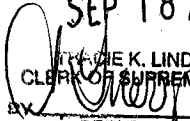


IN THE SUPREME COURT OF THE STATE OF NEVADA

FELIPE ISAIAS ESCOBAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50992

FILED

SEP 18 2008
THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of felony driving under the influence. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Felipe Isaias Escobar to serve a prison term of 12 to 30 months.

Escobar contends that “the State violated its plea bargain agreement when it argued for more than the recommended sentence without notifying the defense or the court that it would be exercising its discretion to do so pursuant to paragraph ten of the guilty plea memorandum.”

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.¹ “The

¹Van Buskirk v. State, 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)).

violation of either the terms or the spirit of the agreement requires reversal.”²

Escobar entered into a guilty plea agreement with the State that allowed the State, at its discretion, to withdraw from the agreement and proceed with the prosecution of the original charges or argue for an appropriate sentence if Escobar failed to appear at any scheduled proceeding, was arrested in any jurisdiction prior to sentencing, or misrepresented his criminal history. Thereafter, Escobar failed to appear at his sentencing hearing and was subsequently arrested, convicted, and sentenced for felony driving under the influence in California. When Escobar finally appeared for sentencing in the instant case, the State informed the district court that it concurred with the Division of Parole and Probation’s sentencing recommendation.³ Escobar did not object.

Escobar’s failure to appear at sentencing and his subsequent arrest in California resulted in a breach of the plea agreement and provided the State with the discretion to argue for an appropriate sentence. The terms of the plea agreement do not require the State to give notice before exercising this discretion, and Escobar has not cited any

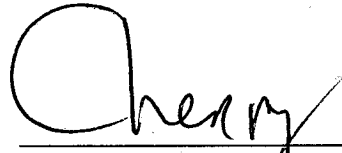
²Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).

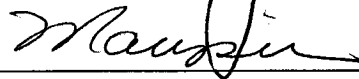
³In the guilty plea memorandum, the State agreed to recommend no more than 12 to 30 months in prison, whereas in the presentence investigation report, the Division recommended a prison term of 12 to 48 months.


authority that would support his contention to the contrary.⁴ Accordingly, we conclude that the State did not violate the plea agreement.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

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

⁴See Sparks v. State, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) (noting that a defendant who signs a written plea agreement with a failure to appear clause "should have reasonably expected that his failure to appear at the first sentencing hearing or commission of another criminal offense prior to sentencing would cause the State to invoke the right to argue").