


IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DENNIS SENG, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44390

FILED

MAY 19 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a firearm by an ex-felon. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge. The district court sentenced appellant to a prison term of 12 to 40 months.

Appellant's sole contention is that the State breached the plea agreement at the sentencing hearing. The plea agreement in this case provided that the State would recommend a sentence of 12 to 30 months. Appellant contends that the prosecutor breached the plea agreement by implicitly suggesting that appellant deserved a longer sentence. We disagree.

In Van Buskirk v. State,¹ we explained that 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, and that due process requires that the bargain be kept when the guilty plea is entered. We have held that the "violation

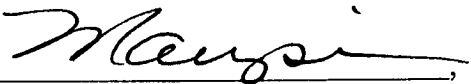
¹102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

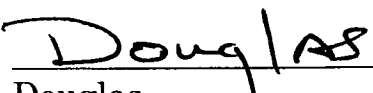
of either the terms or the spirit of the agreement requires reversal."² When a prosecutor expressly recommends only the sentence agreed upon, but by his comments implicitly seeks a higher penalty, the plea agreement is breached in spirit.³

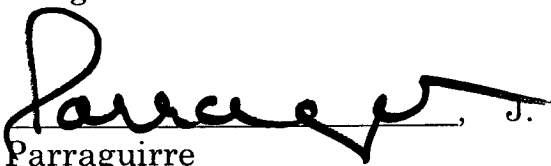
Here, the prosecutor expressly recommended the sentence agreed upon in the plea agreement. Based on our review of the record, we conclude that the prosecutor's comments did not implicitly seek a greater penalty. We therefore conclude that the State did not breach the plea agreement at the sentencing hearing.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

²Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).

³Wolf 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.

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Brian Sandoval/Carson City
Eureka County District Attorney
Eureka County Clerk