

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN JAMES GALLAGHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68146

FILED

NOV 19 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit battery. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant Bryan Gallagher first argues the State breached the plea agreement when it did not automatically withdraw Gallagher's felony plea and enter a new gross misdemeanor plea when Gallagher was honorably discharged from probation. We conclude the State did not breach the plea agreement.

The plea agreement specifically states "if Defendant successfully completes probation and is given an honorable discharge, then Defendant *can* withdraw his plea and enter a plea to (Gross Misdemeanor) Conspiracy to Commit Battery-Strangulation with credit for time served." (Emphasis added). The plain language of the plea agreement indicates Gallagher had the option to withdraw his plea once he honorably discharged probation. Therefore, Gallagher needed to file the necessary motions to withdraw his plea, and the State did not breach the plea agreement by failing to file the motions.

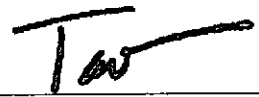
Next, Gallagher claims the district court abused its discretion by failing to grant his motion to file the judgment of conviction nunc pro

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tunc to the date he honorably discharged probation. Gallagher fails to demonstrate the district court abused its discretion. "The object and purpose of a nunc pro tunc order is to make a record speak the truth concerning acts done. . . . [A]n order nunc pro tunc cannot be made use of nor resorted to, to supply the omitted action." *Robertson v. State*, 109 Nev. 1086, 1088 n.1, 863 P.2d 1040, 1041 (1990) *overruled on other grounds by Krauss v. State*, 116 Nev. 307, 310, 998 P.2d 163, 165 (2000) (internal quotation marks omitted). In this case, it would be improper to issue the judgment of conviction nunc pro tunc because the withdrawal of the plea was not done on the date Gallagher honorably discharged probation. Therefore, the motion was properly denied, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk