

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL R. HINOJOSA, JR.,

No. 36430

Appellant,

vs.

FILED

THE STATE OF NEVADA,

NOV 28 2000

Respondent.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of 14. The district court sentenced appellant to a prison term of 32 to 144 months, and ordered appellant to pay restitution in the amount of \$2,087.99.

Appellant contends that the State breached the plea agreement at sentencing. Specifically, appellant argues that the State agreed to recommend a maximum sentence of sixty months, but the prosecutor presented argument that persuaded the district court to impose a sentence in excess of sixty months.

It is true that the prosecutor presented argument at sentencing, but the plea agreement specifically provided that "the State has agreed to retain the right to argue at sentencing." Moreover, this court recently held that "[w]here the state agrees to make a particular recommendation, the agreement . . . does not by its terms restrict the state's right to argue or presents facts in favor of the sentence recommendation." *Sullivan v. State*, 115 Nev. 383, 389, 990 P.2d 1258, 1261 (1999). We note that the State affirmatively recommended a maximum sentence of sixty months, and that the

00-20807


argument made by the State was made to support that recommendation in the face of a psychological evaluation certifying that appellant was not a menace to the health, safety or morals of others, and therefore eligible for probation. Accordingly, we conclude that there was no breach of the plea agreement.

Having considered appellant's contention and concluded that it is without merit, the judgment of conviction is affirmed.

It is so ORDERED.


Shearing J.


Agosti J.


Leavitt J.

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Althea Gilkey
Clark County Clerk