

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUDE WILLIAM SHENKEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53117

FILED

JUN 22 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of domestic battery. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. The district court sentenced appellant, Jude William Shenkel, to serve a prison term of 24-60 months.

Shenkel contends that the prosecutor's statements during sentencing breached the plea agreement. Specifically, Shenkel argues that the prosecutor distanced herself from the terms of the plea agreement and failed to "unequivocally make the agreed upon sentencing recommendation." We disagree.

The written guilty plea agreement provided that "[t]he State will recommend no more than 30 months in the Nevada State Department of Corrections." The State further reserved the right to present arguments, facts, and/or witnesses at sentencing in support of the plea agreement. Shenkel was informed that the district court was not bound by the agreement of the parties and that the sentence was to be determined solely by the district court.

At sentencing, the following exchange took place between the district court and the State:

The State: Your Honor, the State did agree to recommend 12 to 30 months in the Nevada State Prison.

The Court: Why?

The State: Your Honor, there aren't any notes indicating the action that led to the agreement.

The Court: Did you have his criminal history before you entered into the negotiation, if you know?

The State: Yes, there is a criminal history in the file, and it appears to be in the file before.

The Court: All right. Thank you.

...

The State: Your Honor, to answer the question, I would only be able to say that I can take it back to the negotiating deputy. But in reading through the file, I didn't see anything one way or the other that led me to understand or question any specific factors or anything indicated.

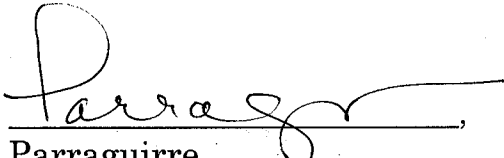
The district court then recited Shenkel's extensive criminal history and sentenced Shenkel to serve a prison term of 24-60 months.

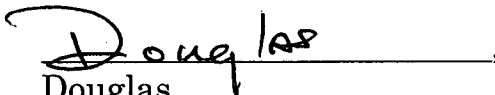
When the State enters a plea agreement, it is held to "the most meticulous standards of both promise and performance" in fulfillment of both the terms and the spirit of the plea bargain. Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)). "[I]n arguing in favor of a sentencing recommendation that the state has agreed to make, the prosecutor must refrain from either explicitly or implicitly repudiating the agreement." Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1262 (1999). Because Shenkel did not object to the prosecutor's statements at the sentencing hearing, we review this claim for plain error. Id. at 387 n.3, 990 P.2d at 1260 n.3.

Here, the prosecutor expressly complied with the plea agreement by informing the court that the State agreed to recommend a sentence of 12 to 30 months. Further, the prosecutor's comments indicating her lack of knowledge regarding the reason this plea agreement was made did not implicitly repudiate the plea agreement or argue in favor of a more severe sentence. These comments merely addressed the court's questions regarding what it termed "the deal of a lifetime."

To the extent Shenkel argues that the prosecutor breached the spirit of the plea agreement because she could have made the sentencing recommendation more zealously, we disagree.¹ The plea bargain here contained neither an express nor an implied duty to "enthusiastically" make the agreed upon recommendation. See United States v. Benchimol, 471 U.S. 453, 455-56 (1985) (per curiam); Sullivan, 115 Nev. at 389 n.5, 990 P.2d at 1261 n.5. Accordingly, we conclude that the prosecutor did not breach the terms or the spirit of the plea agreement, and we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

¹For example, Shenkel argues that instead of saying "[t]he State did recommend 12 to 30 months" the prosecutor could have stated, "[t]he State recommends 12 to 30 months."

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