

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATHEW SCOTT WRIGHT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39494

**FILED**

SEP 18 2003

ORDER OF REMAND

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of lewdness with a minor under 14 years of age. The district court sentenced appellant Mathew Scott Wright to serve a life prison term with parole eligibility in 10 years.

Wright's sole contention is that the prosecutor breached the plea agreement by failing to concur with the Division of Parole and Probation's recommendation that Wright be granted probation. In its appellate brief, the State contends, however, that it had no obligation to recommend probation because it only agreed to not object to Wright's request for probation. We conclude that Wright is entitled to specific performance of the terms of the plea bargain that the parties agreed upon at the oral canvass.

At the plea canvass, Wright's defense counsel placed the terms of the negotiations on the record, stating in relevant part that:

the State will not oppose probation upon certification by a psychotherapist. . . . Beyond that, your honor, I believe the State is going to concur with the department of Parole and Probation at the time of sentencing.

(Emphasis added.) The district court then asked the prosecutor: "does that reflect the State's understanding of the plea-bargain agreement."

The prosecutor responded: "yes it does." The written plea agreement, however, only provided that: "[t]he State will not object to probation, if certified." Notably, the plea agreement did not contain a written provision requiring the State to concur with the Division of Parole and Probation at the time of sentencing. Therefore, at the plea canvass, both sides orally agreed to terms that conflicted with the written plea agreement signed by the parties.

The discord over the terms of the plea bargain is apparent from a review of the transcripts of the sentencing proceeding. At sentencing, defense counsel requested that the prosecutor fulfill his obligations under the plea bargain and "actively" recommend probation. The prosecutor, however, refused to recommend probation, explaining: "[j]udge the negotiations are that the State will not object to probation if he qualifies." The district court then sentenced Wright, denying his request for probation. In so doing, the district court refused to go along with a concept with which everyone that made a sentencing recommendation was in basic agreement, to wit: that Wright be placed on probation.

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 the spirit of the plea bargain.<sup>1</sup> Due process requires that the bargain be kept when the guilty plea is entered.<sup>2</sup>

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<sup>1</sup>Van 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)).


<sup>2</sup>Id.


Although we note that the State kept faith with the written plea agreement, those terms were clearly at odds with the terms agreed upon at oral canvass. Ultimately, it is at the oral canvass where the district court has the best opportunity to divine both the intent of the parties and the understanding of the defendant, who is forfeiting his or her rights to a jury trial. We therefore conclude that the written agreement should give way to the oral statement of understanding. The oral agreement in this case was that the State would concur with the Division of Parole and Probation, which recommended that Wright be placed on probation. Thus, at sentencing, the prosecutor should have been required to concur with the Division of Parole and Probation and affirmatively recommend probation.

Because due process requires that the plea bargain be kept, we conclude that specific enforcement is the appropriate remedy in this case. Wright is entitled to a new sentencing hearing before a different district court judge. At the new sentencing hearing, the prosecutor must actively recommend that the sentencing court impose probation. We therefore

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

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Brent T. Adams, District Judge  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
John E. Oakes  
Walter B. Fey  
Washoe District Court Clerk