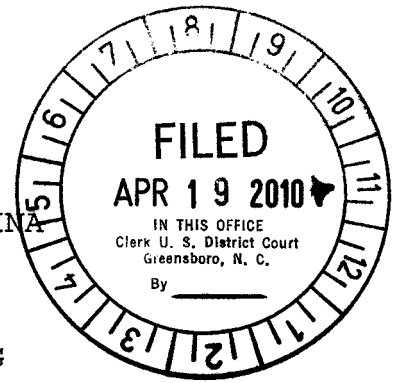


IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA :  
 :  
 v. : SUPERSEDING  
 : 1:08CR384-1  
 :  
 DEMARIO JAMES ATWATER : PLEA AGREEMENT

NOW COME the United States of America, by and through Anna Mills Wagoner, United States Attorney for the Middle District of North Carolina, and the defendant, DEMARIO JAMES ATWATER, in his own person and through his attorneys, Gregory Davis and Kimberly C. Stevens, and state as follows:

1. The defendant, DEMARIO JAMES ATWATER, is presently under Indictment in case number 1:08CR384-1, which charges him in Count One with a violation of Title 18, United States Code, Sections 1201(a)(1) and 2, kidnapping resulting in death; which charges him in Count Two with a violation of Title 18, United States Code, Sections 2119(3) and 2, carjacking resulting in death; which charges him in Count Three with a violation of Title 18, United States Code, Sections 924(c)(1)(A)(iii), 924(c)(1)(B)(i), 924(j)(1) and 2, carrying and using a short-barreled shotgun by discharging and resulting in death; which charges him in Count Four with a violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2) and 2, felon in possession of firearms; and which charges him in Count Five with a violation of Title 26, United States Code, Sections

5861(d) and 5871, and Title 18, United States Code, Section 2, possession of an unregistered short-barreled shotgun.

2. The defendant, DEMARIO JAMES ATWATER, will enter a voluntary plea of guilty to the Indictment herein. The nature of the charges and the elements of each charge which must be proved by the United States beyond a reasonable doubt before the defendant can be found guilty thereof have been explained to him by his attorneys.

a. The defendant, DEMARIO JAMES ATWATER, understands that the maximum punishment provided by law for Count One of the Indictment is death or life imprisonment, and the maximum fine for Count One of the Indictment is \$250,000, or both; the maximum punishment provided by law for Count Two of the Indictment is death or life imprisonment, and the maximum fine for Count Two of the Indictment is \$250,000, or both; the maximum punishment provided by law for Count Three of the Indictment is no less than ten years, death or no more than life imprisonment, and the maximum fine for Count Three of the Indictment is \$250,000, or both; the maximum punishment provided by law for Count Four of the Indictment is imprisonment for not more than ten years and the maximum fine for Count Four of the Indictment is \$250,000, or both; the maximum punishment provided by law for Count Five of the Indictment is not more than ten years, the maximum fine for Count Five of the Indictment is \$250,000, or both. The fines are subject to the

provisions of Title 18, United States Code, Section 3571, entitled "Sentence of Fine."

b. The defendant, DEMARIO JAMES ATWATER, also understands that, as to Counts One, Two and Three of the Indictment herein, the Court may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release of not more than five years after imprisonment, pursuant to Title 18, United States Code, Section 3583. The defendant, DEMARIO JAMES ATWATER, also understands that, as to Counts Four and Five of the Indictment herein, the Court may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release of not more than three years after imprisonment, pursuant to Title 18, United States Code, Section 3583.

c. The defendant, DEMARIO JAMES ATWATER, further understands that, upon the acceptance by the Court of a guilty plea to Count Four of the Indictment, he could be subject to the enhanced penalty provisions of Title 18, United States Code, Section 924(e)(1) at the time of sentencing if the defendant has three previous convictions by any court for a violent felony or a serious drug offense, committed on occasions different from one another. If the Court determines that Title 18, United States Code, Section 924(e)(1) is applicable, the term of imprisonment shall be not less than fifteen years. In addition, the defendant cannot be placed on probation or receive a suspended sentence. The

defendant, DEMARIO JAMES ATWATER, also understands that the Court may include as a part of the sentence a requirement that he be placed on a term of supervised release of not more than five years after imprisonment, pursuant to Title 18, United States Code, Section 3583.

d. The defendant, DEMARIO JAMES ATWATER, understands that the Court shall order, in addition to any other penalty authorized by law, that the defendant make restitution to any victims of the offenses, or if any victim is deceased, to the victim's estate, pursuant to Title 18, United States Code, Section 3663A.

e. The defendant, DEMARIO JAMES ATWATER, further understands that the sentence to be imposed upon him is within the discretion of the sentencing court subject to the statutory maximum and mandatory minimum penalties set forth above. The sentencing court is not bound by the sentencing range prescribed by the United States Sentencing Guidelines. Nevertheless, the sentencing court is required to consult the Guidelines and take them into account when sentencing. In so doing, the sentencing court will first calculate, after making the appropriate findings of fact, the sentencing range prescribed by the Guidelines, and then will consider that range as well as other relevant factors set forth in the Guidelines and those factors set forth in Title 18, United States Code, Section 3553(a) before imposing the sentence.

3. By voluntarily pleading guilty to the Indictment herein, the defendant, DEMARIO JAMES ATWATER, knowingly waives and gives up his constitutional rights to plead not guilty, to compel the United States to prove his guilt beyond a reasonable doubt, not to be compelled to incriminate himself, to confront and cross-examine the witnesses against him, to have a jury or judge determine his guilt on the evidence presented, and other constitutional rights which attend a defendant on trial in a criminal case.

4. The defendant, DEMARIO JAMES ATWATER, is going to plead guilty to the Indictment herein because he is, in fact, guilty and not because of any threats or promises.

5. The extent of the plea bargaining in this case is as follows:

a. It is agreed between the defendant, DEMARIO JAMES ATWATER and the United States, that upon acceptance of his guilty plea to the Indictment by the Court, the United States will not seek the death penalty.

b. Upon the acceptance by the Court of a guilty plea by the defendant, DEMARIO JAMES ATWATER, to the Indictment herein, the parties agree that a life sentence is the appropriate punishment. This portion of the Plea Agreement is made pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

6. It is further understood that the United States and the defendant, DEMARIO JAMES ATWATER, reserve the right to bring to the

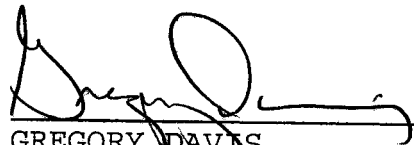
Court's attention any facts deemed relevant for purposes of sentencing.


7. The defendant, DEMARIO JAMES ATWATER, further understands and agrees that pursuant to Title 18, United States Code, Section 3013, for any offense committed on or after October 11, 1996, the defendant shall pay an assessment to the Court of \$100 for each offense to which he is pleading guilty. This payment shall be made at the time of sentencing by cash or money order made payable to the Clerk of the United States District Court. If the defendant is indigent and cannot make the special assessment payment at the time of sentencing, then the defendant agrees to participate in the Inmate Financial Responsibility Program for purposes of paying such special assessment.


8. No agreements, representations, or understandings have been made between the parties in this case other than those which are explicitly set forth in this Plea Agreement, and none will be entered into unless executed in writing and signed by all the parties.

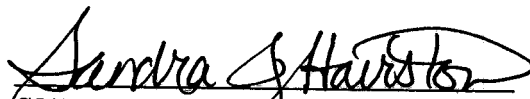
16th  
This the 5th day of April, 2010.

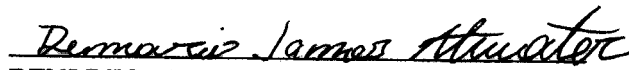
ANNA MILLS WAGONER  
United States Attorney

  
GREGORY DAVIS  
Attorney for Defendant

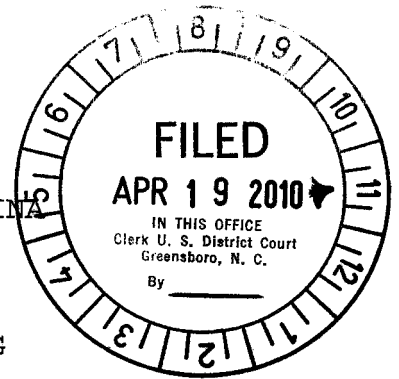
  
CLIFTON T. BARRETT  
Assistant United States Attorney

  
KIMBERLY C. STEVENS  
Attorney for Defendant

  
SANDRA HAIRSTON  
Assistant United States Attorney

  
DEMARIO JAMES ATWATER  
Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA :  
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 v. : SUPERSEDING  
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 :  
 DEMARIO JAMES ATWATER :

GOVERNMENT'S WITHDRAWAL OF INTENTION TO SEEK THE DEATH PENALTY

NOW COMES the United States of America, by and through Anna Mills Wagoner, United States Attorney for the Middle District of North Carolina, pursuant to 18 U.S.C. § 3593(a), and notifies the Court and the Defendant, DEMARIO JAMES ATWATER, that the Government hereby withdraws the Notice of Intention to Seek the Death Penalty filed on February 13, 2009.

This the 19th day of April, 2010.

Respectfully submitted,

ANNA MILLS WAGONER  
United States Attorney

Handwritten signature of Clifton T. Barrett in black ink.

CLIFTON T. BARRETT  
Assistant United States Attorney  
Chief, Criminal Division  
NCSB #12858

Handwritten signature of Sandra J. Hairston in black ink.

SANDRA J. HAIRSTON  
Assistant United States Attorney  
Deputy Chief, Criminal Division  
NCSB #14118

P. O. Box 1858  
Greensboro, NC 27402  
336/333-5351



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Government's Withdrawal of Intention to Seek the Death Penalty was served upon Gregory Davis and Kimberly C. Stevens, the attorneys of record herein, by hand delivery, this the 19th day of April, 2010.



CLIFTON T. BARRETT  
Assistant United States Attorney  
Chief, Criminal Division  
United States Attorney's Office

P. O. Box 1858  
Greensboro, NC 27402  
336/333-5351