

IN THE SUPREME COURT OF THE STATE OF NEVADA

NELSON RAY CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63633

FILED

FEB 19 2014

TRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

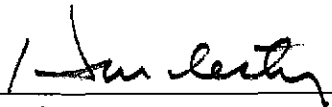
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted burglary. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

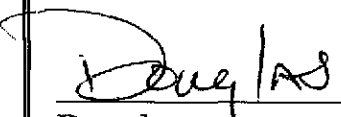
Appellant Nelson Ray Clark contends that the district court erred by concluding that his late arrival to the sentencing hearing released the State from its promise to recommend a certain sentence and asserts that the State breached the plea agreement by arguing for a sentence other than the one agreed to in the guilty plea agreement. Clark notes that the agreement only provided that the State would be released from its promise if he failed to appear and asserts that his late arrival did not constitute a failure to appear. We agree.

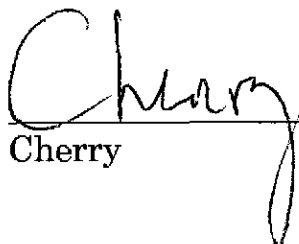
“When the State enters into a plea agreement, it is held to the most meticulous standards of both promise and performance with respect to both the terms and spirit of the plea bargain.” *Sparks v. State*, 121 Nev. 107, 110, 110 P.3d 486, 487 (2005) (internal quotation marks omitted). Here, Clark was not present at the time scheduled for his sentencing hearing. After defense counsel informed the court that he had not heard from Clark in a week and did not know where he was, the district court granted the State’s motion for the issuance of a bench warrant. The

record does not indicate exactly when Clark arrived in the courtroom; he was taken into custody in open court a little over an hour later while it appears the court's docket was still pending. At the continued sentencing hearing, counsel explained that Clark was late because he was arranging child care for his three-year-old and requested that the negotiations in the guilty plea agreement be honored. The district court determined—over Clark's objection—that Clark failed to appear because he was not present at the time his case was called. Under the circumstances presented, we conclude that the district court abused its discretion by determining that Clark's late appearance constituted a failure to appear. Thus, we also conclude that the district court erred by allowing the State to argue for a sentence harsher than the one agreed to in the guilty plea agreement. Clark 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. We therefore,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings before a different district court judge consistent with this order.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Chief Judge, Second Judicial District Court
Hon. Elliott A. Sattler, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk