

IN THE SUPREME COURT OF THE STATE OF NEVADA

NAHUM BROWN,

No. 37863

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 11 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,¹ of four counts of robbery. The district court sentenced appellant to two consecutive prison terms of 38 to 96 months and two concurrent prison terms of 38 to 96 months.

Appellant contends that the State breached the plea agreement at sentencing. Specifically, appellant argues that the State agreed to recommend a maximum sentence of 96 months on each count and not to oppose running the sentences concurrently, but the prosecutor presented a recitation of the facts that persuaded the district court to run two of the sentences consecutively.

It is true that the prosecutor recounted the facts at sentencing, but this court has 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 present facts in favor of the sentence recommendation."² We note that the State affirmatively recommended a maximum sentence of 96 months and specifically stated that it had no opposition to running the sentences concurrently, and that the State did not implicitly undercut the sentencing recommendation by its comments.

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

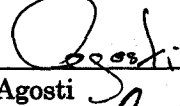
²Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1261 (1999).

Accordingly, we conclude that there was no breach of the plea agreement and we


ORDER the judgment of conviction AFFIRMED.



Young J.



Agosti J.



Leavitt J.

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Gregory L. Denuc
Clark County Clerk