IN THE SUPREME COURT OF THE STATE OF NEVADA

TIFFANY HOWARD A/K/A TIFFANY BOLDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47123

FILED

JUL 10 2006

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 larceny from the person. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Tiffany Howard to serve a prison term of 12-48 months.

Howard contends that the State breached the plea agreement at sentencing. Pursuant to negotiations, the State agreed not to make a sentencing recommendation. At the sentencing hearing, the following exchange took place:

> THE COURT: Has the State negotiated this matter in such a fashion that you can or cannot recommend a sentence?
>
> STATE: There is no recommendation. I'd point out that it looks like there is a robbery charge, juvenile, from February 9, 2006.
>
> THE COURT: What about that?
>
> STATE: Page four of the Presentence Investigation Report.
>
> THE COURT: That's one of many.

06-14197

(Emphasis added.) Howard claims that the prosecutor's comment violated the spirit of the plea agreement not to make a sentencing recommendation because she "understood the agreement to mean the State would stand silent and not present any disparaging information to the court." Additionally, Howard points out that the prosecutor gave the court false information because the juvenile robbery offense occurred in February of 2000, not 2006. We conclude that Howard's contention is without merit.

In Van Buskirk v. State,[1] this court explained that when the State enters into 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. Moreover, "the violation of either the terms or the spirit of the agreement requires reversal."[2]

Initially, we note that Howard did not object to the prosecutor's statement. Failure to raise an objection with the district court generally precludes appellate consideration of an issue.[3] Nevertheless, we have reviewed the record and conclude that the State did not breach the plea agreement. As noted above, the prosecutor was only

---

[1]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)).

[2]Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999); see also Echeverria v. State, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003) (recognizing that the State's breach of a plea agreement is not subject to harmless-error analysis).

[3]See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

bound not to make a sentencing recommendation, and nothing in the plea agreement precluded the State from presenting facts and/or argument at the sentencing hearing. In fact, the formal plea agreement memorandum, signed by Howard, contained the proviso that the prosecutor may discuss the information contained in the Division of Parole and Probation's presentence investigation report. Therefore, we conclude that the prosecutor did not violate either the specific terms or spirit of the plea agreement.

Moreover, to the extent that Howard argues that the district court relied on "false information" to her detriment at sentencing, we disagree. Howard cannot demonstrate that the district court relied solely on impalpable or highly suspect evidence in fashioning a sentence.[4] Prior to the challenged exchange with the prosecutor, the district court had already noted Howard's extensive criminal history, and stated, "Any way you look at it, ma'am, you're a thief." And discussing the nature of the instant offense, which involved knocking down an elderly victim and stealing money from his wallet, the district court called it "behavior that's inexcusable." As a result, the district court stated that "something [a] little more stringent" than the Division's recommendation of probation was appropriate and imposed a term of incarceration.[5]

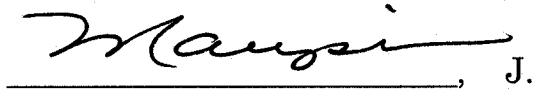
---

[4]See Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (this court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence").

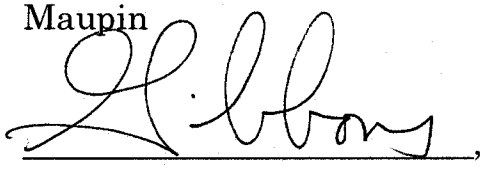
[5]See NRS 176A.100(1)(c) (the granting of probation is discretionary).

Therefore, having considered Howard's contentions and concluded that they are without merit, we

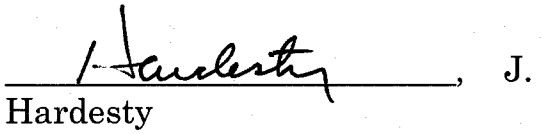
ORDER the judgment of conviction AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

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