

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

THE STATE OF ARIZONA, ) Case No. CR 2008-031157-001  
)  
Plaintiff, ) PLEA AGREEMENT  
vs. )  
)  
ROBERT HANK VAN BRAKEL, )  
) Assigned to the Hon. Teresa Sanders  
Defendant. )  
\_\_\_\_\_ )

The State of Arizona and the defendant hereby agree to the following disposition of the case:

Plea: The defendant hereby agrees to plead GUILTY to:

**Count 1 (amended): MANSLAUGHTER, a class 2 felony, in violation of A.R.S. §§13-1101, 13-1103, 28-3001, 28-3004, 28-3005, 28-3315, 13-301, 13-302, 13-303, 13-304, 13-610, 13-701, 13-702, 702.01 and 13-801, committed on December 28, 2007 in Scottsdale Arizona by recklessly causing the death of Calvin Holman.**

This is a non-dangerous, non-repetitive offense under the criminal code.

[x] If marked, this offense involves a **victim**.

THIS OFFER EXPIRES AND IS REVOKED IF NOT ENTERED IN COURT BY November 30, 2009

Terms: On the following understandings, terms and conditions:

1.  This crime carries a presumptive sentence of **5.0** years; a minimum sentence of **4.0** years (**32.0** year if the Court makes exceptional circumstances finding); and a maximum sentence of **10.0** years (**12.5** years if the court makes exceptional circumstances finding). Probation is available. Restitution of economic loss to the victim and a waiver of extradition for probation revocation proceedings are required. The maximum fine that can be imposed is \$150,000.00 plus an 80% surcharge. If the Defendant is sentenced to prison, the Defendant shall also be sentenced to serve a term of community supervision equal to one-seventh of the prison term to be served consecutively to the actual period of imprisonment. If the Defendant fails to abide by the terms of community supervision, the Defendant can be required to serve the remaining term of community supervision in prison. Special conditions regarding sentence imposed by statute (if any) are: The Defendant shall submit to DNA testing pursuant to A.R.S. § 13-610.
  
2.  The parties stipulate to the following additional terms, subject to court approval at the time of sentencing as set forth in paragraph 11.  
  
**All terms and conditions are left to the discretion of the court ;** Defendant shall pay restitution to all victims in SPD DR# 0738615 in an amount not to exceed **\$50,000.00**
  
3.  The following charges are dismissed or, if not yet filed, shall not be brought against the Defendant:  
  
**COUNT 2: ENDANGERMENT;**  
**COUNT 3 & 4: DUI.**

4.  This agreement serves to amend the complaint, information or indictment, to charge the offense to which the Defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea are automatically reinstated.

5.  If the Defendant is charged with a felony, he hereby waives and gives up his right to a preliminary hearing or other probable cause determination on the charges to which he pleads. The Defendant agrees that this agreement shall be not binding on the State should the Defendant be charged with or commit a crime between the time of this agreement and the time of sentencing in this cause; nor shall this agreement be binding on the State until the State confirms all representations made by the Defendant and his attorney, to-wit: **The Defendant has zero (0) prior felony conviction(s) and WAS NOT on probation, or parole.**

If the Defendant fails to appear for sentencing, the court may disregard the stipulated sentence and impose any lawful sentence which is the same as or exceeds the stipulated sentence in the plea agreement. In the event the court rejects the plea, or either the State or the Defendant withdraws from the plea, the Defendant hereby waives and gives up his right to a preliminary hearing or other probable cause determination on the original charges.

6.  Unless the plea is rejected by the court or withdrawn by either party, the Defendant hereby waives and gives up any and all motions, defenses, objections, or requests which he has made or raised, or could assert hereafter, to the court's entry of judgment against him and imposition of a sentence upon him consistent with this agreement. By entering into the agreement, the Defendant hereby gives up his right of appeal.

7.  If the court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw from the plea agreement, then any sentence either stipulated to or recommended herein in paragraph 2 is not binding upon the court, and the court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.

8.  I agree to enter my plea as indicated above on the terms and conditions as set forth above. I fully understand that if, as part of this plea agreement, I am granted probation by the court, the terms and conditions thereof are subject to modification any time during the period of probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced to any term or terms stated above in paragraph 1, without limitation.

9.  This plea agreement in no way affects any forfeiture proceedings pursuant to A.R.S. §13-4301, et.seq., §13-2301, or §32-1993 if applicable, nor does the plea agreement in any way compromise or abrogate any civil actions, including actions pursuant to A.R.S. §13-2301, et.seq., or §13-4301, et.seq.

10.  I understand that if I am not a citizen of the United States, my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that by pleading guilty or no contest to a crime may affect my immigration status.

Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.

11. I understand that I am giving up the following rights by pleading GUILTY:

- \_\_\_\_\_ a. My right to jury trial, including the right to a jury determination of any aggravating sentencing factor(s), including my right to a jury determination of aggravating circumstances beyond a reasonable doubt. I further understand that the court, using a preponderance of evidence standard, may find the existence of aggravating or mitigating circumstances which may impact my sentence or disposition. The court may find the existence of aggravating or mitigating circumstances without regard to the Arizona Rules of Evidence, and from any source, including, but not limited to a pre-sentence report, letters to the court, victim or witness statements or any other reliable source.
- \_\_\_\_\_ b. My right to confront the witnesses against me and to cross-examine them.
- \_\_\_\_\_ c. My right to present evidence and call witnesses in my defense, knowing the court will compel them to appear and testify at trial.
- \_\_\_\_\_ d. My right to be represented by counsel, appointed free of charge, if I cannot afford to hire, at all stages of the proceedings.
- \_\_\_\_\_ e. My right to remain silent, to refuse to be a witness against myself, and to be presumed innocent until proven guilty beyond a reasonable doubt. And
- \_\_\_\_\_ f. My right to appeal the judgment and sentence to a higher court.

I have personally and voluntarily placed my initials in each of the above boxes and lines and signed the signature line below to indicate that I have read and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement.

Date: \_\_\_\_\_ Defendant: \_\_\_\_\_  
**ROBERT HANK VAN BRAKEL**

I have discussed this case with my client in detail and advised him of his constitutional rights and all possible defenses. I have also explained the nature of the charge(s) and the elements of the crime(s). I believe that the plea and disposition set forth herein are appropriate under the facts of the case. I concur with entry of the plea as indicated above on the terms and conditions set forth herein.

Date: \_\_\_\_\_ Defense Counsel: \_\_\_\_\_  
**ROBERT STORRS**

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

Date: February 4, 2010 Prosecutor: \_\_\_\_\_  
**GREG BIZZOZERO**