

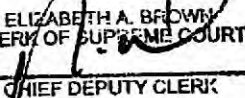
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY CHARLES BAYOUTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80997-COA

FILED

MAR 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Timothy Charles Bayouth appeals from a district court order denying a motion for specific enforcement of his plea agreement.¹ Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Bayouth argues that the district court erred by denying his February 9, 2020, motion for specific enforcement of the drop-down provision in his plea agreement. Due process requires that a plea agreement be kept when a defendant enters a guilty plea. *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986). Unambiguous terms in a plea agreement are given their plain meaning. *See State v. Second Judicial Dist. Court*, 134 Nev. 384, 392, 421 P.3d 803, 809 (2018).

Bayouth agreed to plead guilty to one count of coercion, a category B felony. The drop-down provision of the written plea agreement stated that, if Bayouth “is honorably discharged from probation,” he would be allowed to withdraw his plea and plead guilty to a gross misdemeanor. The plea agreement provided that the State would not oppose probation but

¹The Nevada Supreme Court concluded the courts of appeal have jurisdiction over this appeal. *See Bayouth v. State*, Docket No. 80997 (Order Reinstating Briefing, June 18, 2020).

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the district court was not obligated to follow the sentencing agreement and could impose any legal sentence. Thus, by the plain language of the plea agreement, Bayouth could avail himself of the drop-down provision only if he received probation. Therefore, we conclude the district court did not err when it denied his motion for specific enforcement of his plea agreement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Gregory & Waldo, LLC
Waldo Law, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent, Bayouth argues the State breached the terms of the plea agreement by arguing the facts of the case at the sentencing hearing, Bayouth waived this claim by failing to raise it on direct appeal. Therefore, we do not consider it here. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (holding a claim that the state breached the plea agreement at sentencing must be pursued on direct appeal or it will be considered waived in subsequent proceedings), *disapproved of on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).