

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUILLERMO SANDOVAL GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57810

**FILED**

MAR 07 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malone*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

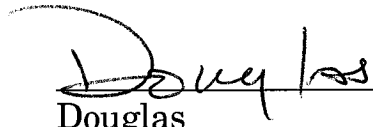
This is an appeal from a judgment of conviction, pursuant to an Alford plea, of attempted lewdness with a child under the age of 14. See Alford v. North Carolina, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

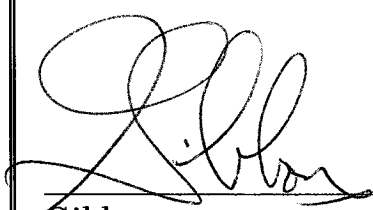
Appellant Guillermo Sandoval Garcia contends that the State violated the terms and spirit of the plea agreement by “unjustifiably challenging” the psychosexual evaluation, making negative comments about his conduct, and producing a representative from the Division of Parole and Probation to testify that she would like to review any supplemental psychosexual evaluation to ensure that the sentencing recommendation was accurate.

In exchange for Garcia’s plea in this matter, the State agreed to make no recommendation at sentencing. While the State may properly inform the court of any factual inaccuracies in the psychosexual evaluation without violating an agreement to make no recommendation, cf. Sullivan v. State, 115 Nev. 383, 388 n.4, 990 P.2d 1258, 1261 n.4 (1999) (citing United States v. Block, 660 F.2d 1086, 1091-92 (5th Cir. 1981)), we conclude the State’s challenge to the evaluator’s scoring of the Static 99 risk assessment test improperly presented the district court with

conjecture and opinion regarding Garcia's risk to reoffend. See Block, 660 F.2d at 1091. Further, the manner in which the State sought clarification from the evaluator went beyond a neutral request for information, in direct contradiction to the district court's instructions. We conclude that the State's actions constituted an indirect form of a sentence recommendation and violated the spirit of the plea agreement. See Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (when the State enters a plea agreement, it "is held to the most meticulous standards of both promise and performance" in fulfillment of both the terms and the spirit of the plea bargain (internal quotation marks omitted)). Accordingly, Garcia is entitled to a new sentencing hearing, before a different district court judge, see Echeverria v. State, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003), at which the State is held to the terms of the plea agreement.<sup>1</sup> We therefore,

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings before a different district court judge consistent with this order.<sup>2</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

---

<sup>1</sup>District Judge Michael Villani and Senior Judge James Brennan presided at Garcia's sentencing hearings. Accordingly, this case should not be assigned to these judges upon remand.

<sup>2</sup>In light of our disposition, we decline to consider Garcia's remaining contention.

cc: Chief Judge, Eighth Judicial District Court  
Hon. Stefany Miley, District Judge  
Hon. Michael Villani, District Judge  
Hon. James Brennan, Senior Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk