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GARY L. HARRISON

F. Gonzales

Deputy

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

THE STATE OF ARIZONA,

Plaintiff,

vs.

KENNETH RUSSELL NELSON

DOB: 04/12/1976

Defendant.

NO. CR 2021-3552-001

PLEA AGREEMENT

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

Plea: The Defendant agrees to plead **GUILTY** to the following offense(s):

Amended Count 4: Attempted Illegal Voting, a Class 6 designated felony, in violation of A.R.S. §§ 13-1001, 16-1016(1), 16-101, 13-701, 13-702, and 13-801 committed during a period beginning on or about October 22, 2020, and ending on or about November 3, 2020.

In addition to the factual basis and *mens rea* provided by or on behalf of the Defendant, the Defendant agrees that the Grand Jury Transcript or Preliminary Hearing Transcript, if existing, is expressly incorporated within the factual basis required by this Agreement.

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

Terms: On the following understandings, terms and conditions:

- KV*
1. Amended Count 4: carries a presumptive sentence of 1 year; a minimum sentence of .5 years; a mitigated sentence of .33 years (with two or more mitigating factors); and a maximum sentence of 1.5 years; and an aggravated sentence of 2 years (with two or more aggravating factors). Probation **IS** available. If the Defendant is sentenced to probation by the Court, as conditions of probation, the Defendant could be ordered to serve up to one year in jail and could be ordered to pay probation fees. The following statutory probation range applies: up to 3 years. The maximum fine that can be imposed is \$150,000.00 plus a 78% surcharge.

If sentenced to probation, Defendant agrees to waive extradition for probation revocation proceedings and Defendant agrees to pay all costs associated with extradition.

If the Defendant is sentenced to prison, 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 Defendant fails to abide by the conditions of community supervision, Defendant can be required to serve the remaining term of community supervision in prison. Special conditions regarding sentence imposed by statute (if any) are:

- A. Pursuant to A.R.S. § 12-114.01, the Defendant shall pay a \$20.00 assessment which shall be deposited in the Judicial Collection Enhancement Fund established by A.R.S. §12-113.
- B. Pursuant to A.R.S. §§ 12-116.04, a \$13.00 penalty assessment shall be collected by the Court and forwarded to the treasurer of Pima County, with \$4.00 of that assessment being forwarded by that treasurer to the agency which investigated the case, to wit: The Arizona Attorney General's Office.
- C. Pursuant to A.R.S. §12-116.08, a \$9.00 penalty assessment shall be collected by the Court and forwarded to the treasurer of Pima County, with that amount in turn being forwarded to the State Treasurer and deposited in the Victims' Rights Fund established by A.R.S. §41-191.08 and the Victim Compensation and Assistance Fund established by A.R.S. §41-2407.
- D. Pursuant to A.R.S. §12-116.09, a \$2.00 penalty assessment shall be collected by the Court and forwarded to the treasurer of Pima County, with that amount in turn being forwarded to the State Treasurer and deposited in the Victims' Rights Enforcement Fund established by A.R.S. §41-1727.
- E. Pursuant to A.R.S. § 13-610, Defendant shall submit to Deoxyribonucleic Acid (DNA) testing for law enforcement identification purposes.
- F. Pursuant to A.R.S. § 13-901(F), if sentenced to a term of probation, the defendant may be required to be imprisoned for up to one year in a county jail at the discretion of the court.

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2. The parties stipulate to the following additional terms, subject to court approval at the time of sentencing as set forth in term 8:

A. Imprisonment.

The Defendant shall be sentenced to a term in the Arizona Department of Corrections, with the exact length of the sentence left to the discretion of the Court. The sentence shall run concurrently to any other sentence the Defendant may be serving, *including any sentence for Pima County Superior Court case CR20192299-001. PB KN 1/19*

B. Fines and Fees.

The Court may impose a fine pursuant to A.R.S. §13-603(E)(3), but no fine is required to be imposed by this agreement. Any fine, if imposed, shall be paid to the Anti-Racketeering Revolving Fund pursuant to A.R.S. §§ 13-811(B), 13-2314.01. If the Defendant is unable to pay any fine or assessment in full on the day of sentencing, the Defendant shall pay a one-time \$20.00 time payment charge pursuant to A.R.S. §12-116.

C. Court-ordered revocation.

The Court shall revoke the Defendant's voter registration at the time of sentencing pursuant to A.R.S. §13-603(G).

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3. All remaining charges are dismissed, and the following uncharged acts shall not be brought against Defendant: **Counts 1-3; allegation of historical prior felony convictions (A.R.S. §13-703(C)).**

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4. All victim(s) listed in the original indictment, complaint, or information retain all of their victim rights even if their names do not appear within the specific count(s) in term 1. Defendant agrees that uncharged victim(s) may address the court at sentencing. Defendant further agrees to have no contact with any victim(s), including uncharged victim(s) receiving restitution, without the prior knowledge and consent of either this Court or the probation department.

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

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6. Defendant agrees that this agreement shall not be binding on the State should 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 Defendant and his attorney, to wit:

- Defendant avows that he has no more than TWO prior felony convictions, said convictions being in the following case numbers:
 - Pima County Superior Court case CR 2007-1721
 - Pima County Superior Court case CR 2007-2393
- Defendant avows that he has no other pending felony cases in any jurisdiction under any name, with the exception of:
 - Pima County Superior Court case CR 2019-2299

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/her right to a preliminary hearing or other probable cause determination on the original charges.

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7. The Defendant agrees pursuant to A.R.S. § 13-4033 that he may not appeal from the judgment entered or sentence imposed as a result of this plea agreement. Unless this agreement is rejected or withdrawn, the Defendant gives up any motions, objections or defenses which he has asserted or could assert in this case. If the Defendant obtains a new trial, the original charges and/or any pending charges in any implicated case(s) dismissed as a result of this Plea Agreement are automatically reinstated. If the Defendant obtains a new trial, the State shall have the right to file uncharged acts identified in term 3, and Defendant agrees to waive any timeliness or statute of limitations defenses to those uncharged acts.

The Defendant hereby waives any right to raise and/or to appeal any and all motions, defenses, probable cause determinations, restitution orders, and objections, which he has asserted or could assert to this prosecution, and to the Court's entry of judgment against and imposition of sentence consistent with this negotiated Plea Agreement. The Defendant further expressly waives any objections, motions, or defenses based upon the statute of limitations, Rule 8 Speedy Trial, Arizona Rules of Criminal Procedure, the Double Jeopardy Clause of the United States and Arizona Constitutions, *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), or any other constitutional restrictions on bringing of charges.

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8. The parties hereto fully and completely understand and agree that by entering into a plea agreement, Defendant consents to judicial fact-finding by preponderance of the evidence as to any aspect or enhancement of sentence, and that any sentence either stipulated to or recommended herein in term 2 is not binding on the court. In making the sentencing determination, the court is not bound by the rules of evidence. If after accepting this plea the court concludes that any of the plea agreement's

provisions regarding the sentence or the term and conditions of probation are inappropriate, it can reject the plea. If the court decides to reject the plea agreement provisions regarding sentencing, it must give both the state and Defendant an opportunity to withdraw from the plea agreement. If, in this situation, either party elects to withdraw, the plea agreement is voided and the charges against the Defendant as they existed before any amendment, reduction, or dismissal on any implicated case(s) made as part of a plea agreement shall automatically be reinstated. If the plea agreement is voided, the State shall have the right to file uncharged acts identified in term 3, and Defendant agrees to waive any timeliness or statute of limitations defenses to those uncharged acts.

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9. If the court decides to reject the plea agreement provisions regarding sentencing and neither the state nor Defendant elects to withdraw from the plea agreement, then any sentence either stipulated to or recommended herein is not binding upon the court, and the court is bound only by the sentencing limits set forth in term 1 and the applicable statutes which may be less favorable than the sentence contemplated by the agreement.

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10. This plea agreement contemplates and is entered solely to resolve this criminal case. It is separate from, independent of, and is entered free of any consideration with respect to any past, present or future civil, administrative, or regulatory action or proceeding brought by or on behalf of the State of Arizona or any department, agency or entity thereof arising from or related to the facts and events giving rise to this criminal case. It does not in any way compromise or provide protections or defenses with respect to any such other proceeding, including but not limited to an action or proceeding pursuant to A.R.S. §§ 13-2301 through 13-2323 or A.R.S. §§ 13-4301 through 13-4315. It does not abrogate or limit the provisions of A.R.S. § 13-2314(H), A.R.S. § 13-2314.04(E), or A.R.S. § 13-4310(C) or in any other way compromise, limit or adversely affect the State in any such past, present or future civil action brought pursuant to A.R.S. §§ 13-2301 through 13-2323, A.R.S. §§ 13-4301 through 13-4315, or A.R.S. § 32-1993, if applicable. Any relief from this plea agreement or other relief from this criminal case shall not give rise to relief from or serve to affect any resolution or disposition entered by court ruling or by agreement in any such other proceeding brought by or on behalf of the State.

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11. I understand that if I am not a citizen of the United States that my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that 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.

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12. I have read all the provisions of all pages of this agreement with the assistance of counsel or my counsel's translator and understand all the provisions of all pages of this agreement. I have discussed the case and my constitutional rights with my lawyer and have considered the risks associated with going to trial. My lawyer has explained the nature of the charge(s) and the elements of the crime(s) to which I am pleading. I understand that by pleading guilty I will be waiving and giving up my rights to: a trial by jury; to be represented at trial by appointed counsel if I cannot afford to hire my own; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my behalf; my right to remain silent; my privilege against self-incrimination; my presumption of innocence and right to appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I have decided on my own free will to enter into a plea agreement and am not on or under the influence of any drug, medication, liquor, or other intoxicant. My plea is not the result of force, threats, assurances, or promises other than those which are contained in writing in this agreement. 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 at 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 term 1, without limitation.

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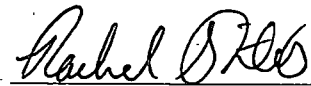
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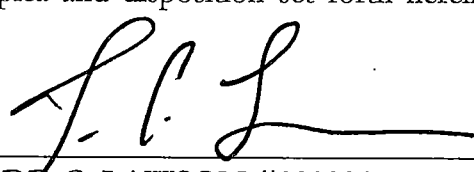
I have personally and voluntarily placed my initials beside each of the above terms and signed the signature line below to indicate I read and approved all of the previous terms in this agreement, both individually and as a total binding agreement. I am satisfied with my counsel's work representing me in this matter.

Date 3/16/22 Defendant 
KENNETH RUSSELL NELSON

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 this case and in the best interest of my client. I believe my client understands this plea agreement and I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date 3/16/22 Defense Counsel 
RACHEL STILES #024783

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 17 MAR '22 Prosecutor 
TODD C. LAWSON #020216

#9888102v3

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FILED

APR 21/2022

4/20/22

GARY L. HARRISON, Clerk

C Webster

Deputy

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. BRENDEN J. GRIFFIN

CASE NO. CR20213552-001

COURT REPORTER: Anne Bouley Meyer
Courtroom - 680

DATE: April 15, 2022

STATE OF ARIZONA

Todd C. Lawson, Esq., counsel for State

VS.

KENNETH RUSSELL NELSON (-001)
Defendant

Rachel L. Stiles, Esq., counsel for Defendant

DATE OF BIRTH: 4/12/1976

MINUTE ENTRY

SENTENCE OF IMPRISONMENT

Defendant present, in custody, appearing by video.

The Defendant is advised of the charge and the determination of guilt, and all parties are given the opportunity to make recommendations/statements to the Court.

Mr. Lawson requests that the Court sign an Order cancelling the Defendant's voter registration from the Pima County Recorder's Office; Ms. Stiles states no objection.

Mr. Lawson advises the Court that the State will submit a proposed form of Order for the Court's signature.

Pursuant to A.R.S. § 13-607, the Court finds as follows:

WAIVER OF TRIAL--The Defendant knowingly, intelligently, and voluntarily waived his right to a trial with or without a jury, his right to confront and cross-examine witnesses, his right to testify or remain silent, his right to present evidence and call his own witnesses, and his right to review after having been advised of these rights. The determination of guilt was based upon a plea of guilty.

