

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD THOMAS QUICK,

No. 38558

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 17 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving under the influence. The district court sentenced appellant to a prison term of 24 to 60 months and ordered appellant to pay a fine in the amount of \$2,000.00.

Appellant's sole contention is that the State breached the plea agreement at the new sentencing hearing. The plea agreement in this case provided that the State would recommend a sentence of 12 to 30 months. Appellant contends that the prosecutor breached the plea agreement by implicitly suggesting his disagreement with the negotiations. We disagree.

In Van Buskirk v. State,¹ we explained that when the State enters a plea agreement, it is held to "the most meticulous standards of both promise and performance" in fulfillment of both the terms and the

¹102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

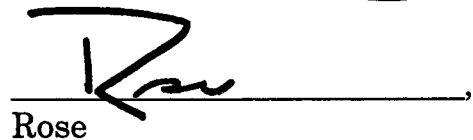
spirit of the plea bargain, and that due process requires that the bargain be kept when the guilty plea is entered. We have held that the "violation of either the terms or the spirit of the agreement requires reversal."² When a prosecutor expressly recommends only the sentence agreed upon, but by his comments implicitly seeks a higher penalty, the plea agreement is breached in spirit.³

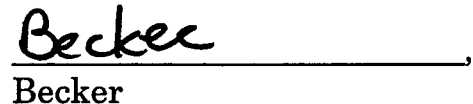
Here, the prosecutor expressly recommended the sentence agreed upon in the plea agreement. Based on our review of the record, we conclude that the prosecutor's comments did not implicitly seek a higher penalty. We therefore conclude that the State did not breach the plea agreement at the sentencing hearing.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

²Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).

³Wolf v. State, 106 Nev. 426, 427-28, 794 P.2d 721, 722-23 (1990); Kluttz, 99 Nev. at 683-84, 669 P.2d at 245-46.

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk