

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BLOOMBERG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47268

FILED

OCT 17 2006

BY Vanette M. Bloom
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a plea of nolo contendere, of one count of battery causing substantial bodily harm. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge. The district court sentenced appellant John Bloomberg to a prison term of 12-36 months.

Bloomberg first contends the State violated its agreement to stipulate to probation by suggesting that a jail term as a condition of probation "would not be inappropriate." 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 of either the terms or the spirit of the agreement requires reversal."²

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)).

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

Our review of the record shows that the State not only argued for the district court to follow the plea agreement, but also provided a rationale and justification for the recommendation of probation. The Department of Probation and Parole recommended a 60-day jail sentence as a condition of probation. The State addressed that recommendation in a neutral manner leaving it to the discretion of the district court. We conclude that the State did not breach either the terms or the spirit of the plea agreement.

Bloomberg also contends that the State undercut the sentencing recommendation by presenting graphic photographs of the victim's injuries. This court notes that the pictures were provided as part of the documents requested by the district court to establish a factual basis for the plea. We conclude that the prosecutor was not implicitly seeking a higher penalty by providing the photographs.³

Third, Bloomberg argues that the district court erred by ordering the State to file police reports to support the factual basis for the plea. In accepting a nolo contendere plea, "a district court must determine not only that there is a factual basis for the plea but 'must further inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence.'"⁴ The district court requested the additional information in this case in order to establish a factual basis for the plea, and we conclude that the district court did not err in so doing.

³Cf. Wolf 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; see also Sullivan v. State, 115 Nev. 383, 389-90, 990 P.2d 1258, 1262 (1999).

⁴State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996).

Having considered Bloomberg's contentions are concluded they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Becker J.
Becker

Hardesty J.
Hardesty

Parraguirre J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
Richard F. Cornell
Attorney General George Chanos/Carson City
White Pine County District Attorney
White Pine County Clerk