

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO RICHARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57531

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF AFFIRMANCE

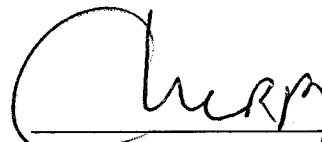
This is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

In his motion, filed on December 10, 2010, appellant claimed that the district court erred in allowing the State to argue for a sentence different from that agreed upon in the written plea agreement without first conducting an evidentiary hearing. Even were appellant's claims true, withdrawal of the guilty plea would not have been the appropriate remedy. If, as appellant implies, the State improperly breached the plea agreement, the appropriate remedy would be specific performance of the agreement. Citti v. State, 107 Nev. 89, 92-93, 807 P.2d 724, 727 (1991). However, if, as the State argued at the sentencing hearing, appellant breached the plea agreement first, the appropriate remedy pursuant to the terms of the plea agreement would be that the State may "argue for any

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

lawful sentence.” See generally State v. Crockett, 110 Nev. 838, 842-45, 877 P.2d 1077, 1078-81 (1994) (applying contract principles in analyzing a written plea agreement); Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) (“[W]hen a contract is clear on its face, it ‘will be construed from the written language and enforced as written.” (quoting Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990)). Accordingly, a motion to withdraw his guilty plea was not the appropriate vehicle in which appellant should have sought relief.² We therefore conclude that the district court did not err in denying appellant’s motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Valorie Vega, District Judge
Antonio Richard
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We note that appellant raised a similar claim in a post-conviction petition for a writ of habeas corpus pending before the district court.