

IN THE SUPREME COURT OF THE STATE OF NEVADA

JENNIFER GONZALES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46274

**FILED**

**FEB 09 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of the personal identification information of another to establish a false status and/or identity. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant to a prison term of 19 to 60 months.

Appellant contends that the State breached the plea agreement.<sup>1</sup> We agree and remand this matter for a new sentencing hearing before a different district court judge.

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.<sup>2</sup> Due process requires that the bargain be kept when the guilty plea is entered.<sup>3</sup>

Here, the State agreed to recommend no more than 18 to 48 months. At sentencing, the prosecutor stated that she would not object if

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<sup>1</sup>On December 29, 2005, the State filed a confession of error, conceding the breach.

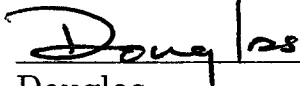
<sup>2</sup>Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).


<sup>3</sup>Id.

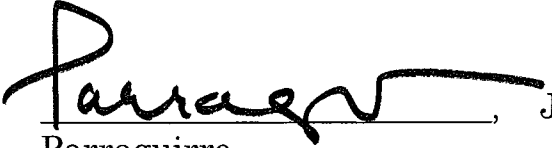
the court wanted "to go above the negotiations." We conclude that the prosecutor's comment constituted a breach of the plea agreement.

Accordingly, we remand this matter to the district court with instructions to vacate appellant's sentence and hold a new sentencing hearing before a different district court judge.<sup>4</sup> We further order the Washoe County District Attorney to specifically perform the plea bargain agreement.<sup>5</sup> Moreover, the new sentencing judge will be free to impose any sentence allowable under the relevant statutes, provided that, under the circumstances of this case, the sentence does not exceed the sentence imposed by Judge Polaha. Upon remand, if the sentencing judge pronounces a sentence that exceeds the sentence imposed by Judge Polaha, said sentence shall be automatically reduced to conform with Judge Polaha's lesser sentence.<sup>6</sup> Accordingly, we

REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>See Santobello v. New York, 404 U.S. 257, 262-63 (1971); Riley v. Warden, 89 Nev. 510, 512-13, 515 P.2d 1269, 1270 (1973).

<sup>5</sup>See Citti v. State, 107 Nev. 89, 807 P.2d 724 (1991).

<sup>6</sup>See id.

cc: Hon. Jerome Polaha, District Judge  
Washoe County Public Defender  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk