

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON JONES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38659

FILED

JAN 04 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
J. Richard

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant Jason Jones to serve two consecutive terms of 48 to 120 months in prison.

Jones contends that the State breached the plea agreement at sentencing. 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 spirit of the plea bargain.¹ Due process requires that the bargain be kept when the guilty plea is entered.² When a prosecutor expressly recommends only the sentence agreed upon, but by his comments implicitly seeks a higher penalty, the plea agreement

¹Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

²Id.

is breached in spirit.³ In evaluating a claim that the State breached a plea agreement, the agreement "is construed according to what the defendant reasonably understood when he or she entered the plea."⁴ That understanding may be inferred, in part, from a defendant's failure to make a contemporaneous objection to an alleged breach of the plea agreement.⁵

As part of the plea negotiations in this case, the State agreed to "recommend no more than forty eight to one hundred twenty months, plus forty eight to one hundred twenty months for the deadly weapon enhancement in the Nevada State Prison." At sentencing, defense counsel argued for two consecutive sentences of 28 to 72 months in prison. In response, the prosecutor first addressed the facts of the case and then commented on the negotiations and made a recommendation of two consecutive terms of 48 to 120 months in prison. In doing so, the prosecutor observed that the plea agreement left open the possibility that the State would recommend a sentence of less than 48 to 120 months. The prosecutor then explained why the State had determined that the maximum sentence allowed under the plea agreement was warranted. As noted above, the prosecutor ultimately recommended the maximum sentence permitted by the plea negotiations. Jones did not object to those comments.

Based on our review of the record, we conclude that the State did not breach the plea agreement. The agreement clearly indicated that the State could recommend consecutive sentences of less than 48 to 120 months. When the defense argued for such a sentence, it was appropriate

³See Wolf 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; see also Sullivan v. State, 115 Nev. 383, 389-90, 990 P.2d 1258, 1262 (1999).

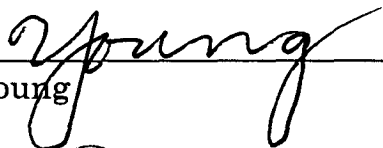
⁴Sullivan, 115 Nev. at 387, 990 P.2d at 1260.

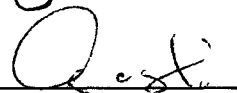
⁵Id. at 388 n.3, 990 P.2d at 1261 n.3.


for the prosecutor to explain why the maximum recommendation permitted by the plea agreement was warranted. Nothing in those comments implicitly or explicitly sought a harsher sentence than the State agreed to recommend. Nor did they undercut the sentence recommendation. We therefore conclude that the prosecutor did not breach the terms or the spirit of the plea agreement.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

 J.

 J.

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County Public Defender
Washoe County District Attorney
Washoe County Clerk