

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LEE NEAL, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69834

FILED

SEP 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to an *Alford*¹ plea of two counts of sexually motivated coercion. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant David Neal, Jr., claims the State breached the terms of the guilty plea agreement by contending it had “regain[ed] the right to argue’ and by contradicting and disparaging the defendant’s version of events at sentencing,” and Neal asserts “[t]he appropriate remedy is specific performance and a remand for sentencing in front of a different court.”

“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). “A plea agreement is construed according to what the defendant reasonably understood when he or she entered the plea.” *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).


Here, the written plea agreement and plea canvass demonstrate Neal reasonably understood the State would not oppose probation so long as he was not deemed a high risk to offend; the State did not have the unqualified right to argue for any legal sentence unless he failed to interview with the Division of Parole and Probation, failed to appear at any subsequent hearing in this case, or an independent magistrate confirmed there was probable cause to believe he had committed new criminal offenses; and his sentence was strictly up to the district court, so he was not promised probation, leniency, or special treatment.


The record reveals the district court rejected the State's assertion it had regained the right to argue at sentencing as a result of Neal's house arrest violations. The district court allowed Neal time to file a written motion to withdraw his *Alford* plea, and it subsequently denied Neal's motion after finding the State performed its agreement, the State did not argue the case, and the district court was not bound by the parties' sentencing recommendation. The State objected to several of Neal's representations and characterizations of the case when sentencing resumed.

We conclude from this record that the State did not breach the terms or the spirit of the plea agreement and Neal is not entitled to relief. The State's assertion it had regained the right to argue at sentencing did not explicitly or implicitly undermine the plea agreement, *see generally id.* at 389, 990 P.2d at 1262, and the State's objections to Neal's version of events were permissible to correct misstatements, *see United States v. Block*, 660 F.2d 1086, 1091 (5th Cir. 1981) ("Efforts by the government to provide relevant factual information or to correct misstatements are not

tantamount to taking a position on the sentence and will not violate the plea agreement.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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