

IN THE SUPREME COURT OF THE STATE OF NEVADA


JAMES LEE CORELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40547

FILED

FEB 03 2003

ORDER OF REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of failure to register as a sex offender. The district court sentenced appellant to a prison term of 12 to 48 months.

Appellant's sole contention is that the State breached the plea agreement.¹ We agree and remand this matter for a new sentencing hearing before a different district court judge.

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.² Due process requires that the bargain be kept when the guilty plea is entered.³ When a prosecutor expressly recommends only the sentence agreed upon,

¹On January 16, 2003, the State filed a confession of error, conceding the breach.

²Van 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)).

³Id.

but by his comments implicitly seeks a higher penalty, the plea agreement is breached in spirit.⁴

Here, the State agreed to stipulate to probation. At sentencing, the prosecutor noted that the State was "bound by the negotiations to stip [sic] to a probation in this case." But the prosecutor also observed that appellant's criminal history was extensive. The prosecutor then went on to inform the court that there was an outstanding criminal warrant from Texas, and that officers were present in the courtroom to arrest appellant on that warrant.

We conclude that the prosecutor's comments regarding appellant's criminal history and the outstanding warrant implicitly undercut the sentencing recommendation. The prosecutor implied that a harsher sentence was appropriate. This constituted a breach of the spirit of the plea agreement.

Having concluded that the State breached the plea agreement, we remand this matter to the district court with instructions to vacate appellant's sentence and hold a new sentencing hearing before a different district court judge.⁵ We further order the Washoe County District Attorney to specifically perform the plea bargain agreement.⁶ Moreover, the new sentencing judge will be free to impose any sentence allowable under the relevant statutes, provided that, under the circumstances of this

⁴See 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).

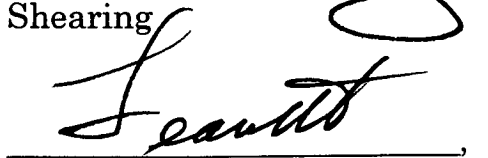
⁵See Santobello v. New York, 404 U.S. 257, 262-63 (1971); Riley v. Warden, 89 Nev. 510, 512-13, 515 P.2d 1269, 1270 (1973).

⁶See Citti v. State, 107 Nev. 89, 807 P.2d 724 (1991).

case, the sentence does not exceed the sentence imposed by Judge Berry. Upon remand, if the sentencing judge pronounces a sentence that exceeds the sentence imposed by Judge Berry, said sentence shall be automatically reduced to conform with Judge Berry's lesser sentence.⁷ Accordingly, we

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

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷See id.