

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY LEE GAVALAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67875

FILED

SEP 15 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of possession of a controlled substance. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Jeffrey Gavalas claims, in the alternative, (1) the State failed to provide sufficient proof of his breach of the plea agreement to support filing an amended information with an additional count of habitual criminality or (2) the State breached the plea agreement by filing an amended information with an additional count of habitual criminality without sufficient proof of his breach. "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 the spirit of the plea bargain." *Sparks v. State*, 121 Nev. 107, 110, 110 P.3d 486, 487 (2005) (internal quotation marks omitted).

At sentencing, the State informed the district court that Gavalas had breached the plea agreement by being arrested for a new

crime, the State was adding an allegation of habitual criminality by way of an amended information, and the new allegation was contemplated by the terms of the plea agreement. Defense counsel responded, "As far as the plea agreement goes, he did pick up a new charge that was found [on] probable cause by a magistrate, so I don't think we can object at this time."

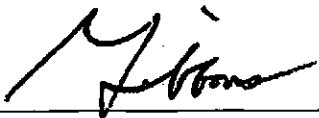
Gavalas provided adequate proof of his breach by conceding his arrest and the magistrate's probable-cause finding. Consequently, the State was released from its promise to stand silent and was free to pursue a habitual criminal adjudication under the terms of the plea agreement. Given these circumstances, Gavalas has not demonstrated plain error. *See Sullivan v. State*, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999) (observing unpreserved breach-of-plea allegations may be reviewed for plain error and failure to object "may be considered as evidence of the defendant's understanding of the terms of a plea agreement"); *see also Puckett v. United States*, 556 U.S. 129, 143 (2009) (holding unpreserved breach-of-plea allegations are subject to plain-error review).


Gavalas also claims the district court abused its discretion by adjudicating him a habitual criminal because his prior felony convictions were stale.¹ Gavalas did not preserve this claim of error for review and he

¹The guilty plea agreement informed Gavalas that if an independent magistrate confirmed probable cause against him for new criminal charges, the State would be free to argue for any legal sentence and term of confinement possible under the circumstances of the charges set forth in
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has not demonstrated plain error because there was no error: the habitual criminal statute “makes no special allowance for non-violent crimes or for the remoteness of [prior] convictions.” *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992); *see also Grey v. State*, 124 Nev. 110, 123, 178 P.3d 154, 163 (2008) (applying plain-error review to an alleged habitual-criminal-adjudication error).

Having concluded Gavalas is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

...continued

the charging document, to include any increased punishment as a habitual criminal. We note, however, that Gavalas was charged with a category E felony, which is normally mandatory probation; he was not informed in the plea agreement of the possible term of years he would be facing as a habitual criminal; and at the plea canvass the district court did not even inform him that he may be subject to habitual criminal adjudication. Because Gavalas has not argued that he was not provided adequate notice regarding the habitual criminal adjudication, we do not address this issue on appeal.

cc: Hon. Robert W. Lane, District Judge
Leventhal & Associates
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk