

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35615

DONALD WOODROW ANDERSON, JR.,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

APR 28 2000

JANE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony non-support of minor children for a period exceeding one year. The district court sentenced appellant to twenty-four (24) to sixty (60) months in the Nevada State Prison. Further, appellant was ordered to pay restitution in the amount of \$78,354.79.

Appellant contends the State breached the plea agreement wherein the prosecutor agreed to recommend probation. We agree.

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. *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting *Kluttz v. Warden*, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)). Due process requires the bargain be kept when the guilty plea is entered. *Id.* (citing *Santobello v. New York*, 404 U.S. 257 (1971); *Gamble v. State*, 95 Nev. 904, 604 P.2d 335 (1979)). Additionally, the State may not act to "explicitly or implicitly undercut the sentencing recommendation by attempting to persuade the sentencing court to impose a harsher sentence than that which

[the State] agreed to recommend." Sullivan v. State, 115 Nev. ___, ___, 990 P.2d 1258, 1262 (1999).

As agreed, the prosecutor recommended probation at appellant's sentencing hearing. However, the prosecutor undermined the recommendation by presenting testimony suggesting it would better serve the interests of the aggrieved parties if appellant were sentenced to prison in lieu of probation. Based at least in part upon this testimony, the district court ordered appellant to serve a prison sentence. Therefore, we conclude the State breached the plea agreement.¹

Accordingly, we remand to the district court with instructions to vacate appellant's sentence and hold a new sentencing hearing before a different district court judge. We further order the Washoe County District Attorney to specifically perform the plea agreement. See Citti v. State, 107 Nev. 89, 807 P.2d 724 (1991).

It is so ORDERED.

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

¹Further, we note the State conceded, on appeal, its sentencing recommendation was "implicitly, if not explicitly, undermined" by the testimony at issue.