



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETER THOMAS NEREU, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 91046-COA

*ORDER VACATING JUDGMENT AND REMANDING*

Peter Thomas Nereu, Jr., appeals from a judgment of conviction, entered pursuant to a guilty plea, of sexual assault, attempted sexual assault, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Nereu argues the State breached the plea agreement by arguing for a sentence greater than what was agreed to by the parties. Nereu argues the condition precedent to the State being allowed to argue for a higher sentence was not met, namely that the State did not demonstrate that an independent magistrate, by affidavit review, confirmed probable cause for new criminal charges. The State contends that an independent magistrate determined probable cause existed to support that Nereu engaged in new criminal conduct and that the distinction between probable cause for arrest and for charges is largely semantics. The State further argues that the intent of the guilty plea agreement language was unmistakable—Nereu was not to commit new crimes while awaiting sentencing.

“When the State enters into a plea agreement, it is held to the most meticulous standards of both promise and performance with respect to both the terms and the spirit of the plea bargain.” *Sparks v. State*, 121

Nev. 107, 110, 110 P.3d 486, 487 (2005) (internal quotation marks omitted). “A plea agreement is construed according to what the defendant reasonably understood when he or she entered the plea.” *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999). Where, as here, the State drafts the plea agreement, ambiguities in the plea agreement are construed against the State. *Aldape v. State*, 139 Nev. 388, 390, 535 P.3d 1184, 1188 (2023). “[T]he State’s violation of a plea agreement requires reversal.” *Echeverria v. State*, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003) (internal quotation marks omitted).

Here, the plain language of the guilty plea agreement provided that the State would regain the right to argue for any lawful sentence if an independent magistrate, by affidavit review, confirmed probable cause for new criminal charges. The record demonstrates that the magistrate confirmed probable cause for Nereu’s arrest. Although the State argues the distinction is semantics, the State fails to present cogent argument or citation to legal authorities to demonstrate that a determination of probable cause for an arrest equates to a determination of probable cause for new charges. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating issues not cogently argued or supported by relevant authority need not be considered on appeal). And we must construe any ambiguity against the State as the drafter of the plea agreement. *Aldape*, 139 Nev. at 390, 535 P.3d at 1188.

But even if the guilty plea agreement was clear, there is nothing in the record showing what the alleged new charge was nor that a magistrate found probable cause for that particular charge. Thus, in arguing that it had regained the right to argue for any lawful sentence, the

State did not support its argument with documentation that Nereu's conduct satisfied the condition precedent.

Further, we note that the record before us does not demonstrate the magistrate's probable cause determination was based on affidavit review. In conducting an initial appearance hearing for multiple individuals, the justice of the peace informed the group that, in everyone's case, it had reviewed the "Temporary Custody Record; arrest report; the Nevada Pretrial Risk Assessment Tool" and a financial affidavit, if one was made available.<sup>1</sup> Nothing in this statement demonstrates the magistrate reviewed an affidavit as required by the plain language of the plea agreement.

Having considered the record in this case and construed any ambiguity against the State as the drafter of the agreement, we conclude that the condition in the guilty plea agreement, that an independent magistrate, by affidavit review, confirm probable cause for new criminal charges, was not clearly satisfied and that the State breached the plea agreement when it argued for a higher sentence. Therefore, we vacate the judgment of conviction and remand this matter for a new sentencing hearing in front of a different judge, where the State is required to specifically perform the terms of the guilty plea agreement. *See Echeverria*, 119 Nev. at 44, 62 P.3d at 745. Accordingly, we

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<sup>1</sup>The State argues that the guilty plea agreement must refer to a probable cause determination that the defendant committed new criminal acts because the agreement expressly refers to a probable cause finding by "affidavit review," which occurs before a formal filing. The State fails to offer a cite for this proposition, and NRS 171.106(2) clearly contemplates probable cause review by a magistrate on the affidavits filed contemporaneously with a complaint.

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



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Tara D. Clark Newberry, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk