

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH ALAN KLEIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45036

FILED

SEP 28 2005

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 nolo contendere plea, of one count of felony domestic battery. First Judicial District Court, Storey County; William A. Maddox, Judge. The district court sentenced appellant Keith Alan Klein to serve a prison term of 18 to 60 months.

Klein's sole contention is that the State breached the plea agreement at the sentencing hearing. In particular, Klein argues that the prosecutor implicitly suggested that Klein deserved a longer sentence by emphasizing his criminal record, threatening future prosecution under the habitual criminal statute, and only "grudgingly" recommending the agreed-upon 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

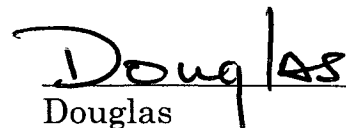
¹102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

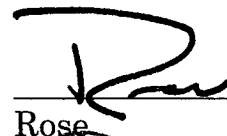
of either the terms or the spirit of the agreement requires reversal."² When a prosecutor expressly recommends only the sentence agreed upon, but by his comments implicitly seeks a higher penalty, the plea agreement is breached in spirit.³

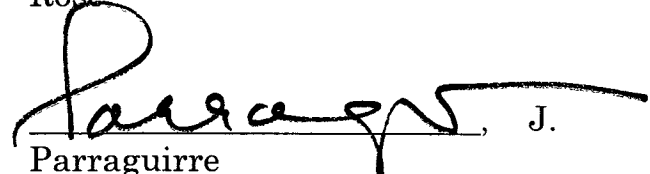
Here, the prosecutor expressly recommended the sentence agreed upon in the plea agreement. Although the prosecutor commented on Klein's criminal history and advised him that he would seek habitual criminal adjudication against him in the future, we conclude that the prosecutor's comments did not implicitly seek a greater penalty. Accordingly, the State did not breach the plea agreement at the sentencing hearing.

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

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Douglas

 _____, J.
Rose

 _____, 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. William A. Maddox, District Judge
State Public Defender/Carson City
Attorney General Brian Sandoval/Carson City
Storey County District Attorney
Storey County Clerk