

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH ANTHONY MELI,  
Appellant,  
Vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39033

FILED

SEP 13 2002

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district denying a motion to dismiss a judgment of conviction.

On June 16, 1998, appellant Joseph Anthony Meli was convicted, pursuant to a guilty plea, of one count of felony nonsupport of children. The district court agreed to impose sentence according to the terms of the plea agreement, releasing Meli on his own recognizance and ordering him to pay child support payments and arrears for a period of 2 years. The judgment of conviction stated that Meli's felony conviction would be reduced to a misdemeanor with a 6-month jail term provided Meli made the child support payments for the 2-year period. Additionally, the judgment of conviction provided that the 6-month jail term would be suspended provided Meli made child support payments for an additional 1-year period.<sup>1</sup>

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<sup>1</sup>The sentence imposed by the district court was authorized by the statutory scheme at that time, although it has since been repealed. See 1985 Nev. Stat., ch. 49, § 3, at 64.

On November 17, 1998, the district court held a status check hearing to determine whether Meli had made the child support payments as required by the judgment of conviction. The State represented that Meli had not made any support payments since the time he entered his guilty plea. The district court issued a bench warrant for Meli's arrest finding he failed to comply with the conditions of the judgment of conviction. Meli was then apparently given another opportunity to comply with the conditions of the judgment, and on February 4, 1999, upon the stipulation of the parties, the district court issued an order quashing the bench warrant.

Thereafter, on August 4, 2001, the State filed an ex parte motion for an order to show cause why a felony judgment should not be entered for failure to make child support payments. In the motion, the State alleged that Meli had failed to make child support payments since February 16, 1999. The district court granted the State's motion and a show cause proceeding was held on September 10, 2001. At the show cause proceeding, counsel for Meli argued the judgment of conviction should be dismissed because the State waited over two years to seek enforcement of the judgment. The district court ordered the parties to brief the issue. After reviewing the written arguments submitted by counsel and conducting a hearing, the district court denied Meli's motion to dismiss, ruling that "Meli was provided an opportunity to have [his felony conviction] changed to a misdemeanor status and he has failed to avail himself to this opportunity." Meli filed the instant appeal.

Meli contends the district court erred in denying his motion to dismiss the judgment of conviction. Specifically, Meli contends that the judgment of conviction is inconsistent with the plea agreement, thereby violating his right to due process and resulting in a breach of the plea agreement. We disagree.

Our review of the record reveals that the sentence imposed by the district court complies with the terms of the plea agreement reached between Meli and the State.<sup>2</sup> In particular, the signed plea agreement provided:

The state will recommend that [Meli will] be ordered to pay a certain sum each month for 24 months. . . . The state will further recommend that [Meli] be released from custody on [his] own recognizance for period of up to 24 months. . . . If [Meli] substantially compl[ies] during the first 24 months with the court's order(s), [Meli's] guilty plea to a felony will be voided, and instead, become a guilty plea to NONSUPPORT OF CHILDREN, a misdemeanor. At that time the state will recommend a suspended sentence of 6 months in the county jail conditioned on [Meli's] further substantial compliance for the next 12 months with the court's order(s) in this matter.

Meli's argument that entry of the felony judgment of conviction resulted in a denial of due process and a breach of the plea

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<sup>2</sup>See Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (recognizing that due process requires that the State fulfill the promises made in the plea bargain when the guilty plea is entered).

agreement is belied by the record. In fact, the judgment of conviction includes terms identical to those in the plea agreement, set forth above, expressly providing, among other terms, that the judgment would “be amended to reflect a misdemeanor” if Meli made the required support payments for 24 months. Further, Meli’s contention that his “plea of guilty was never accepted” is belied by the record of the plea canvass. At the plea canvass, the district court asked: “Okay, Mr. Meli, to the nonsupport of children, a felony, to that what’s your plea,” and Meli responded, “Guilty.” The district court also advised Meli of the constitutional rights he was waiving by pleaded guilty, determined that his plea was knowing and voluntary, and imposed sentence in accordance with the plea agreement.<sup>3</sup> Accordingly, we conclude the district court did not err in denying Meli’s motion to dismiss the judgment of conviction.<sup>4</sup>

Meli also contends that the district court erred in rejecting the motion to dismiss because the State waited over two years to enforce the agreement and, therefore, any further proceedings were barred by laches. We disagree. We note that within six months of the entry of the judgment

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<sup>3</sup>We note that the district court was required to enter the judgment of conviction once it found Meli guilty and imposed sentence; it could not merely hold the proceedings in abeyance for two years, as Meli suggests. See NRS 176.105.


<sup>4</sup>Even assuming the State had breached the plea agreement, the remedy for that breach would have been withdrawal of the plea and then a criminal trial on the charges, not dismissal of the criminal action. See Van Buskirk, 102 Nev. at 243-44, 720 P.2d at 1216.


of conviction, the State sought and received a bench warrant for Meli's breach of the plea agreement for nonpayment of support. At that time Meli was given another opportunity to comply with the sentence and failed to do so. Finally, Meli failed to present any evidence that he complied with the judgment and supported his children as required by law.

Having considered Meli's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. John P. Davis, District Judge  
Harold Kuehn  
Attorney General/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk