

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORY L. LYTTLE,

No. 38170

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 10 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 guilty plea, of attempted sexual conduct between a school employee and a pupil. The district court sentenced appellant to serve a prison term of 12 to 36 months.

Appellant's sole contention is that the State breached the plea agreement. Particularly, appellant argues that the State breached its promise to recommend that appellant's offense be treated as a gross misdemeanor because the Nevada Division of Investigation (NDI) sent the Division of Parole and Probation a letter requesting that appellant's offense be treated as a felony. Appellant argues that NDI was bound by the plea agreement with the State because it was an investigatory and prosecuting agency in appellant's case. Appellant further argues that NDI's request resulted in the Division of Parole and Probation's recommendation that appellant's offense be treated as a felony.


We conclude that appellant's contention lacks merit. There is no authority for the proposition that NDI is bound by an agreement entered into by appellant and the Lincoln County District Attorney.¹ Further, the State fulfilled the promise it made to appellant by affirmatively recommending at appellant's sentencing hearing that

¹Compare Sullivan v. State, 115 Nev. 383, 388 n.4, 990 P.2d 1258, 1261 n.4 (1999) (noting that State may provide information to the Department of Parole or Probation without violating a plea agreement where it promised to remain silent or make no recommendation).

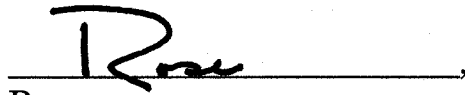
appellant's offense be treated as a gross misdemeanor.² Accordingly, the State did not breach the plea agreement.

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

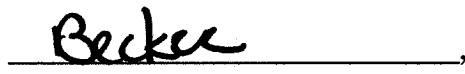
ORDER the judgment of conviction AFFIRMED.



Shearing J.



Rose J.



Becker J.

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General
Lincoln County District Attorney
Dickerson, Dickerson, Consul & Pocker
Lincoln County Clerk

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