

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LEE ENGLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39104

FILED

MAY 15 2002

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

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one felony count of possession of a credit card without the cardholder's consent. The district court sentenced appellant Daniel Lee England to serve a prison term of 18-48 months.

England contends the State breached the negotiated plea agreement at sentencing necessitating remand to the district court for a new sentencing hearing before a different district court judge. England argues that the State failed to keep its promise to make no recommendation at sentencing, thereby violating the spirit and terms of the plea agreement. We agree with England's contention that the State breached the plea agreement.

When the State enters into a plea agreement, it is held to "the most meticulous standards of both promise and performance" in fulfillment of both the terms and spirit of the plea bargain.¹ Due process

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)).

requires that the bargain be kept when the guilty plea is entered.² Moreover, this court has stated that "[i]f the government agrees only to refrain from recommending a specific sentence and intends to retain the right to present facts and argument pertaining to sentencing, such a limited commitment should be made explicit."³

In this case, our review of the transcripts of the preliminary hearing and the entry of England's guilty plea reveals that as part of the negotiated plea, the State agreed not to make any recommendations at sentencing. The State only explicitly retained the right to argue the terms of probation, if granted. Nevertheless, the State argued strongly against the granting of probation, and further asked the district court to consider imposing the maximum sentence based on England's extensive criminal history.

This court has stated that "even where the state has agreed to stand silent or make no recommendation, it may nonetheless correct factual misstatements and provide the court with relevant information that is not in the court's possession."⁴ Our review of the record on appeal reveals that the prosecutor's comments went beyond the limits imposed by Sullivan, and therefore constituted a breach of the plea agreement.

Accordingly, we remand this case to the district court with instructions to vacate England's sentence and hold a new sentencing

²Id. (citing Santobello v. New York, 404 U.S. 257 (1971); Gamble v. State, 95 Nev. 904, 604 P.2d 335 (1979)).

³Statz v. State, 113 Nev. 987, 993, 944 P.2d 813, 817 (1997), overruled on other grounds by Sullivan v. State, 115 Nev. 383, 990 P.2d 1258 (1999).

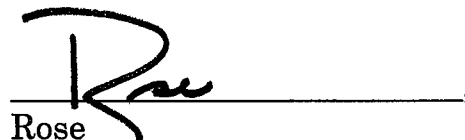
⁴Sullivan, 115 Nev. at 388 n.4, 990 P.2d at 1261 n.4.

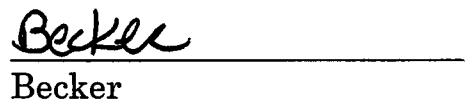
hearing before a different district court judge. We further order the Clark County District Attorney to specifically perform the plea bargain agreement.⁵ Moreover, the new sentencing judge will be free to impose any sentence allowable under the relevant statutes, provided that the sentence does not exceed the sentence imposed by Judge Mosley. Upon remand, if the sentencing judge pronounces a sentence that exceeds the sentence imposed by Judge Mosley, the sentence shall be automatically reduced to conform to the lesser sentence.⁶

Having considered England's contention and concluded that it has merit, we

ORDER this matter REMANDED to the district court for proceedings consistent with this order.

 J.
Shearing

 J.
Rose

 J.
Becker

⁵See Citti v. State, 107 Nev. 89, 807 P.2d 724 (1991).

⁶See id. at 94, 807 P.2d at 727.

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk