

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**FILED**

MAY 01 2012

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

KEVIN BENNETT HOLT,

*Defendant.*

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WILLIAM B. GUTHRIE  
Clerk, U.S. District Court  
By \_\_\_\_\_  
Deputy Clerk

Case No. 11-078-RAW

**PLEA AGREEMENT****PARTIES**

This Plea Agreement ("Agreement") is entered into by and between the United States Attorney for the Eastern District of Oklahoma, the Civil Rights Division of the United States Department of Justice (the "Government") and the above-captioned defendant.

**I. THE PLEA****DEFENDANT'S PLEA**

The defendant agrees to voluntarily plead guilty to and admits to being guilty of the following charge in the Eastern District of Oklahoma:

| Count     | Offense  | Statute                     | Elements  |
|-----------|--|-----------------------------|---|
| Count # 4 | Deprivation of Civil Rights Under Color of Law | Title 18 U.S.C. Section 242 | <ol style="list-style-type: none"> <li>1. The defendant acted under color of law;</li> <li>2. The defendant acted willfully;</li> <li>3. The defendant deprived the victim of a right secured and protected by the Constitution or laws of the United States;</li> <li>4. The defendant's actions resulted in bodily injury to the victim.</li> </ol> |

as set forth in the INDICTMENT. At the time the guilty plea is entered, the defendant shall admit to the Court that the defendant is, in fact, guilty of the offense charged in the INDICTMENT.

MAXIMUM POSSIBLE IMPRISONMENT AND/OR FINE

The defendant understands that the *maximum* possible penalty for this offense is imprisonment for a period of 10 years and/or a fine of not more than \$250,000, a term of supervised release of not more than three years, and a special assessment in the amount of \$100.00. The defendant understands that the Court may impose a fine pursuant to the Sentencing Reform Act of 1984. The willful failure to pay any fine imposed by the Court, in full, may be considered a breach of this plea agreement. Further, the defendant acknowledges that willful failure to pay the fine may subject the defendant to additional criminal violations and civil penalties pursuant to Title 18, United States Code, Section 3611, et seq.

DISMISSAL

At the time of sentencing on the count set forth above, the Government agrees to move for dismissal of the remaining counts pending against the defendant.

NO OTHER CHARGES (TAX CHARGES EXCLUDED)

The Government agrees that it will not bring any other federal criminal charges against the defendant arising from the acts underlying the offenses charged in the Indictment that are known to the Government as of the date of this Agreement. However, nothing in this Agreement will limit prosecution for criminal tax charges, if any, arising out of such offense(s). Nothing in this Agreement shall bind any other federal, state or local district, jurisdiction or law enforcement agency.

FACTUAL BASIS FOR PLEA

The defendant agrees that if this matter were to proceed to trial, the Government could prove the following facts beyond a reasonable doubt, and that these facts accurately represent the defendant's provable offense conduct and specific offense characteristics:

On or about November 25, 2010, the defendant was employed as a Lieutenant at the Bryan County Sheriff's Office (BCSO) in or near Durant, Oklahoma, within the Eastern District of Oklahoma. On that date, the victim, J.H., was arrested and transported to the Bryan County Jail to await an appearance before a magistrate or pretrial officer. Shortly after arriving at the jail, J.H. was strapped into a restraint chair. The defendant, while acting under color of law, did electronically shock J.H. by using a Taser device, which is a dangerous weapon, while J.H. was strapped into a restraint chair. The defendant thereby willfully deprived J.H. of the right, secured and protected by the Constitution and laws of the United States, not to be subjected to an unreasonable use of force by a law enforcement officer. This offense resulted in bodily injury to J.H. Subsequently, the defendant knowingly and intentionally falsely wrote in a report and falsely stated to the Federal Bureau of Investigation (FBI) that he did not deploy his taser device on J.H.

The defendant understands that he will have to swear under oath to the accuracy of this statement, and if the defendant should be called upon to testify about this matter in the future, any inconsistencies in such testimony may subject defendant to additional penalties of perjury which may be enforced by the Government under this Agreement.

#### SENTENCING GUIDELINES

The parties agree with respect to the application of the United States Sentencing Guidelines that:

- (a) In accordance with U.S.S.G. § 2H1.1 through reference to U.S.S.G. § 2A2.2, defendant's base offense level is 14.

- (b) In accordance with U.S.S.G. § 2A2.2(b)(2)(B), defendant's offense level is increased by 4 levels because defendant used a dangerous weapon.
- (c) In accordance with U.S.S.G. § 2A2.2(b)(3)(A), defendant's offense level is increased by 3 levels because the victim sustained bodily injury.
- (d) In accordance with U.S.S.G. § 2H1.1(b)(1)(B), defendant's offense level is increased by 6 levels because the offense was committed under color of law.
- (e) In accordance with U.S.S.G. § 3A1.3, defendant's offense level is increased by 2 levels because the victim was physically restrained in the course of the offense.
- (f) In accordance with U.S.S.G. § 3C1.1, defendant's offense level is increased by 2 levels because the defendant willfully obstructed justice.
- (g) In accordance with U.S.S.G. § 3E1.1, defendant's offense level is reduced by 3 levels based on Defendant's prompt acceptance of personal responsibility for the offense of conviction in this case.

Accordingly, the parties agree that the defendant's offense level is 28. Assuming the defendant's criminal history category is I, the sentencing guideline range is 78-97 months.

#### SENTENCING AGREEMENT

This Agreement is made pursuant to Fed. R. Crim. P. 11(c)(1)(C), and defendant's plea will be tendered pursuant to that provision. The Government and the defendant agree that incarceration for a period of 18 months is a reasonable and appropriate disposition of this case. In accordance with Fed. R. Crim. P. 11(c)(1)(C), if the Court accepts this Agreement, the Court must include the agreed disposition in the judgment.

#### FACTORS WARRANTING SENTENCING DEPARTURE

Although the agreed upon sentence departs from the applicable guideline range, it does so for justifiable reasons pursuant to U.S.S.G. §6B1.2, and the agreed upon sentence satisfies the sentencing factors articulated in 18 U.S.C. § 3553. An 18 month sentence is sufficient, but not

greater than necessary, in light of the nature and circumstances of the offense. The defendant, a former Lieutenant at the Bryan County Jail illegally used a taser to punish J.H., an inmate in his care and custody who was suffering from a long term, and at the time untreated, mental health illness. J.H. had been removed from his jail cell and placed into a restraint chair after yelling for nearly an hour and writing on the walls with the mustard that had been provided with his meal. Once in the restraint chair, J.H. continued making loud and nonsensical comments. Although J.H. was completely restrained and posed no safety threat, the defendant tased J.H. to punish him for his remarks. This unlawful tasing caused J.H. pain and left J.H. with two small scars on his arm. No permanent injury resulted from the incident. The agreed upon sentence reflects the fact that this offense is a serious abuse of the defendant's authority as a law enforcement officer. However, it also reflects the limited scope of the defendant's unlawful use of force and the minimal nature of the victim's injuries.

An 18 month sentence is also sufficient in light of the history and characteristics of the defendant. As a result of this offense, the defendant's employment with the Bryan County Jail was terminated. The defendant has reportedly been unable to retain employment since that time approximately a year and a half ago.

Moreover, this sentence includes a substantial period of imprisonment that promotes respect for the law and provides just punishment. A term of imprisonment of this length also affords adequate deterrence to other police officers who may be tempted to use their taser as a form of unlawful punishment. Finally, there is no expectation that this defendant will pose a danger to the public through the commission of additional crimes. This offense resulted, in part, from the defendant's employment as a law enforcement officer, and this felony conviction will

preclude him from working in law enforcement in the future.

Additionally, while satisfying the statutory requirements, this sentence will save substantial government and judicial resources. The plea agreement will also avoid additional unnecessary stress on the victim's psychological well being. As noted above, the victim suffers from a long term mental illness and being forced to participate in judicial proceedings may prove detrimental to his overall mental health. For all the above reasons, the agreed upon sentence satisfies the criteria enumerated in U.S.S.G. §6B1.2 and 18 U.S.C. § 3553.

## **II. WAIVERS**

### **SPEEDY TRIAL ACT WAIVER**

The defendant waives and agrees to waive any rights under the Speedy Trial Act.

### **WAIVER OF CIVIL CLAIMS AND HYDE ACT CLAIMS**

The defendant agrees not to pursue or initiate any civil claims or suits against the United States of America, its agencies or employees, whether or not presently known to the defendant.

### **FREEDOM OF INFORMATION ACT (FOIA) WAIVER**

The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, but not limited to, any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §552a.

### **FEDERAL RULE OF EVIDENCE 408**

The defendant waives and agrees to waive any rights under Federal Rule of Evidence 408.

### **WAIVER OF APPELLATE AND POST-CONVICTION RIGHTS**

In consideration of the promises and concessions made by the Government in this Agreement, the defendant knowingly and voluntarily agrees and understands the following appellate and post-conviction terms of this Agreement:

- a. the defendant waives the right to directly appeal the conviction and sentence pursuant to 28 U.S.C. § 1291 and/or 18 U.S.C. § 3742(a);
- b. the defendant waives the right to collaterally attack the conviction and sentence pursuant to 28 U.S.C. § 2255 and/or 28 U.S.C. § 2241, except for claims based on ineffective assistance of counsel which challenge the validity of the guilty plea or this waiver;
- c. the defendant waives the right to have the sentence modified pursuant to 18 U.S.C. § 3582(c). The defendant understands that once the Court accepts this Rule 11 (c) (1) (c) plea agreement, the Court is bound by the parties' agreed-upon sentence. The defendant may not contest the agreed-upon sentence in an appeal or challenge the sentence in a future proceeding in federal court, even if the Sentencing Guidelines are later modified in a way that appears favorable to the defendant. Likewise, the defendant agrees that he will not seek to be re-sentenced with the benefit of any change to the criminal history category that existed at the time of the defendant's original sentencing. Given that a defendant who agrees to a specific sentence cannot later challenge it, and also because the defendant desires to obtain the benefits of this Agreement, the defendant agrees that he will not challenge the sentence imposed in an appeal or other future proceeding. Defendant also agrees that he will not seek to challenge the sentence in an appeal or future proceeding even if the Court rejects one or more positions advocated by any party at sentencing;
- d. the defendant waives the right to appeal the Court's determination of the amount of restitution and the Court's subsequent restitution order, if any; and
- e. the defendant waives the right to appeal the Court's determination of any forfeiture issues and the Court's subsequent forfeiture order, if any.

The defendant has been represented by counsel and is fully satisfied with the services rendered by the defense attorney(s) and agrees that such representation has been competent legal representation and has provided the best result for the defendant possible under the circumstances of this case. The defendant expressly acknowledges that counsel has explained defendant's trial,

sentencing, appellate and post-conviction rights; that defendant understands these rights; and that defendant knowingly and voluntarily waives and relinquishes those rights as set forth above.

### **III. WITHDRAWAL OF PLEA OR BREACH OF AGREEMENT**

#### **WITHDRAWAL OF PLEA**

If the Court rejects any aspect of this Agreement, then the Government may deem the Agreement null and void. Pursuant to Rules 11(c)(1)(C) and (d) of the Federal Rules of Criminal Procedure, should the Court reject the sentencing agreement of 18 months, then the defendant may withdraw his guilty plea. The parties agree that Rules 11(c)(1)(C) and (d) do not apply to any other provisions of this agreement. Thus, the parties agree that should the Court reject any provision of this Agreement, other than the sentencing agreement of 18 months, then the defendant will not have the right to withdraw his guilty plea.

#### **BREACH OF AGREEMENT**

In the event the Government believes the defendant has failed to fulfill any obligations under this Agreement or has falsely implicated an innocent person in the commission of a crime, the Government shall, in its discretion, have the options of declaring any provision of this Agreement null and void. The defendant and the Government agree that in the event the Court concludes that the defendant has breached this Agreement:

- a. the defendant will not be permitted to withdraw any guilty plea(s) tendered under this Agreement and agrees not to petition for withdrawal of any guilty plea(s);
- b. any evidence or statements made by the defendant during the cooperation phase will be admissible before any grand jury and at any hearings, trials or sentencings; and
- c. the United States will be free to bring any other charges it has against the

defendant.

#### RE-INSTITUTION OF PROSECUTION

If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the Government will be free to prosecute the defendant for all charges of which it then has knowledge, and any charges that have been dismissed will be automatically reinstated or may be represented to a grand jury with jurisdiction over the matter. In such event, defendant waives any objections, motions or defenses based upon the Statute of Limitations, Speedy Trial Act, or any constitutional restrictions as to the time of bringing such charges.

#### **IV. CRIME VICTIMS' RIGHTS ACT PROVISIONS**

##### CRIME VICTIMS' RIGHTS ACT (18 U.S.C. §3771)

Pursuant to the Crime Victims' Rights Act (18 U.S.C. §3771) and the regulations promulgated under the Act by the Attorney General of the United States, the defendant understands that a crime victim has the following rights:

- a. The right to be reasonably protected from the accused.
- b. The right to reasonable, accurate, and timely notice of any public court proceeding, involving the crime or of any release or escape of the accused.
- c. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding.
- d. The right to be reasonably heard at any public proceeding in the district court involving release, plea or sentencing. The defendant understands that the victim's comments and recommendations may be different than those of the parties to this agreement.
- e. The reasonable right to confer with the attorney for the Government in the case. The defendant understands that the victim's opinions and recommendations may be different than those presented by the United States.
- f. The right to full and timely restitution as provided by law, including, but not limited to, restitution for property loss, personal injury or death.

- g. The right to proceedings free from unreasonable delay.
- h. The right to be treated with fairness and with respect for the victim's dignity and privacy.

The definition of "crime victim" under the Crime Victims' Rights is a person directly and proximately harmed as a result of the commission of a Federal offense. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights. In no event, shall the defendant be named as such guardian or representative.

## **V. PRE-SENTENCE REPORT AND SENTENCING PROVISIONS**

### **INFORMATION TO BE CONSIDERED AT SENTENCING**

The defendant understands that the Government may bring to the Court's attention, and the Court may consider, all relevant information with respect to the defendant's background, character and conduct, including the conduct that is the subject of the charges which the Government has agreed to dismiss, and the nature and extent of the defendant's cooperation, if any. The Government may bring to the Court's attention and the Court may consider any failure by the defendant to fulfill any obligation under this Agreement.

## **VI. CONTRACTUAL SPECIFICATIONS**

### **REASONS FOR AGREEMENT**

The Government enters into this Agreement with the defendant because this disposition of the matter fairly and adequately addresses the gravity of the series of offenses from which the charges are drawn, as well as the defendant's role in such offenses; takes into account the public interest in a prompt and certain disposition of the case; adequately protects the public; and

promotes respect for the law, thereby serving the ends of justice.

**COMPLETE AGREEMENT/TERMS NOT SEVERABLE/CONSTRUCTION**

The parties agree that this Agreement was negotiated between competent legal counsel and shall not be construed against either the Government or the defendant because both parties acknowledge responsibility for the Agreement reached as a result of negotiation with respect hereto and the expressed herein. The subject headings herein are for convenience only and are not part of this Agreement. This document sets forth the complete and only terms of the Agreement between the Government and the defendant in this case, and is binding only on the Government and the defendant. It supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than by a writing that is signed by all parties or on the record in Court. No other promises or inducements have been or will be made to the defendant in connection with this case, nor have any predictions or threats been made in connection with this Agreement. This Agreement is not contingent in any way upon the outcome of any investigation, proceeding or subsequent trial.

**TIME LIMIT**

The original of this Agreement must be signed by the defendant and defense counsel and received by the United States Attorney's Office on or before 5:00 p.m., on May 1, 2012. Otherwise, the invitation to offer shall be deemed withdrawn.

**SIGNATURE REQUIREMENTS**

None of the terms of this Agreement shall be binding on the Government until this Agreement is signed by the defendant, defense counsel and the Government.

**ACKNOWLEDGMENTS**


I have read this Agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it without reservation. No promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorney in connection with this Agreement and matters related to it. I do this of my own free will. No threats have been made to me, nor am I under the influence of anything that could impede my ability to fully understand this Agreement.

5/1/2012  
Date

  
KEVIN BENNETT HOLT  
Defendant

I am the defendant's counsel. I have carefully reviewed every part of this agreement with the defendant. It accurately and completely sets forth the entire Agreement between the Government and the defendant. The defendant's decision to enter into this Agreement is an informed and voluntary one.

5/1/2012  
Date


  
Robert Ridenour, OBA # 16038  
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Federal Public Defender  
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On behalf of the Office of the United States Attorney for the Eastern District of Oklahoma, I accept this agreement of the defendant to plead guilty under the terms and

conditions set forth herein.

May 1, 2012  
Date

MARK F. GREEN  
United States Attorney

  
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