

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE JOHN RANDALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43024

FILED

JUN 25 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of assault with a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Bruce John Randall to serve a prison term of 12 to 48 months.

Randall contends that the State violated the terms and the spirit of the plea agreement by failing to explain why it had agreed not to oppose probation. Specifically, when the district court asked the prosecutor what he knew about the plea negotiations, the prosecutor responded: "I don't know why it was negotiated the way it was. [Another prosecutor] negotiated the case." Randall argues that the prosecutor's response undercut the negotiations and was the functional equivalent of a recommendation against probation. We conclude that Randall's contention lacks merit.

When the State enters a plea agreement, it is held to "the most meticulous standards of both promise and performance" in fulfillment of both the terms and the spirit of the plea bargain.¹ The


¹Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

prosecutor breaches the plea agreement in spirit by making comments that implicitly seek a higher penalty than the sentence the parties agreed upon.²


Here, it is undisputed that the prosecutor expressly recommended the sentence agreed upon in the plea agreement. Moreover, the prosecutor's response about the underlying justification for the plea negotiations did not undercut the spirit of the plea negotiations because it was not an implicit request for a higher penalty. We therefore conclude that the State did not breach the plea agreement at the sentencing hearing.

Having considered Randall's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

²Wolf v. State, 106 Nev. 426, 427-28, 794 P.2d 721, 722-23 (1990); Kluttz, 99 Nev. at 683-84, 669 P.2d at 245-46.