

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHANIE REGINA OWENS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56155

**FILED**

OCT 04 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

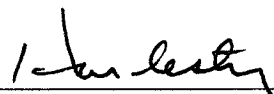
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Stephanie Regina Owens contends that the State breached the negotiated plea agreement. We disagree.

In exchange for Owens' guilty plea, the State, in relevant part, agreed "to not object to a treatment program under NRS Chapter 453/458 if [Owens] qualified. Otherwise, the State will concur with the recommendation of the Division of Parole and Probation." Owens' first sentencing hearing, in December 2009, was continued to gauge Owens' progress in adult drug court arising out of another case. When the second sentencing hearing took place five months later, the district court advised Owens that based on her poor performance in drug court in the other case, the court did not intend to place her in a treatment program for the underlying offense. When the court asked the State's position, the State replied, "I support the division's recommendation of probation." Owens 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 did not breach the plea agreement by supporting the Division’s recommendation of probation at sentencing. Once the district court advised Owens that it did not intend to place her in a treatment program for the underlying offense, the State had the right, under the plea agreement, to concur with the Division’s recommendation of probation. We therefore,

ORDER the judgment of conviction AFFIRMED.

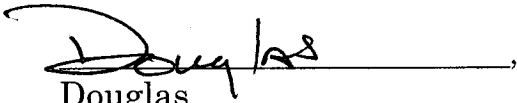
  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Pickering

DOUGLAS, J., dissenting:

I dissent. Although at sentencing the district court expressed some doubts as to whether treatment was a viable option, the court found that Owens was a drug addict. In my view, the State breached the plea agreement by supporting the Division’s recommendation of probation at sentencing, without it being evident that Owens did not qualify for the alternative treatment program. See Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1262 (1999) (“[T]he prosecutor must refrain from either

explicitly or implicitly repudiating the agreement.”). Consequently, I would reverse and remand this matter to the district court for proceedings before a different district court judge.

 J.  
Douglas

cc: Hon. Brent T. Adams, District Judge  
Washoe County District Court Clerk  
Attorney General/Carson City  
Washoe County Alternate Public Defender  
Washoe County District Attorney