Upon due consideration of the offense, and the facts, law and circumstances involved in this case, and having found no legal cause to delay rendition of judgment and pronouncement of sentence, the Court enters the following judgment and sentence:

IT IS THE JUDGMENT OF THE COURT that the Defendant is guilty of AMENDED COUNT FOUR: ATTEMPTED ILLEGAL VOTING, a Class Six Felony, nondangerous, nonrepetitive offense, in violation of A.R.S. §§ 13-1001, 16-1016(1) committed on October 22, 2020 through November 03, 2020.

C. Webster
Deputy Clerk

MINUTE ENTRY

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Date: April 15, 2022

Case No.: CR20213552-001

THE COURT FINDS that suspension of sentence and a term of probation are not appropriate and that a sentence of imprisonment with the Department of Corrections is appropriate.

AS PUNISHMENT, IT IS ORDERED that the Defendant be incarcerated in the Arizona Department of Corrections for a period of TWO HUNDRED TEN (210) DAYS, commencing on April 15, 2022. The Defendant shall be given credit for TWO HUNDRED TEN (210) DAYS, for an effective sentence of TIME SERVED.

IT IS FURTHER ORDERED that the term of community supervision is waived in accordance with A.R.S. § 13-603(K).

IT IS ORDERED that the Clerk of the Court shall remit to the Department of Corrections a copy of this order, plus all presentence reports, probation violation reports, medical and psychological reports relating to the Defendant and involving this cause.

IT IS ORDERED that the Pima County Adult Detention Center do the following: take original booking information including date of birth, Arizona SID number, PCN number, and County booking number, original fingerprints, original photographs, and take a DNA sample. The Pima County Adult Detention Center shall provide the aforementioned original documents and a DNA sample to the Department of Corrections.

IT IS ORDERED that the Defendant shall pay the following:

1. Time Payment Fee in the amount of \$20.00.
2. Attorney's fees in the amount of \$400.00.
3. Indigent Administrative Assessment Fee in the amount of \$25.00.
4. Probation Assessment in the amount of \$20.00.
5. Surcharge Assessment in the amount of \$13.00.
6. Victim Rights Enforcement Fund Fee in the amount of \$2.00.
7. Victim Rights Assessment in the amount of \$9.00.

The Court retains jurisdiction of the case for purposes of ordering, modifying, and enforcing the manner in which court-ordered payments are made until paid in full or until the Defendant's sentence expires, such payment to include but not limited to:

A restitution order in favor of any person entitled to such; along with fines, costs, incarceration costs, fees, surcharges or assessments imposed.

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C. Webster
Deputy Clerk

MINUTE ENTRY

Page 3

Date: April 15, 2022

Case No.: CR20213552-001

Mr. Lawson requests that the Presentence Report be corrected to reflect the offense dates.

The Court notes that the offense dates in the Presentence Report list the wrong year; the correct year should be 2020.

IT IS ORDERED that any outstanding bond that has not been previously referred for a bond forfeiture proceeding is hereby exonerated.

IT IS ORDERED, pursuant to the plea, that all remaining counts and allegations shall be dismissed as to this cause number only.

The Defendant is advised of his Notice of Rights of Review and Notice of Right to Apply to Have Conviction Set Aside, signs, and receives a copy of same.

Let the record reflect that the Defendant's fingerprint is permanently affixed to the signature page of this sentencing order in open court.

FILED IN COURT: Commitment Order; Presentence Report; Notice of Rights of Review; Notice of Right to Apply to Have Conviction Set Aside



B. J. Griffin /s/
HON. BRENDEN J. GRIFFIN
(ID: b3597140-2691-4f1b-b8fb-29d57fdfa19d)

cc: Hon. Brenden J Griffin
Rachel L Stiles, Esq.
Todd C. Lawson, Esq.
Adult Probation
Attorney General - Victim Notification
Clerk of Court - Accounting Unit
Clerk of Court - Appeals Unit
Clerk of Court - Criminal Unit
DOC (1 certified) *W PSR 4-21-22*
Pretrial Services
Sheriff of Pima County (1 certified) *W PSR 4-21-22*

C. Webster
Deputy Clerk