

SEP 02 2021

SCHOHARIE COUNTY COURTS

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Indictment No. 2019-33

NAUMAN HUSSAIN,

Defendant.

PLEA AGREEMENT

1. Subject to the approval of the Court, the People and the Defendant (the "parties") have reached an agreement for the disposition of this case.
2. Nauman Hussain will plead guilty under Counts 21 through 40 of the Indictment, each charging Criminally Negligent Homicide, in violation of Section 125.10 of the Penal Law, in full satisfaction of the Indictment. Mr. Hussain consents to the Court's acceptance of victim impact statements at the time of his plea proceeding, with the understanding that, pursuant to the Court's discretion, such statements may be made by any member of the family of a victim, or the legal guardian or representative of the legal guardian of the victim where such guardian or representative has personal knowledge of and a relationship with the victim. In addition, Mr. Hussain shall waive his right to appeal to the full extent he is able in accordance with the terms as more fully set out in paragraph 17 hereof, including but not limited to any issue relating to the Court's acceptance of victim impact statements.
3. Upon the entry of his guilty plea, Mr. Hussain shall be placed on two years interim probation, during which, as a special condition thereof and as part of a treatment plan, he shall perform a total of 1,000 hours of community service, within whichever county he may reside. Such community service must be approved by the Court and shall be completed in increments of 125 hours every three months. Mr. Hussain's community service may include participation in speaking events concerning the importance of compliance with commercial vehicle regulations.
4. Upon the successful completion of his two years interim probation, Mr. Hussain shall be sentenced to a term of five years probation, with credit received for the two years thus served on interim probation (resulting in a remaining period of three years probation to be served post-sentencing). Mr. Hussain shall pay full restitution to Schoharie County. Mr. Hussain shall pay a fine at the Court's discretion, and pay the mandatory surcharge unless restitution is paid in full prior to sentencing. Mr. Hussain shall submit his DNA and pay a DNA surcharge.

The following special conditions shall apply to Mr. Hussain's interim and post-sentencing

terms of probation:

- a. Mr. Hussain shall be prohibited from, directly or indirectly, owning, operating or working for any commercial transportation business.
 - b. Mr. Hussain's probation shall not terminate early.
5. Pursuant to Criminal Procedure Law § 370.25, upon judgment of conviction for the above-referenced felonies, Mr. Hussain shall immediately surrender any or all firearms, rifles, shotguns owned or possessed by him.
 6. Criminally Negligent Homicide is a Son of Sam specified crime. The Court will provide the defendant with written notice of reporting requirements, procedures and potential penalty for failure to comply with the Son of Sam Law pursuant to Criminal Procedure Law § 410.10(3).
 7. Criminally Negligent Homicide is a Class E felony for which a possible maximum indeterminate term of imprisonment of 1½ to 4 years may be imposed, pursuant to Penal Law § 70.00. The term on each such count in this case is required by law to run concurrently, pursuant to Penal Law § 70.25(2), as each offense is alleged to have been committed through the same omission. Consequently, Mr. Hussain's maximum sentencing exposure for Criminally Negligent Homicide remains the same irrespective of the number of counts of conviction. The possible maximum term of imprisonment that may be imposed upon a conviction of all twenty counts of Criminally Negligent Homicide in this case is 1½ to 4 years.
 8. The possible least sentence that may be imposed upon a conviction of all twenty counts of Criminally Negligent Homicide in this case is an unconditional discharge, pursuant to Penal Law §§ 60.01(3)(d) and 65.20(1). When a sentence of an unconditional discharge is imposed, a defendant does not receive imprisonment or probation pursuant to Penal Law § 65.20(2).
 9. The legal and factual justifications for the disposition of five years probation agreed upon herein are set forth below.
 10. The parties jointly submit:
 - a. The Defendant cannot be guilty of *both* Criminally Negligent Homicide and Manslaughter as a matter of law because Criminally Negligent Homicide requires the element of "criminal negligence," meaning that a person "*fails to perceive* a substantial and unjustifiable risk" of death (Penal Law § 15.05(4) (emphasis added), while Manslaughter requires the contradictory element of "recklessness," meaning that a person "*is aware of and consciously disregards* a substantial and unjustifiable risk" of death. (Penal Law § 15.05(3)) (emphasis added).