

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

FILED

UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

DEC -7 2009

2:30 p.m.

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEREK WULF,

Defendant.

CRIMINAL NO. 09-CR-2479 RB

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant, **DEREK WULF**, and the defendant's counsel, PAUL J. RUBINO:

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 following rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury;
 - c. to confront and cross-examine witnesses and to call witnesses to testify for the defense; and
 - d. against compelled self-incrimination.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The defendant hereby agrees to waive these rights and to plead guilty to Count 2 of the Indictment charging a violation of 18 U.S.C. §§ 7 and 13 and §§ 30-6-1(D)(1) and (2), (E) NMSA, that being Abuse of a Child Not Resulting in Death; 18 U.S.C. § 2 Aiding and Abetting.

SENTENCING

4. The defendant understands that the maximum penalty the Court can impose is:

- a. imprisonment for a period no more than 3 years;
- b. a fine not to exceed \$250,000.00;
- c. a mandatory term of supervised release of no more than one year. (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.

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 United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

7. Except under circumstances where the Court, acting on its own, fails to accept this 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 below, 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.

DEFENDANT'S ADMISSION OF FACTS

8. 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. 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:

I, Derek Wulf, am a United States Air Force enlisted man, who was married to Rebecca Wulf (a/k/a Rebecca Christie). Rebecca Wulf (a/k/a Rebecca Christie) and I were the parents of the minor child known as Brandi Wulf.

From February 2005 through January 2006, Rebecca Wulf (a/k/a Rebecca Christie) Brandi Wulf and I lived together as a family at 2032-A Langley Court, Holloman Air Force Base in Alamogordo, New Mexico. From shortly after her birth, Brandi Wulf had health problems and she was being seen by various health care providers in the health care system of the United States military for these problems until January, 2005.

From February 2005 through January 2006 while residing at Holloman Air Force Base in Alamogordo, New Mexico, I neglected the health of my daughter Brandi Wulf in that I did not adequately monitor and follow up on Brandi's health care and nutritional needs even though I reasonably should have known that it was necessary for me to do so. I reasonably should have known that neither my wife

Rebecca Wulf (a/k/a Rebecca Christie) nor I were ensuring that Brandi's medical appointments were being made and kept and that Brandi's special nutritional needs were being met.

9. By signing this agreement, the defendant admits that there is a factual basis for each element of the crime(s) to which the defendant will plead 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.

STIPULATIONS

10. The United States and the defendant stipulate as follows:

a. Pursuant to U.S.S.G. § 3E1.1(a), the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the defendant's criminal conduct. Consequently, so long as the defendant continues to accept responsibility for the defendant's criminal conduct, the defendant is entitled to a reduction of two (2) levels from the base offense level as calculated under the sentencing guidelines. This reduction is contingent upon the defendant providing an appropriate oral or written statement to the United States Probation officer who prepares the presentence report in this case in which the defendant clearly establishes the defendant's entitlement to this reduction.

b. Provided the defendant meets the requirements of U.S.S.G. §3E1.1(b), the government agrees to move for a reduction of one (1) additional level from the base offense level as calculated under the sentencing guidelines.

11. The defendant understands that the above stipulations are not

binding on the Court and that whether the Court accepts these stipulations 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. The defendant understands that if the Court does not accept any one or more of the above stipulations 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 stipulations the parties may enter into, the defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

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.

WAIVER OF APPEAL RIGHTS

13. 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 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) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

GOVERNMENT'S AGREEMENT

14. 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 1, 3, 4 and 5 of the Indictment.

b. The United States will not bring additional criminal charges against the defendant arising out of the facts forming the basis of the present Indictment.

15. 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

16. 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). 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

17. 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

18. 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 \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

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

AGREED TO AND SIGNED this

 day of December

2009.

GREGORY J. FOURATT
United States Attorney



MARIA Y. ARMIJO
Assistant U.S. Attorney
555 S. Telshor Blvd., Ste. 300
Las Cruces, NM 88011
(575) 522-2304 - Tel.
(575) 522-2391 - Fax

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.

A handwritten signature in black ink, appearing to read "Derek Wulf", written over a horizontal line.

DEREK WULF
Defendant

A handwritten signature in black ink, appearing to read "Paul J. Rubino", written over a horizontal line.

PAUL J. RUBINO
Attorney for Defendant

T:\Wulf, Derek\Pleadings\Wulf, Derek_PA.wpd