

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL LYNN ENGEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39315

FILED

JUN 05 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. The district court sentenced appellant Russell Lynn Engel to serve a prison term of 72-180 months; he was given credit for 406 days time served.

Engel's sole contention on appeal is that the negotiated plea agreement was breached at sentencing, necessitating a remand to the district court for a new sentencing hearing. More specifically, Engel argues that in exchange for his guilty plea, the State agreed that the minimum end of the sentencing range would be capped at four years. We conclude that Engel has failed to demonstrate that the State or the district court breached the plea agreement, and that he is not entitled to the relief requested.

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 . . . 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 Engel's guilty plea canvass and sentencing hearing, and the written guilty plea agreement, reveals that Engel merely stipulated to a minimum of four years in prison, and that the State agreed to dismiss the charge of first-degree kidnapping with the use of a deadly weapon while explicitly retaining the right to argue at sentencing. The district court, however, was not a party to the guilty plea agreement and was not required to impose the sentence recommended by the State or by defense counsel. The State did, in fact, argue for the imposition of the maximum sentence.⁴ In the written guilty plea agreement, Engel was advised that his sentence was "to be determined by the Court within the limits prescribed by statute. . . . [And] if [his] attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation." Moreover, during both the guilty plea canvass and the sentencing hearing, Engel acknowledged, after discussions with the district court, that he was not guaranteed any particular sentence by

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).

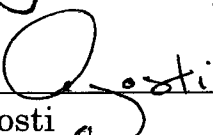
⁴See NRS 200.380(2).


pleading guilty. Therefore, we conclude that the plea agreement was not breached by either the State or the district court.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk