

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEAH JEAN STRAKA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88251-COA

**FILED**

MAR 24 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Leah Jean Straka appeals from a judgment of conviction, entered pursuant to a guilty plea, of distribution of child pornography. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Straka argues the State breached the guilty plea agreement by arguing for a sentence outside the agreed-upon recommendation. Straka contends the prosecutor improperly argued for the “maximum” sentence, commented on how disgusted he was with Straka, and emphasized Straka’s harm to the victims and the need for imprisonment. Straka did not object to the prosecutor’s statements. However, the parties agree that this court can review Straka’s claim for plain error. *See Sullivan v. State*, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999).

To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant’s substantial rights. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). When the State enters into a plea agreement, it “is held to the most meticulous standards of both promise and performance,” and “violation of [either] the terms or the spirit of the plea bargain requires reversal.” *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (internal

quotation marks omitted). “[I]n arguing in favor of a sentencing recommendation that the state has agreed to make, the prosecutor must refrain from either explicitly or implicitly repudiating the agreement.” *Sullivan*, 115 Nev. at 389, 990 P.2d at 1262; see also *Kluttz v. Warden*, 99 Nev. 681, 684, 669 P.2d 244, 245-46 (1983) (concluding the prosecutor’s comment that the State entered into the plea agreement without knowledge of all salient facts regarding defendant’s criminal history violated the spirit of the agreement).

Here, the plea agreement provided that the State would not “argue for a sentence greater than four (4) to ten (10) years in the Nevada Department of Corrections” and that “otherwise the parties retain[ed] the full right to argue.” At the beginning of the sentencing hearing, the district court commented on the plea agreement’s provision that the prosecutor could not recommend a sentence greater than 4 to 10 years in prison. Thereafter, Straka argued for probation. The prosecutor began his sentencing argument by stating he did not agree that the case warranted probation before recounting the facts of the offense and the impact on the victims. Thereafter, the prosecutor stated:

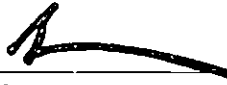
I can’t begin to describe how disgusted I am with this particular individual. She deserves prison for this case. We did afford her the benefit of only arguing for up to four to ten years. I think she deserves the maximum amount of time in prison.

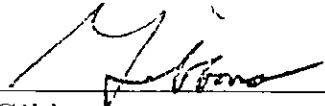
In context, it is not clear from the record that the prosecutor breached the plea agreement as the prosecutor’s request for the “maximum” sentence appears to be a request for the maximum sentence the prosecutor could argue for within the bounds of the plea agreement. Further supporting this conclusion is the fact that the court subsequently confirmed with the prosecutor that he was recommending a sentence of 4 to 10 years


and later stated, "I know the State's limited to four to ten years, but this Court is not." Thus, the prosecutor's sentencing arguments do not appear to have been made to repudiate the plea agreement based on a change in the prosecutor's understanding of the case but instead were most likely offered to demonstrate the maximum prison sentence that could be recommended pursuant to the plea agreement—and not probation—was appropriate in this case.

In light of these circumstances, we conclude Straka fails to demonstrate the prosecutor's sentencing arguments amounted to error plain from the record. Therefore, Straka is not entitled to relief based on this claim, and we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Kimberly A. Wanker, District Judge  
SDS Chartered, LLC  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk