

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFTON EMIL IGNACIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53317

FILED

JAN 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of statutory sexual seduction. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

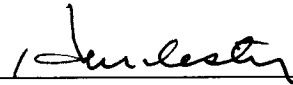
Appellant Clifton Emil Ignacio contends that the State breached the negotiated plea agreement at sentencing. We agree.

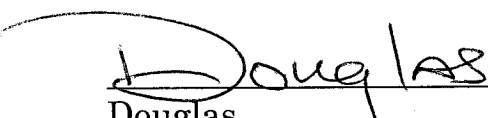
The State reserved the qualified “right to present arguments, facts, and/or witnesses at sentencing in support of the plea agreement,” but agreed not to object to probation if Ignacio qualified based on a psychosexual evaluation. Ignacio was determined to be eligible for probation. Although the prosecutor stated several times that the State would stand behind its agreement, the State also presented argument at sentencing. Ignacio objected to the State’s argument.


The State is held “to the most meticulous standards of both promise and performance in fulfillment of its part of a plea bargain,” and “[t]he violation of either the terms or the spirit of the agreement requires reversal.” Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999) (internal quotation marks omitted). We conclude that the State breached the plea agreement by implicitly seeking to persuade the district court to impose a harsher sentence than probation. See id. at 389, 990 P.2d at

1262 (“[T]he prosecutor must refrain from either explicitly or implicitly repudiating the agreement.”). Specifically, the prosecutor improperly reviewed negative information contained in Ignacio’s psychosexual evaluation, related a disparaging assessment of his offense, expressed skepticism that Ignacio was truly remorseful, opined that Ignacio minimized his responsibility for his offense, and implied that the State would not have made that promise if it had been aware of the contents of Ignacio’s psychosexual evaluation. See id. at 389-90, 990 P.2d at 1261-62. Accordingly, we conclude that Ignacio is entitled to a new sentencing hearing, before a different district court judge, see Echeverria v. State, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003), at which the State is held to the terms of the plea agreement. We therefore,

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings before a different district court judge consistent with this order.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Connie Steinheimer, Chief Judge
Hon. Steven R. Kosach, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk