

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAMERONE COLE REPASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53221

FILED

NOV 05 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, pursuant to a jury verdict, of two counts of burglary and 52 counts of possession of stolen property. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court sentenced appellant Cameron Cole Repass to serve two concurrent prison terms of 3 to 10 years for the burglary counts and a term of 3 to 8 years for each count of possession of stolen property, to run concurrently to each other but consecutively to the burglary counts. This appeal followed.

Repass' sole claim on appeal is that the district court erred in denying his pretrial motion to enforce an oral guilty plea agreement. On the morning of Repass' preliminary hearing in justice court, which was scheduled for January 25, 2007, he entered an oral agreement with the

State to plead guilty to one or two felony counts¹ in exchange for information as to the location of 15 to 20 stolen firearms. Based on this oral agreement, Repass unconditionally waived his preliminary hearing—without making a record of the negotiation—and provided investigators with information that led to the recovery of eight stolen firearms. However, while Repass acknowledged that he knew the location of more stolen weapons, he refused to provide any further information. Accordingly, the State withdrew the agreement, and Repass entered a plea of not guilty on February 22, 2007.

Over a year later, on March 28, 2008, Repass filed a motion to enforce the oral agreement with the State. The district court held an evidentiary hearing and concluded that while the parties had entered into an enforceable oral agreement, Repass had not fulfilled his obligations and was not entitled to “receive the benefit of the bargain.” Repass proceeded to trial and was convicted of all counts charged. We conclude that the district court did not err in denying Repass’ motion to enforce the guilty plea agreement.

While guilty plea agreements exist in the criminal realm, “they are also subject to contract principles.” State v. Crockett, 110 Nev.

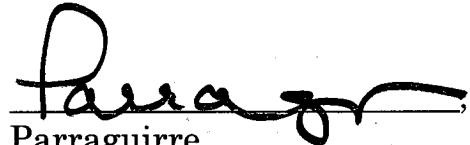
¹The parties disagree as to the precise details of the negotiation. Defense counsel testified at an evidentiary hearing that the agreement contemplated his client pleading guilty to one count of possession of stolen property. On the other hand, the prosecuting attorney testified that the agreement required Repass to plead guilty to two felony counts: burglary and felon in possession of a firearm.

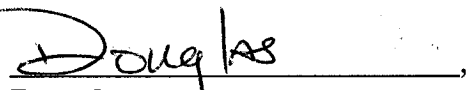
838, 842, 877 P.2d 1077, 1079 (1994). Thus, while the general rule is that neither party to a plea negotiation “is justified in relying substantially on the bargain until the trial court approves the plea,” when a defendant detrimentally relies on an agreement that has not been finalized by the court, the prosecutorial promises in the plea agreement can become binding. *Id.* at 843, 877 P.2d at 1079-80 (quoting *U.S. v. Savage*, 978 F.2d 1136, 1138 (9th Cir. 1992)). One example of detrimental reliance is when “a defendant supplie[s] the prosecution with information . . . based on the negotiated plea bargain.” *Id.* at 843, 877 P.2d at 1080. However, “[w]hen a defendant has committed a material breach of the plea agreement, she forfeits any right to its enforcement.” *U.S. v. Levi*, 313 F. App’x. 571, 572 (4th Cir. 2008); see also *Villalpando v. State*, 107 Nev. 465, 467, 814 P.2d 78, 79 (1991) (“[I]f the defendant’s actions are found to be a deliberate repudiation of the plea agreement ‘the proper remedy is the nullification of the plea bargain.’”) (quoting *Gamble v. State*, 95 Nev. 904, 908-09, 604 P.2d 335, 337-38 (1979)).

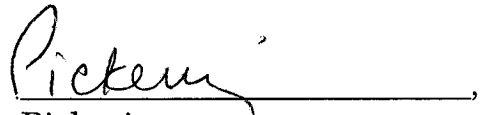
In this case, because Repass provided information on the whereabouts of some of the guns he had stolen pursuant to his negotiations with the State, we conclude that the district court did not err in finding that an enforceable agreement existed. However, Repass breached that agreement. Neither party disputes that the agreement was for Repass to provide 15 to 20 stolen firearms. Repass refused to provide more than 8. Therefore, we conclude that the State was justified in withdrawing the plea agreement and the district court did not err in denying Repass’ motion to enforce it.

Having considered Repass' claim and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. David Wall, District Judge
Robert L. Langford & Associates
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk