

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LADEL GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47427

FILED

SEP 07 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted robbery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Michael Ladel Gray to serve two consecutive prison terms of 24-96 months and ordered him to pay \$150.00 in restitution.

Gray's sole contention is that the State breached the plea agreement by failing to concur with the Division of Parole and Probation's sentencing recommendation. We disagree.

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

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)).

that the bargain be kept when the guilty plea is entered. "The violation of either the terms or the spirit of the agreement requires reversal."²

We conclude that the State did not breach the plea agreement. The presentence investigation report prepared by the Division recommended a prison term of 24-96 months, but omitted the deadly weapon enhancement. At the sentencing hearing, the State pointed out the omission to the district court. Gray argued that the recommendation in the PSI took into account the primary offense and the enhancement, and therefore, should be construed to be two consecutive prison terms of 12-48 months. The representative of the Division, however, stated:


As to the sentence, in reviewing this case, and through my training and experience, I will tell you right now that the Division had no intention of recommending 12 to 48 months. Because of the weapon, because of the injuries, because of the violent nature of this offense, the recommendation of 24 to 96 is appropriate. And I believe there was just an omission of the like consecutive sentence for the same.


(Emphasis added.) The State concurred with the Division and the district court imposed the recommended sentence. Accordingly, we conclude that the State did not violate either the specific terms or spirit of the plea bargain.

²Sullivan 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).

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

ORDER the judgment of conviction AFFIRMED.


Gibbons J.


Maupin J.


Douglas J.

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