

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD EUDELL WELBORN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43684

FILED

JUN 13 2005

BY *A. Smith*
CERIE M. GILLOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant Arnold Eudell Welborn, Jr., to serve a prison term of 12 to 32 months.

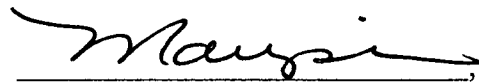
Welborn contends that the State breached the plea agreement at sentencing by arguing for a prison term because, under the terms of the plea agreement, it agreed to refrain from making a sentencing recommendation. Welborn acknowledges that his plea agreement contained a clause, known as the FTA clause, that released the State from its promise to refrain from making a sentencing recommendation if Welborn failed to appear at sentencing. While Welborn concedes that he failed to appear for his first sentencing date, he argues that the State should have nonetheless refrained from making a sentencing recommendation because the FTA clause was unenforceable under Nevada law. Specifically, Welborn argues that the FTA clause is invalid because: (1) it was a unilateral change to the plea agreement made by the State, without Welborn's consent or additional consideration, made after Welborn waived his right to a preliminary hearing; and (2) the FTA clause

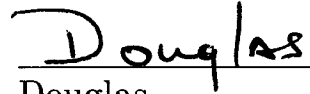
did not substantially comply with the written form requirements set forth in NRS 174.063. We conclude that Welborn's contentions lack merit.

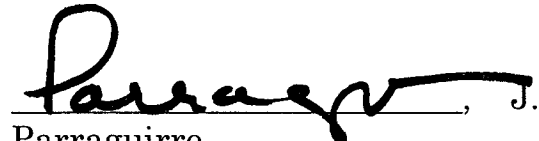
Recently, in Sparks v. State,¹ this court considered and rejected the identical arguments raised by Welborn. In so doing, this court held that the standardized FTA clause is legally enforceable and does not violate Nevada law.² Accordingly, we conclude that the State did not breach the plea agreement at sentencing.

Having considered Welborn's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Michael A. Cherry, 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

¹121 Nev. ___, ___ P.3d ___ (Adv. Op. No. 12, April 28, 2005).

²Id.