. Unless otherwise specified herein, this plea agreement does not in any way restrict or impair any forfeiture proceedings which may be brought under Arizona or United States law.

AEV 14. I have read and understand the provisions of this agreement. I have discussed the case and my constitutional rights with my lawyer. I understand that by entering this agreement I will be waiving and giving up my right to a trial by jury; to confront, cross-examine, and compel attendance of witnesses; to present evidence on my own behalf; to a preliminary hearing; to remain silent, and the presumption of innocence. I also understand I give up the right to direct appeal.

I have read and approved all of the previous paragraphs in this agreement and approve them individually and as a total binding agreement.

6/6/18
DATE

Adonis Encinas Velarde
ADONIS ENCINAS-VELARDE
DOB: 10/28/1997
SSN: XXX-XX-0647

KS AS

I have discussed this case with my client and advised him of his constitutional rights; possible defenses and penalties. I believe this plea agreement is appropriate under the facts of this case and concur in its entry.

6/6/18
DATE

Rana Sanni
DEFENSE COUNSEL

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

6/6/18
DATE

[Signature]
PROSECUTOR