

**FILED**Aug 27 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY STAFFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90237

Appeal from a judgment of conviction, pursuant to a guilty plea,
of attempted battery with substantial bodily harm. Eighth Judicial District
Court, Clark County; Mary Kay Holthus, Judge.

Vacated and remanded.

Nancy M. Lemcke, Public Defender, and Kelsey Bernstein, Deputy Public
Defender, Clark County,
for Appellant.

Aaron D. Ford, Attorney General, Carson City; Steven B. Wolfson, District
Attorney, and Karen Mishler, Chief Deputy District Attorney, Clark
County,
for Respondent.

BEFORE THE SUPREME COURT, HERNDON, C.J., and BELL and
STIGLICH, JJ.

OPINION

By the Court, STIGLICH, J.:

For the first time, we consider whether a failure-to-appear
clause in a guilty plea agreement may be enforced against a defendant who

remains in custody. A failure-to-appear clause in a plea agreement releases the State from its promises under the agreement should the defendant fail to appear at any subsequent hearing. The purpose of a failure-to-appear clause is to ensure out-of-custody defendants do not abscond, necessitating police resources to bring the defendant to court. This purpose is not served when the defendant is already in custody, and we thus hold that a failure-to-appear clause may not be enforced against an in-custody defendant.

Appellant Johnny Stafford pleaded guilty to attempted battery with substantial bodily harm, and the State agreed to recommend a lesser sentence conditioned on Stafford's appearance at all subsequent hearings. While Stafford was still in the State's custody, he failed to appear at a hearing, and the district court released the State from its obligations under the plea agreement. Because we hold an in-custody defendant's failure to appear at a hearing is not a basis for releasing the State from its promises under a plea agreement, we vacate Stafford's sentence and remand for resentencing.

FACTS AND PROCEDURAL HISTORY

Stafford pleaded guilty to attempted battery with substantial bodily harm, an offense that could be treated as either a gross misdemeanor or a felony. In exchange for Stafford's guilty plea, the State agreed to recommend gross misdemeanor treatment and a sentence of 225 days in the Clark County Detention Center. The written plea agreement also contained a failure-to-appear clause providing that if Stafford failed to appear at any subsequent hearings, the State would have the unqualified right to argue for any legal sentence.

After entering the guilty plea, Stafford remained in custody at the Clark County Detention Center. He was present at several hearings

before failing to appear at a continued sentencing hearing. The district court asked a corrections officer present in the courtroom why Stafford was absent, and the officer stated that Stafford refused to be transported and the reason was nonmedical. The district court deemed this to be a failure to appear and a breach of the plea agreement, which released the State from its obligations under the plea agreement and allowed the State to argue for any legal sentence. The State argued for felony treatment of the attempted battery offense and recommended a sentence of 19 to 48 months in prison. The district court ultimately followed the State's recommendation.

DISCUSSION

Stafford argues that the district court erred by finding that he breached the failure-to-appear clause in the written plea agreement. We agree and conclude district courts may not enforce failure-to-appear clauses in guilty plea agreements against defendants held in custody for two reasons.

First, the purpose of a failure-to-appear clause in a plea agreement is to ensure that a defendant who is released from custody pending sentencing does not abscond or disregard their obligation to appear in court. Thus, a failure-to-appear clause functions to prevent the government from having to “devote[] resources to finding, arresting, and extraditing [the defendant]” or to “face[] the possibility that [the defendant] would never be punished for [their] crimes.” *United States v. Munoz*, 718 F.3d 726, 730 (7th Cir. 2013). Because none of these concerns apply to a defendant who is detained in jail after entering a guilty plea, we conclude the State loses nothing of consequence when an in-custody defendant fails to appear at a hearing. *See id.* (discussing the benefits of enforcing failure-to-appear clauses); *see also State v. Knight*, 857 S.E.2d 728, 733 (N.C. Ct.

App. 2021) (holding the State did not lose the benefit of a plea agreement when the defendant appeared late for sentencing).

Second, in-custody defendants lack control over whether they appear in court. *See Johnson v. State*, 501 So. 2d 158, 161 (Fla. Dist. Ct. App. 1987) (recognizing that a defendant in custody lacks control over their appearance); *cf. People v. Love*, 34 Cal. Rptr. 3d 6, 13 (Ct. App. 2005) (“A defendant who is denied bail . . . remains in custody due to circumstances beyond his control. A defendant who is released is the captain of his own fate.”). Even should a defendant in custody refuse to be transported to court, the district court may simply issue an order to have the State produce the defendant. Thus, whether a defendant wishes to come to court or not, the State has ultimate control over the defendant’s appearance, and we hold an in-custody defendant’s failure to appear at a hearing does not release the State from its promises under a plea bargain.

Accordingly, we vacate Stafford’s sentence and remand with instructions for the State to perform according to its promise and recommend gross misdemeanor treatment and 225 days’ confinement. On remand, the case shall be reassigned to another judge for sentencing. *Villalpando v. State*, 107 Nev. 465, 468, 814 P.2d 78, 80 (1991) (reassigning a case for resentencing when the district court erroneously released the State from a plea agreement). The sentencing judge is not bound by the recommendations of the parties and is free to consider the evidence in deciding Stafford’s sentence.

CONCLUSION

Because the State retains control over defendants in custody following a plea agreement, an in-custody defendant’s failure to appear at a hearing does not release the State from its promises under a plea bargain.

Accordingly, we vacate Stafford's sentence and remand with instructions for the State to perform according to the plea bargain at a sentencing hearing before a new judge.

A handwritten signature in cursive script, appearing to read "Stiglich".

Stiglich, J.

We concur:

A handwritten signature in cursive script, appearing to read "Herndon".

Herndon, C.J.

A handwritten signature in cursive script, appearing to read "Bell".

Bell, J.