

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHAD RUSSELL HUNTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57403

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *H. J. J. J.*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of domestic battery by strangulation. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Chad Russell Hunter contends that the State implicitly repudiated the terms of his plea agreement by commenting on the severity of the crime and that this resulted in a sentence in excess of the agreed upon recommendation.

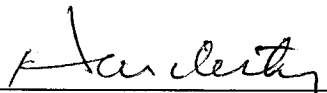
Where the State violates the terms of a plea agreement this court will reverse and remand for resentencing before a different judge. See Echeverria v. State, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003) (rejecting harmless-error analysis). However, in this case the State explicitly retained the right to argue at sentencing. See also Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1261 (1999) (explaining that State implicitly retains the right to argue or present facts at sentencing when it agrees to recommend a particular sentence). It did not implicitly violate the terms of the plea agreement by insinuating that the plea agreement should not be honored. Cf. Kluttz v. Warden, 99 Nev. 681, 684, 669 P.2d 244, 245-46 (1983) (reversing conviction where the prosecutor expressed his doubt about the terms of the plea bargain to the court). The State merely argued

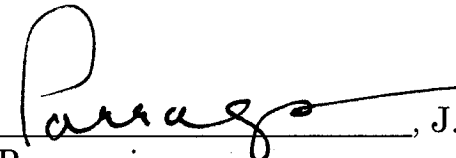
for the agreed upon sentencing recommendation by presenting the facts of the case and correcting misstatements made by the defense. “[T]he State is not required to stand mute in the face of factual misstatements or withhold relevant information from the court.” Sullivan, 115 Nev. at 388 n.4, 990 P.2d at 1261 n.4.

Having considered Hunter’s arguments and concluded that they lack merit we,

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Waters Law Firm LLC
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk