

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY JAMES FORSYTHE A/K/A
SCOTT ALAN BLUETHMAN A/K/A
SCOTT B. ALAN A/K/A JAMES
FRANKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57049

FILED

JUL 15 2011

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 attempted escape from a classification assignment. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Larry Forsythe contends that the State violated the terms and spirit of the guilty plea agreement by arguing for (1) zero credit for time served and (2) a term of incarceration rather than probation. "When the State enters into a plea agreement, it is held to the most meticulous standards of both promise and performance with respect to both the terms and spirit of the plea bargain." Sparks v. State, 121 Nev. 107, 110, 110 P.3d 486, 487 (2005) (internal quotation marks omitted).


First, although the parties disagreed at the change of plea hearing about whether Forsythe was entitled to credit for time served, at sentencing the State did not argue for zero credit for time served or otherwise mention credits. Thus, Forsythe's first contention is belied by the record.

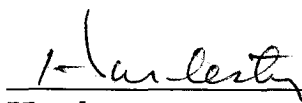
Second, the State agreed not to oppose a recommendation for probation if such a recommendation was made by the Division of Parole

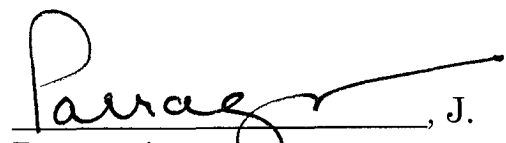
and Probation. However, because Forsythe expressly waived the preparation of a new presentence investigation report (PSI),¹ see NRS 176.135(3)(b), the Division never made any recommendation as to the sentence in this case. And the plea agreement did not include any promise to order a new PSI. Thus, the State did not breach the plea agreement by arguing for incarceration rather than probation and Forsythe's second contention lacks merit.

Finally, Forsythe contends that the district court violated his right to due process and statutory right of allocution by refusing to allow him to present a "full account of mitigating information at sentencing." Forsythe did not object to the district court's limitation on his argument at sentencing and we conclude that he has failed to demonstrate that any error affected his substantial rights. See Mendoza-Lobos v. State, 125 Nev. ___, ___, 218 P.3d 501, 507 (2009). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

¹To the extent Forsythe contends that he was coerced into proceeding without a new PSI, this contention is belied by the record. Forsythe was insistent that sentencing take place on the same day as the change of plea hearing.

cc: Chief Judge, Eighth Judicial District Court
Clark County Public Defender
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk