

IN THE SUPREME COURT OF THE STATE OF NEVADA

BALDEMAR MORENO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53544

FILED

DEC 03 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 guilty plea, of lewdness with a child under the age of 14 years. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Baldemar Moreno to life in prison with the possibility of parole after 10 years, to be served consecutively to the sentence in another case.

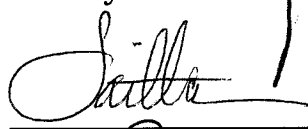
Moreno's sole contention on appeal is that the State breached the plea agreement during sentencing by explaining the facts and circumstances of the case. We disagree. The prosecutor provided relevant information that was requested by the district court, provided factual information that was not included in the presentence report, and complied with the plea agreement by affirmatively informing the court that the State had no objection to probation because Moreno had qualified for it. Cf. Sullivan v. State, 115 Nev. 383, 388 n.4, 990 P.2d 1258, 1261 n.4 (1999) ("[E]ven where the state has agreed to stand silent or make no recommendation, it may nonetheless correct factual misstatements and provide the court with relevant information that is not in the court's possession."). And tellingly, Moreno did not object to the prosecutor's

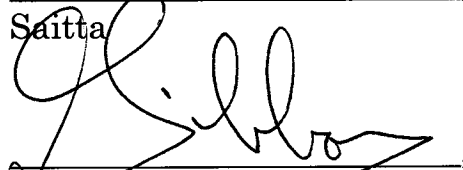
statements; rather, Moreno's counsel thanked the prosecutor for "giving [the court] the factual background in this." Under the circumstances, we conclude that Moreno cannot demonstrate plain error requiring reversal of the judgment of conviction. See id. at 388 n.3, 990 P.2d at 1261 n.3 (noting applicability of plain-error review when defendant fails to object to alleged breach of a plea agreement and explaining that "[a]lthough a defendant's failure to object does not necessarily preclude appellate review of an alleged breach of a plea agreement . . . such a failure may be considered as evidence of the defendant's understanding of the terms of a plea agreement"); see also Puckett v. United States, 129 S. Ct. 1423 (2009) (holding that plain-error review applies when defendant fails to object to alleged breach of a plea agreement).

Having considered Moreno's claim and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Scott W. Edwards
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk