IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASMINE JENEVIVE RAZO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90377-COA

FILED

MAR 12 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Jasmine Jenevive Razo appeals from a judgment of conviction, entered pursuant to a guilty plea, of fraudulent use of a credit or debit card or identifying information on a card with the intent to defraud.[1] Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Razo argues the State breached the plea agreement when it argued for community service as a condition of Razo's deferred judgment where the only condition stated in the plea agreement was payment of restitution. Razo contends that because restitution was the sole condition addressed in the plea agreement, the maxim of expressio unius est exclusio alterius dictates that the plea agreement necessarily excluded all other conditions, including the community service condition argued for by the State. The State asserts the plain language of the plea agreement did not prevent it from requesting community service as a condition of Razo's deferred judgment. Further, the State contends that, because the plea agreement provided the State would not oppose deferred judgment

[1]We have considered the supplemental briefing ordered by this court and conclude that it is proper to consider Razo's appeal on the merits.

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pursuant to NRS 176.211 and because community service may be imposed as a condition of deferred judgment pursuant to NRS 176.211(2), it did not breach the plea agreement by requesting community service as it did not oppose deferred judgment.

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 v. State*, 115 Nev. 383, 389, 990 P.2d 1258, 1262 (1999). Contract principles apply to plea agreements, and they are enforced as written in accordance with "what the defendant reasonably understood when he or she entered the plea." *Aldape v. State*, 139 Nev. 388, 390, 535 P.3d 1184, 1188 (2023). Ambiguities in plea agreements are construed against the State as the drafter of the plea agreement. *Id.*

Here, the plea agreement provided the following:

> In exchange for my plea of guilty, the State, my counsel and I have agreed to recommend the following: I agree to pay all provable restitution. The State will not oppose diversion under [NRS] 176.211, and the State will not pursue any other criminal charges arising out of this transaction or occurrence.

At Razo's sentencing hearing, the State did not oppose deferral of the judgment in accordance with the plea agreement. However, the State asked that Razo be ordered to complete 120 hours of community service as a condition of her deferred judgment. Razo's counsel objected, arguing "there was never an agreement for community service between the district

attorney and Ms. Razo in this case." The district court continued the sentencing hearing and allowed the parties to brief the issue of whether the State breached the plea agreement by asking for community service as a condition of Razo's deferred judgment. At the outset of the continued sentencing hearing, the district court overruled Razo's objection, finding that the State did not breach the plea agreement by asking for community service as a condition of Razo's deferred judgment. Thereafter, as part of her sentencing argument, Razo contended there was no meeting of the minds regarding community service and asked the court not to impose it. Ultimately, the district court entered an order of deferral with conditions, including the conditions that Razo pay restitution to the victim and complete 100 hours of community service. *See* NRS 176.211(1) (providing that, upon a plea of guilty, a district court may, "without entering a judgment . . . and with the consent of the defendant, defer judgment on the case . . . and set forth specific terms and conditions for the defendant"); NRS 176.211(2) (listing possible terms and conditions for the deferral period, including but not limited to "[p]ayment of restitution" and "[c]ompletion of a term of community service").

Considering the facts of this case, we conclude the State breached the plea agreement at sentencing by asking the district court to impose community service. In the plea agreement, the parties agreed the State would not oppose deferred judgement. They also agreed to recommend one condition: the payment of restitution. Consistent with the maxim of expressio unius est exclusio alterius, which means "the expression of one thing is the exclusion of another," *State v. Javier C.*, 128 Nev. 536, 541, 289 P.3d 1194, 1197 (2012), we agree with Razo that the inclusion of the one, specific condition in the plea agreement indicates the parties

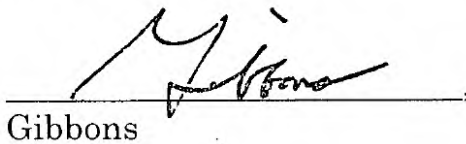
agreed not to recommend any further conditions, *see Flyge v. Flynn*, 63 Nev. 201, 243, 166 P.2d 539, 557 (1946) (providing that the "very reasonable" maxim of expressio unius est exclusio alterius "is frequently applied in the construction of statutes, and also of deeds, conveyances, contracts, and other instruments"). To the extent the plea agreement is ambiguous as to the parties' understanding about recommending further conditions, we construe such ambiguity against the State. Accordingly, we conclude that Razo could have reasonably understood at the time she entered her plea that the State was prohibited from recommending any condition other than restitution. That understanding is supported by the fact that Razo (1) objected when the State argued for community service, and (2) proffered that there was no agreement or meeting of the minds between her and the State regarding community service. *Cf. Sullivan*, 115 Nev. at 387 n.3, 990 P.2d at 1260 n.3. (providing that a defendant's failure to object to the State's alleged breach of the plea agreement "may be considered as evidence of the defendant's understanding of the terms of a plea agreement").

Because we conclude the State breached the plea agreement, we vacate the judgment of conviction and remand this case for a new sentencing hearing in front of a different judge. *See Echeverria v. State*, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003) (holding "that when the State breaches a plea agreement, the case must be reassigned to a different sentencing judge for resentencing"). At the new sentencing hearing, we order the State to specifically perform the plea agreement by not opposing deferred judgment pursuant to NRS 176.211 and by not recommending any condition other than restitution. *See Citti v. State*, 107 Nev. 89, 94, 807 P.2d 724, 727 (1991) (discussing when specific performance is the proper remedy for when the State breaches of the plea agreement). Although we anticipate the new

sentencing judge will impose the same sentence that was previously imposed in this matter, the new sentencing judge is not bound by the State's recommendation and is free to consider Razo's conduct that occurred after the entry of her plea.[2] Accordingly, we

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

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Egan J. Walker, Chief Judge
Second Judicial District Court, Department 4
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[2]*See Villalpando v. State*, 107 Nev. 465, 468, 814 P.2d 78, 80 (1991) (ordering the prosecution, on remand before a new sentencing judge, "to recommend probation in accordance with the plea agreement" and holding that "[t]he sentencing judge is not bound by the prosecution's recommendation and is free to consider Villalpando's failure to appear at his original sentencing as well as his subsequent activities").