

IN THE SUPREME COURT OF THE STATE OF NEVADA

JENNIFER ANN CASTILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50053

FILED

NOV 13 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of causing the death of another while being under the influence of a controlled substance. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Jennifer Ann Castillo to serve a prison term of 54 to 192 months.

Castillo contends that the State breached the plea agreement at the sentencing hearing. In particular, Castillo contends that the prosecutor presented "evidence that was detrimental to the defendant then failed to support the terms of the agreement." In a related argument, Castillo contends that the prosecutor implicitly repudiated the sentencing recommendation by advising the district court that he did not negotiate the case, and then providing a "half-hearted" explanation as to why the State believed the recommended sentence was appropriate. We conclude that Castillo's contentions lack merit.

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 "[t]he violation of either the terms or the spirit of the agreement requires reversal."² When a prosecutor expressly recommends only the sentence agreed upon, but by his comments implicitly seeks a higher penalty, the plea agreement is breached in spirit.³

Based on our review of the record, we conclude that the prosecutor did not breach the plea agreement by implicitly seeking a greater penalty. The State reserved in writing the right to present arguments at sentencing in support of the plea agreement. At the sentencing hearing, the prosecutor expressly recommended the sentence of 24 to 60 months, as required by the agreement, and informed the court that it was "fair and appropriate." The prosecutor also explained that the recommended sentence was appropriate because there was an issue involving "proximate causation." Accordingly, the prosecutor did not violate either the terms or the spirit of the plea bargain.

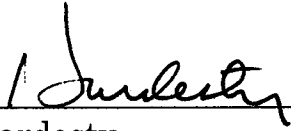
¹102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

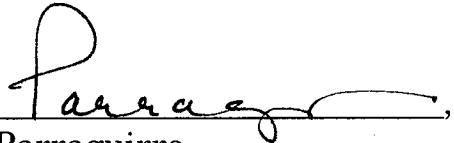
²Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).

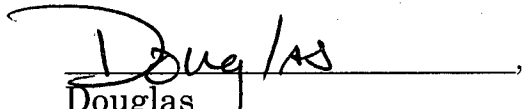
³Wolf v. State, 106 Nev. 426, 427-28, 794 P.2d 721, 722-23 (1990); Kluttz, 99 Nev. at 683-84, 669 P.2d at 245-46.

Having considered Castillo's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk