

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

RAFAEL MUNOZ

No. 14 CR 496

The Honorable Maria Valdez

PLEA AGREEMENT

1. This Plea Agreement between the United States, by the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and Molly Moran, the Acting Assistant Attorney General for the Civil Rights Division (collectively, “the United States”), and defendant RAFAEL MUNOZ, and his attorney, PAUL FLYNN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The information in this case charges defendant with one misdemeanor count of use of unreasonable force while acting under color of law, in violation of Title 18, United States Code, Section 242.

3. Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with, while acting under color of law, willfully subjecting a pretrial detainee to the deprivation of a right secured and protected by the Constitution and laws of the United States, namely, the right to be free from the use of unreasonable force by a person acting under color of law, in violation of Title 18, United States Code, Section 242.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt: On or about July 8, 2010, at Maywood, in the Northern District of Illinois, Eastern Division, RAFAEL MUNOZ (“MUNOZ”), defendant herein, while acting under color of law, did willfully subject a pretrial detainee (“M.O.”) to the deprivation of a right secured and protected by the Constitution and laws of the United States, namely, the right to be free from the use of unreasonable force by a person acting under color of law, in violation of Title 18, United States Code, Section 242.

More specifically, beginning in approximately August 2006, MUNOZ was employed by the Cook County Sheriff’s Office as a Deputy. As of approximately July 8, 2010, MUNOZ was assigned as a CCSO Deputy to the Cook County Detention Lockup facility in Maywood, Illinois, where his responsibilities included overseeing pretrial detainees.

In the early morning of July 8, 2010, individual M.O was arrested and transported to the Maywood lockup, where he was detained in a holding cell. In that cell, M.O. was restrained with his hands handcuffed behind his back and his legs in ankle shackles. At approximately 2:06

a.m. on July 8, 2010, in response to M.O.'s requests that his handcuffs be loosened, MUNOZ entered M.O.'s cell. After entering the cell, MUNOZ ordered M.O. to turn around and face the wall. M.O. complied with MUNOZ's instructions and turned around such that M.O.'s back and handcuffs faced MUNOZ while M.O. faced the rear of the cell. At the time MUNOZ entered the cell, M.O. was uninjured. Throughout MUNOZ's interaction with M.O., M.O. complied with MUNOZ's orders and did not pose a threat to MUNOZ, any other person, or himself.

After M.O. turned as instructed, MUNOZ grabbed and forcibly pulled the chain that connected M.O.'s ankle shackles to each other, causing M.O. to flip forward and his head and face to hit the concrete floor. As a result of MUNOZ's use of excessive force against M.O., M.O. suffered injuries that included a broken nose, a broken tooth, swelling, bruising, and bleeding from cuts to his lips and nose.

In an attempt to cover up his use of excessive force against M.O., MUNOZ completed three law enforcement reports that contained false information: a prisoner/arrestee injury information sheet, a prisoner/arrestee medical incident log, and a prisoner transport report. In each of those documents, MUNOZ reported that he "opened [M.O.'s] cell door and ordered the subject to step back and enter" and then "grabbed [M.O.'s] handcuffs to loosen at which time [M.O.] rolled onto the cell floor." At the time that he wrote these reports, MUNOZ knew that they were false because M.O. did not, in fact, roll onto the cell floor, but instead suffered his injuries as the result of MUNOZ's use of excessive force.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of one year of imprisonment. This offense also carries a maximum fine of \$100,000. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$25 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2013 Guidelines Manual.

b. Offense Level Calculations.

i. Pursuant to Guideline § 2H1.1(a)(1), the base offense level is calculated under Guideline § 2A2.2 because that is the offense guideline applicable to the underlying offense, namely, aggravated assault.

ii. Pursuant to Guideline §§ 2H1.1(a)(1) and 2A2.2, the base offense level is 19, which is comprised of the following:

a. 14 levels, pursuant to Guideline § 2A2.2(a); and

b. 5 additional levels, pursuant to Guideline § 2A2.2(b)(3), because the victim sustained serious bodily injury during the offense.

iii. Pursuant to Guideline § 2H1.1(b)(1)(B), the offense level is increased by 6 levels because the offense was committed under color of law.

iv. Pursuant to Guideline § 3A1.3, the offense level is increased by two levels because the victim was physically restrained during the course of the offense.

v. Pursuant to Guideline § 3C1.1, the offense level is increased by two levels because defendant willfully obstructed and impeded, or attempted to obstruct and impede, the administration of justice with respect to the investigation of the instant offense, and the obstructive conduct related to defendant's offense of conviction.

vi. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial

information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 26, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 63 to 78 months' imprisonment, in addition to any supervised release and fine the Court may impose. Pursuant to Guideline § 5G1.1(a), because the statutorily authorized maximum sentence is less than the minimum application guideline range, the statutorily authorized maximum sentence of one year of imprisonment is the anticipated advisory Guideline sentence, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth

above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Defendant agrees to pay the special assessment of \$25 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

14. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in Case No. 14 CR 496.

15. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and the Civil Rights Division of the Department of Justice, and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

16. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this agreement or to its negotiation, nor does it

prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights

Presentence Investigation Report/Post-Sentence Supervision

17. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

18. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

18. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

19. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

20. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

21. Defendant agrees to not seek or accept any future law enforcement employment, including but not limited to employment as a police officer, correctional officer, deputy sheriff, or any position or assignment that would require or permit defendant to supervise or care for detainees or prisoners. Defendant agrees to submit an affidavit to the Illinois Law Enforcement Training and Standards Board immediately upon entry of his guilty plea in this case and prior to his sentencing, in which he states that he will not seek or accept any future employment as a

police officer, correctional officer, deputy sheriff, or any position or assignment that would require or permit defendant to supervise or care for detainees or prisoners. The affidavit also will attach this Plea Agreement and specifically reference this paragraph of the Plea Agreement. Defendant understands that failure to submit such an affidavit shall constitute a breach of this Plea Agreement.

Conclusion

22. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

23. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

25. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

26. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

ZACHARY T. FARDON
United States Attorney

RAFAEL MUNOZ
Defendant

MOLLY MORAN
Acting Assistant Attorney General

PAUL FLYNN
Attorney for Defendant

ALI AHMAD
Trial Attorney

NATHALINA HUDSON
Assistant U.S. Attorney