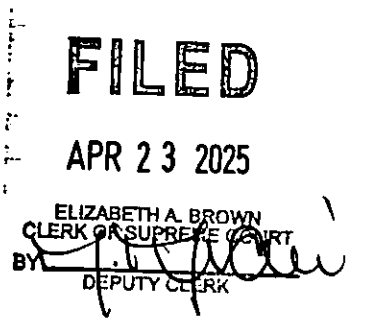
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LESLIE MAREILA CAMPOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89423-COA



ORDER OF AFFIRMANCE

Leslie Mareila Campos appeals from a judgment of conviction, entered pursuant to a guilty plea, of two counts of driving under the influence of alcohol and/or a controlled or prohibited substance, above the legal limit, resulting in substantial bodily harm. Second Judicial District Court, Washoe County; Tammy Riggs, Judge.

Campos argues the State breached the plea agreement when the prosecutor informed the court during sentencing that he did not believe the plea bargain was warranted in this case because the facts were egregious and that the State only entered into a plea agreement at the behest of the victims' fathers. Campos contends the prosecutor's statements implied that the plea agreement should not be followed or that the State's error in making an unwarranted plea offer could be countered by the court in imposing the maximum sentence possible under the plea agreement.

Campos did not object to the prosecutor's statements, so we review 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 under current law from a casual inspection of the record, 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 a "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 possible prison term for each count was 2 to 20 years. The agreement also provided that the State would recommend the counts run concurrently but that otherwise the parties were free to argue. Campos presented significant argument and evidence in mitigation and asked for concurrent 2-to-8-year prison terms. During its sentencing argument, the prosecutor recounted Campos's criminal history, the facts of the offense, and the injuries her children sustained. The prosecutor explained how Campos hit a tree with her children in the car travelling over 100 mph and described Campos's behavior regarding the offense as "egregious." In support of the argument that Campos be given the maximum allowable sentence provided for by the plea agreement, the prosecutor stated:

> Your Honor, I've appeared in front of you for over a year now, I think I can count on one hand how many times I've asked for a maximum sentence on

> a case. And I'm asking for 8 to 20 on both counts in this case. They are to be run concurrent. That was the agreement reached with the State and, frankly, I want to explain a little bit about that. That was mercy extended to the defendant. And, frankly, it wasn't mercy extended by me, it was by the fathers of both children. I spoke with them, and they wanted this case to be resolved, in a quicker—in a quick fashion. They didn't want this dragging out a year or year and a half going through jury trial. They saw what—they saw mental—they were concerned about the mental health of their children seeing their mother go through the court proceedings. And so based on that we had talked and agreed to a concurrent sentence as—frankly, that was not something I was interested in doing. I think this—the facts of this case are egregious, and it wasn't warranted. However, based on the families of both Angelo and Ashley, that was the agreement we came to. And so I am asking for 8 to 20 years on both, concurrent. I think it's appropriate. I think it's fair. I think it's just.

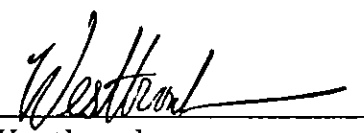
In context, the record does not clearly demonstrate that the prosecutor argued the State erroneously offered Campos a plea deal and the only way to rectify the error was by imposing the maximum sentence, as argued by Campos. Instead, the prosecutor appeared to only offer an explanation as to why the maximum allowable sentence was warranted based on the circumstances of the case, and not as grounds to repudiate the plea agreement because the prosecutor's understanding of the case had changed. Further, Campos's failure to object may be considered as evidence that she understood the prosecutor's argument to be within the bounds allowed by the plea agreement. *See Sullivan*, 115 Nev. at 387 n. 3, 990 P.2d at 1260 n. 3.

In light of these circumstances, we conclude Campos fails to demonstrate the State plainly breached the plea agreement. Therefore, Campos 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. Tammy Riggs, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk