

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 34884

JIMMY CHARLES LANDROM,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 13 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of statutory sexual seduction. The district court sentenced appellant to consecutive terms of twenty-four to sixty months in the Nevada State Prison. Appellant contends that the State breached the plea agreement at sentencing. We agree, and we therefore remand the matter for resentencing.

Appellant was charged with three counts of statutory sexual seduction, living from the earnings of a prostitute, child abuse and neglect, and possession of a controlled substance. Pursuant to plea negotiations as reflected in the record, appellant agreed to plead to two counts of statutory sexual seduction, and the State retained the right to argue, but agreed not to oppose concurrent sentences. At sentencing, however, the State argued expressly for consecutive terms. Appellant objected, but the district court concluded that its decision had not been influenced by the State's argument and rejected appellant's challenge.

The general principles governing the State's obligation to honor the terms of a plea agreement are well settled. "[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said

to be part of the inducement or consideration, such promise must be fulfilled." Santobello v. New York, 404 U.S. 257, 262 (1971). Moreover, this court has held the State to the "most meticulous standards of both promise and performance" in fulfillment of its part of a 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)). The violation of either the terms or the spirit of the agreement requires reversal. Id.

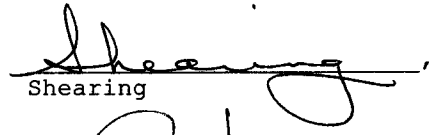
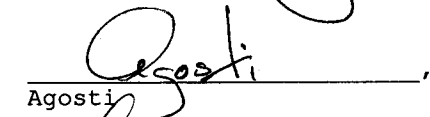
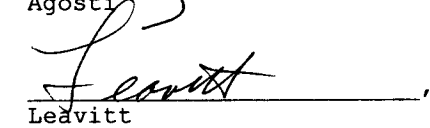
In this case, although the written plea memorandum is silent regarding concurrent or consecutive terms, the record clearly reflects that as part of the plea negotiation, the State agreed not to oppose the imposition of concurrent sentences. However, at both sentencing hearings, the State affirmatively asked the court to impose consecutive sentences.¹ This constitutes a breach of the agreement. Due process requires that the bargain be kept when the guilty plea is entered. Van Buskirk, 102 Nev. at 243, 720 P.2d at 1216 (citing Santobello, 404 U.S. at 257); Gamble v. State, 95 Nev. 904, 604 P.2d 335 (1979)). It is immaterial that the district court may have stated that its decision to impose consecutive sentences was not affected by the State's argument. See Santobello, 404 U.S. at 262 (holding that despite the sentencing judge's assertion that his determination was not affected by the breach, the case should be remanded in the "interests of justice and appropriate recognition of the

¹Appellant was first sentenced on December 14, 1998. On March 30, 1999, appellant moved for resentencing, alleging that his psychological evaluation was flawed because the examining doctor was not qualified. The district court granted the motion, and a new presentence report was prepared. On August 26, 1999, the district court resentenced appellant and again imposed consecutive terms of twenty-four to sixty months.

duties of the prosecution in relation to promises made in the negotiation of pleas of guilty"), and Riley v. Warden, 89 Nev. 510, 515 P.2d 1269 (1973).

We conclude that the prosecutor violated the plea agreement. Accordingly, we remand this matter to the district court with instructions to vacate appellant's sentence and hold a new sentencing hearing before a different district court judge.

It is so ORDERED.

 _____ Shearing	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk