

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED GERALD SWARTZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37196

FILED

MAR 15 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Buskirk*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of theft. The district court sentenced appellant to serve 24-60 months in prison and ordered appellant to pay \$24,362.94 in restitution.

Appellant contends that the State breached the plea agreement in this case by arguing for a term of incarceration. We disagree.

When the State enters a plea agreement, it is held to "'the most meticulous standards of both promise and performance'" in fulfillment of both the terms and the spirit of the plea bargain.¹ Due process requires that the bargain be kept when the guilty plea is entered.²

Here, the plea agreement provided that the State agree to a four-month stay of the sentencing proceedings to

¹Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

²Id.

01-04653



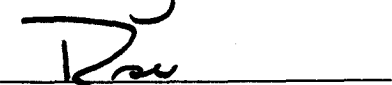
allow appellant to pay restitution. The State further agreed that it would not oppose probation if appellant paid restitution within that time, but that it would retain its right to argue for an appropriate sentence if appellant did not pay restitution. For various reasons, appellant had not paid restitution at the time of sentencing. The State therefore argued for a prison term based on the charged offenses and appellant's criminal history.

Based on our review of the record, we conclude that the State did not breach the plea agreement. There is nothing in the record to suggest that the State intentionally interfered with appellant's ability to pay restitution. The parties seem to agree that the prosecutor in this case did not know about other charges that were filed against appellant three days after he entered his guilty plea in this case, which led to appellant's arrest and incarceration for approximately one month. Moreover, there is nothing in the record to suggest that the State sought restrictive house arrest conditions in the other case to interfere with appellant's ability to work and pay restitution in this case. Furthermore, the plea agreement did not guarantee that appellant would remain free during the four months or that the State would not prosecute any additional charges (other than those involving the Fiesta Casino and the Texas Station Casino) that might come to light during that time. Because appellant had not paid restitution during the four months

before sentencing, the State was free to argue for an appropriate sentence. We therefore conclude that the State did not breach the plea agreement.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 _____	J.
Shearing	
 _____	J.
Agosti	
 _____	J.
Rose	

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk