

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN CARLOS CASTILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53786

FILED

DEC 04 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of open or gross lewdness. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Juan Carlos Castillo to serve a jail term of 12 months.


Castillo contends that the prosecutor breached the terms of the guilty plea agreement by failing to state on the record that the State did not oppose probation. Because Castillo did not object to the prosecutor's silence at the sentencing hearing, we review this claim for plain error. Sullivan v. State, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999).

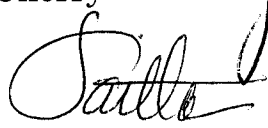
When the State enters a plea agreement, it "is held to 'the most meticulous standards of both promise and performance'" in fulfillment of both the terms and the spirit of the plea bargain. Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)). This court construes a plea agreement according to the defendant's reasonable

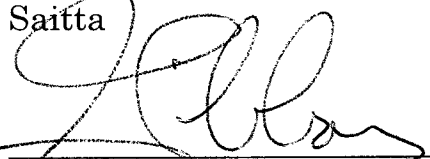
understanding of the agreement when he entered the plea. Sullivan, 115 Nev. at 387, 990 P.2d at 1260.

Here, the guilty plea agreement stated, "The State will not oppose a probationary term if I qualify by Statute." The plain language of this agreement did not require the State to state on the record that it did not oppose probation; instead the agreement barred the State from objecting to or opposing probation. And, Castillo's failure to object to the prosecutor's silence as a breach of the plea agreement indicates that Castillo understood that the agreement did not require the State to make any statements on the record. See id. at 390 n.7, 990 P.2d at 1262 n.7. Accordingly, we conclude that Castillo could not have reasonably understood the agreement to require the State to state on the record that it did not oppose probation. Further, during the sentencing hearing, the State complied with the terms of the plea agreement by noting that the victim was not present and submitting the matter to the district court without additional comment. Thus, we conclude that no plain error occurred, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

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