

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
ESMERALDA AND THE HONORABLE  
JOHN P. DAVIS, DISTRICT JUDGE,

Respondents,

and

GARY ROBERT CONWAY,  
Real Party in Interest.

No. 47292

**FILED**

DEC 01 2006

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

ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges an order of the district court rejecting a plea agreement in a criminal action pending against the real party in interest, Gary Robert Conway. Fifth Judicial District Court, Esmeralda County; John P. Davis, Judge.

The State charged Conway with three counts of sexual assault and one count of lewdness with a child under the age of 14. It subsequently negotiated an agreement under which Conway would plead no contest to one count of indecent exposure, a gross misdemeanor, and the State would not prosecute any additional charges arising from

Conway's alleged conduct with the victim. The district court conducted a hearing on Conway's change of plea and rejected the plea agreement.

On May 12, 2006, the State filed the instant petition in which it claims that the district court abused its discretion by failing to conduct an adequate inquiry into the State's reasons for offering the plea agreement. On June 6, 2006, we entered an order directing the State to file a supplemental petition and directing the attorney general to file an answer on behalf of the respondent district court. On June 26, 2006, the State filed its supplemental petition and on August 30, 2006, the attorney general filed its answer. Having considered the documents and pleadings now before us, and for the reasons discussed below, we conclude that this court's intervention by way of extraordinary relief is warranted.

In Sandy v. District Court, we emphasized that a district court may reject a plea agreement "only when there has been an abuse of prosecutorial discretion."<sup>1</sup> "Rejections may not be made without explanation, but must be accompanied by findings of fact explaining with particularity the reasons for the rejection."<sup>2</sup> The findings of fact should not "be cursory indications of the judge's view of public opinion" or "based

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<sup>1</sup>113 Nev. 435, 440, 935 P.2d 1148, 1150 (1997).

<sup>2</sup>Id.

upon disagreement with prosecutorial charging decisions."<sup>3</sup> Instead, they should reflect a "judicial inquiry into the prosecution's reasons for offering the plea."<sup>4</sup> A finding of fact regarding a disparity between the charges the defendant was bound over on and the charges that the parties have agreed to in a plea agreement, by itself, "is insufficient to reject a plea bargain without evidence that the prosecution had no valid reason for not proceeding to trial."<sup>5</sup>

Our review of the hearing transcript reveals that the district court focused its inquiry on the issue of general deterrence and did not explore other interests that may have justified the State's acceptance of the plea agreement. Such interests may include insufficiency of trial evidence, doubt as to the admissibility of certain evidence, avoiding a prosecution of uncertain success, conserving prosecutorial resources, subjecting an unwilling victim to psychological evaluations and trial, or any other separate factor necessitating acceptance of the plea.<sup>6</sup> Conway's attorney alluded to such interests when he stated that this case had

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<sup>3</sup>Id. at 442, 935 P.2d at 1152.

<sup>4</sup>Id.

<sup>5</sup>Id.

<sup>6</sup>See id. at 441, 935 P.2d at 1151 (citing United States v. Escobar Noble, 653 F.2d 34, 36-37 (1st Cir. 1981)).

serious evidentiary problems. Because the district court focused almost entirely on the single factor of "general deterrence" and failed to adequately inquire into the State's reasons for negotiating the plea agreement, the district court could not have properly determined that the State had abused its prosecutorial discretion to such an extent that rejection of the plea agreement was warranted.

Accordingly, we grant the State's petition. The clerk of this court shall issue a writ of mandamus compelling the district court to vacate its order rejecting the plea agreement, conduct a thorough inquiry into the State's reasons for offering the plea agreement, and then determine whether a rejection of the plea agreement is warranted.

It is so ORDERED.<sup>7</sup>

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

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<sup>7</sup>We deny the district attorney's request for a stay of the jury trial in this matter.

cc: Hon. John P. Davis, District Judge  
Esmeralda County District Attorney  
Attorney General George Chanos/Carson City  
Carl M. Joerger  
Esmeralda County Clerk