

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY LEON PLUMB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38429

FILED

MAY 15 2002

JANE F. M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion for specific performance of plea agreement and motion for reconsideration or to withdraw guilty plea.

On December 23, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of driving and/or being in actual physical control while under the influence of intoxicating liquor. The district court sentenced appellant to serve a maximum term of sixty months with a minimum term of twenty-four months in the Nevada State Prison. This court dismissed appellant's direct appeal.¹

On June 1, 2001, appellant filed a motion for specific performance of plea agreement in district court. The State opposed the motion. On July 13, 2001, appellant filed a motion for reconsideration or to withdraw guilty plea in district court. The State opposed the motion.

¹Plumb v. State, Docket No. 35544 (Order Dismissing Appeal, May 10, 2000).

On August 16, 2001, the district court issued an order denying appellant's motions.² This appeal followed.

In his motion for specific performance of the plea agreement, appellant contended that the district court breached the plea agreement because it did not sentence him to the statutory minimum, as recommended by the State. Appellant signed a written plea agreement that specifically stated his sentence would be determined by the district court, which was not obligated to follow any recommendation regarding sentencing. In addition, the district court conducted a plea canvass during which appellant was asked if he understood that, while the State had agreed to recommend the minimum sentence, the court was not bound by that recommendation and could sentence him to a maximum of up to six years. Appellant said he understood. Therefore, we find that appellant's contention is without merit.

Appellant also contended that the State breached the plea agreement because it did not argue that appellant be given the minimum sentence. The State affirmatively recommended to the district court that the minimum sentence be imposed, and made no comments that implicitly or explicitly repudiated the agreement.³ Therefore, we find that the State did not breach the terms or spirit of the plea agreement, and appellant's contention is without merit.

²It is unclear from the record on appeal whether the district court had actually ruled on appellant's first motion when the motion for reconsideration was filed. However, we find that the district court did not err in denying both motions in its written order.

³See United States v. Benchimol, 471 U.S. 453, 455 (1985); Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1262 (1999).


In his motion for reconsideration or to withdraw guilty plea, appellant argued that the State breached the plea agreement by opposing his motion for specific performance of the plea agreement, and that the Nevada Legislature's repeal of NRS 174.065(3), allowing defendant's to withdraw a guilty plea if the district court rejected a sentence recommendation, was unconstitutional. We find these arguments to be patently without merit.


Accordingly, we find that the district court did not err in denying appellant's motion for specific performance of plea agreement and motion for reconsideration or to withdraw guilty plea.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
Anthony Leon Plumb
Clark County Clerk