

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JAN 14 2011

ms
MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

Cr. No. 10-1008 JCH

ALEX LAWRENCE ROMERO,)

Defendant.)

PLEA AGREEMENT

Pursuant to Rule 11, 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, ALEX LAWRENCE ROMERO, and the Defendant's counsel, Kari T. Morrissey and J. Miles Hanisee:

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 indictment, charging a violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B), that being Possession with Intent to Distribute 500 Grams and More of Cocaine, and Count 9 of the indictment, charging a violation of 18 U.S.C. § 924(c)(1)(A), that being Possession of Firearms in Furtherance of a Drug Trafficking Crime.

SENTENCING

4. The Defendant understands that the minimum and maximum penalty the Court can impose is:
- a. imprisonment for a period of not less than 5 years nor more than 40 years as to Count 1; five years consecutive mandatory imprisonment as to Count 9;
 - b. a fine not greater than \$2,000,000 as to Count 1; a fine not greater than \$250,000 as to Count 9;
 - c. a mandatory term of supervised release of not less than 4 years as to Count 1 that must follow any term of imprisonment; a mandatory term of supervised release of not less than 3 years as to Count 9 that must 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 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.

DEFENDANT'S ADMISSION OF FACTS

7. 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:

On or about December 30, 2009, at my residence located at 545 Hermosa Lane in

Las Vegas, in the Count of San Miguel, New Mexico, I unlawfully, knowingly and intentionally possessed with intent to distribute 500 grams and more of cocaine at my residence. The net weight of the cocaine found at the residence was 589.5 net grams. The quantity is a distribution amount that shows that I intended to sell the cocaine to make an illegal profit. In conjunction with the narcotics found at my home, I possessed additional narcotics paraphernalia such as scales, measuring cups, plastic baggies, police scanners, a ballistic vest, firearms, and sums of U.S. Currency.

I also had numerous operable firearms at my residence. The firearms at my residence are fully set forth in paragraph 13 of this agreement. These firearms at my residence were possessed during and in relation to the drug trafficking offense set forth in Count 1 of the indictment to which I am pleading guilty.

The United States would be able to prove through a chemical analysis that the controlled substance relating to this charge tested positive for the presence of cocaine which is a Schedule II controlled substance. The United States would show through a chemical analysis that the corresponding quantities of cocaine seized at the residence were as follows:

Exhibit 1: 195.8 net grams of cocaine

Exhibit 2: 248.2 net grams of cocaine

Exhibit 21: 126.2 net grams of cocaine

Exhibit 20: 19.3 net grams of cocaine

Total = 589.5 net grams of cocaine

8. 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

9. The United States and the Defendant stipulate as follows:
 - a. At least 500 grams but less than 2 kilograms of cocaine are attributable to the Defendant. Accordingly, the parties agree that the Defendant's base offense level under the sentencing guidelines is 26, pursuant to U.S.S.G. § 2D1.1(c)(7).
 - b. The government stipulates that a sentence at the low end of the correctly-calculated guideline range is appropriate.
 - c. 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. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of three levels from the base offense level as calculated under the sentencing guidelines. This reduction is contingent upon the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate oral or written statement in which the Defendant clearly establishes the Defendant's entitlement to this reduction. Further, the United States is free to withdraw this stipulation 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 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 a downward departure or variance from the applicable sentencing guideline range as determined by the Court after the Court resolves any objections by either party to the presentence report. In other words, the Defendant agrees that a sentence within the applicable guideline range is a reasonable sentence. If the Defendant, in violation of this paragraph, should nevertheless seek a downward departure or variance, including a departure or variance from the guideline Criminal History Category, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on all charges before the Court.
- e. 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 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.

- f. Apart from the stipulations 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).

10. 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

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.

FORFEITURE

12. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offense(s) in this case. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which the Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

13. The Defendant voluntarily and immediately agrees to forfeit to the United States all of the Defendant's right, title, and interest in the following assets and properties:

- a. a 2002, gray Nissan four-door passenger vehicle bearing NM license plate DTZ807.
- b. a Norinco, SKS assault rifle, serial number 008517;
- c. a Kel-Tech, model Sub-2000, 9 mm Luger, rifle-pistol type, serial number 04565;
- d. a High Point, model 9 mm rifle, serial number A08991;

- e. a Harrington & Richardson, model Topper 158, 20 gauge shotgun patent number 2876578;
- f. a Marlin, model 80, .22 caliber rifle not identified by serial number;
- g. a Ruger, model 10/22, .22 caliber rifle, serial number 246-88374;
- h. a S&W, model-3000, 12 gauge shotgun, serial number FC10961;
- i. an IMI, model B, 9 mm semi-automatic assault rifle, serial number SA54376;
- j. an unknown manufacture, model MP-44, unknown caliber assault rifle, serial number 9787ab/45 #787;
- k. a Cobray, model M-11, 9 mm handgun, serial number 89-0061664;
- l. a Bryco, model Jennings, 9 mm caliber pistol, serial number 1503639;
- m. a Browning, model (signature), handgun, serial number 245NV70449;
- n. a Smith & Wesson, model SW 40VE, handgun model, serial number PDS3723;
- o. an Iver Johnson, revolver handgun, serial number 69989;
- p. a Bryco, model Jennings 59, 9 mm pistol, serial number 761485;
- q. a Ruger, model 10/22, .22 caliber rifle, serial number 113-248-27;
- r. an Astra, model 2000, .22 caliber handgun, serial number 88309; and
- s. \$3,071.00 United States Currency.

14. The Defendant agrees to fully assist the United States in the forfeiture of the above-described property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to execution of any documents necessary to transfer the Defendant's interest in the above-described property to the United States.

15. The Defendant agrees to waive the right to notice of any forfeiture proceeding involving the above-described property.

16. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States or any State or its subdivisions.

WAIVER OF APPEAL RIGHTS

17. 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 within or below the applicable advisory guideline range as determined by the Court. The Defendant specifically agrees not to appeal the Court's resolution of any contested sentencing factor in determining the advisory sentencing guideline range. In other words, the Defendant waives the right to appeal both the Defendant's conviction(s) and the right to appeal any sentence imposed in this case except to the extent, if any, that the Court may depart or vary upward from the advisory sentencing guideline range as determined by the Court. 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 counsel's ineffective assistance in negotiating or entering this plea or this waiver.

GOVERNMENT'S AGREEMENT

18. 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 through 8 and Count 10.
- 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.

19. 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

20. 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

21. 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

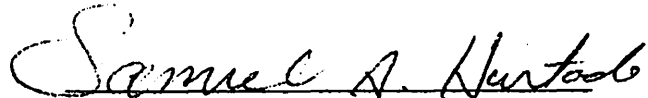
22. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$200 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

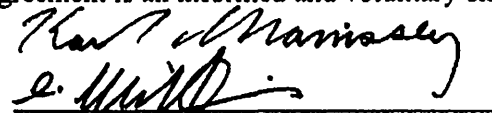
23. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding. This agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 14th day of January, 2011.

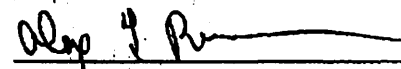
KENNETH J. GONZALES
United States Attorney


SAMUEL A. HURTADO
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

I am Alex Lawrence Romero's attorney. I have carefully discussed every part of this Agreement with my client. Further, I have fully advised my client of his 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.


KARI T. MORRISSEY AND J. MILES
HANISEE
Attorney for the Defendant

This Agreement has been read to me in English, the language I understand best, and I have carefully discussed every part of it 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. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this Agreement. Finally, I am satisfied with the representation of my attorney in this matter.


ALEX LAWRENCE ROMERO
Defendant