

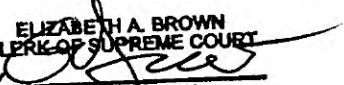
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM TYS MULDROW, A/K/A  
WILLIAM MULDROW, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87712-COA

**FILED**

OCT 09 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER VACATING JUDGMENT AND REMANDING*

William Tys Muldrow appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted establishing or possessing a financial forgery laboratory. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Muldrow signed a guilty plea agreement, which provided that the State would have no opposition to probation but that Muldrow stipulated to a sentence of 24 to 60 months if, among other things, he “fail[ed] to appear at any subsequent hearing in the instant case” or if “an independent magistrate, by affidavit or declaration review, or a grand jury confirms probable cause against [him] for any new criminal charge” (collectively, the Stipulated Sentence Provision). Muldrow argues the State violated the terms of his guilty plea agreement by arguing for, and the district court erred by imposing, the stipulated prison sentence because the probable cause underlying his arrest on a new charge was not confirmed by a magistrate.

On appeal, the State concedes that the condition requiring an independent magistrate confirm probable cause for Muldrow's new charge was not satisfied because Muldrow posted bond before the justice of the peace held a probable cause hearing and that the filing of a complaint does not constitute confirmation of probable cause by an independent magistrate. Rather, the State argues that the district court properly imposed the stipulated sentence because Muldrow twice failed to appear at two hearings held after the entry of his plea, thus satisfying a separate condition in the Stipulated Sentence Provision.

A district court's sentencing discretion is generally not bound by the terms of a plea agreement. *Van Buskirk v. State*, 102 Nev. 241, 244, 720 P.2d 1215, 1217 (1986). However, guilty plea agreements are subject to general contract principles. *State v. Crockett*, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994). Thus, a plea agreement is construed from its plain language and enforced as written. *Burns v. State*, 137 Nev. 494, 497, 495 P.3d 1091, 1097 (2021).

At the sentencing hearing, it appears the district court did not rely on Muldrow's failure to appear in imposing the stipulated sentence; rather, the district court only mentioned Muldrow's arrest on a new charge. Further, the record contains only the district court minutes regarding the two hearings from which Muldrow was absent. The November 8, 2023, minutes reflect that Muldrow's counsel advised the court that Muldrow was still in custody. The minutes also reflect that the district court did not grant the State's request for a bench warrant and continued the matter so that Muldrow could appear. The November 13, 2023, hearing minutes reflect that counsel stated he attempted to contact Muldrow and sought a

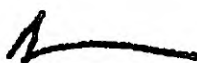
continuance of the matter pending a hearing in Muldrow's new case. The State argued that Muldrow had "two new cases" and that, pursuant to negotiations, he had thus stipulated to the 24-to-60-month sentence. The State again sought a bench warrant which was apparently denied by the district court. Instead, the district court found that the criminal complaints in the new cases had not yet been filed and ordered that the sentencing hearing "stands." The record includes no district court findings related to Muldrow's absence or that his alleged failures to appear satisfied that condition in the Stipulated Sentence Provision. *Cf. Int'l Fid. Ins. Co. v. State*, 114 Nev. 1061, 1062, 967 P.2d 804, 805 (1998) (considering whether a defendant out on bail who was absent for subsequent hearings forfeited the bail bond where the district court implicitly excused the absence by continuing proceedings pending counsel's location of the accused and noting the district court is vested "with implied authority to excuse absences by persons accused[ ] [and] the court may implicitly excuse an absence").

We conclude the record does not clearly demonstrate that Muldrow's absence from the two hearings satisfied the condition in the Stipulated Sentence Provision. Accordingly, we vacate the judgment of conviction and remand to the district court to determine whether Muldrow's absence from the two hearings satisfied the Stipulated Sentence Provision, thus subjecting Muldrow to the stipulated sentence. If the district court finds that Muldrow's absence from the two hearings satisfied the Stipulated Sentence Provision, it may reinstate the judgment of conviction because the State's argument did not violate the guilty plea agreement and the district court did not abuse its discretion by imposing the stipulated sentence. If the district court finds that Muldrow's absence at the two hearings did not

satisfy the Stipulated Sentence Provision, then the State breached the guilty plea agreement by opposing probation at sentencing, and a new sentencing hearing before a different judge must be held. *See Echeverria v. State*, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003). For these reasons, we

ORDER the judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Danielle K. Pieper, District Judge  
Nevada Defense Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk