

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID AUGUST KILLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42254

FILED

MAR 05 2004

ORDER OF AFFIRMANCE

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 sexual assault of a minor under the age of 16, and one count of attempted sexual assault of a minor under the age of 16. The district court sentenced appellant for sexual assault to a prison term of 60 to 240 months, and for attempted sexual assault to a consecutive prison term of 24 to 240 months.

As part of the guilty plea agreement, the State agreed not to oppose appellant's release on house arrest for 2 weeks after the entry of his guilty plea. When appellant entered his guilty plea, the district court did, in fact, order that appellant be released on house arrest, and that he surrender to the court 2 weeks later. When appellant appeared 2 weeks later, he informed the district court that he had not been out on house release because federal regulations prohibited him from staying at his fiancé's residence while he was on house arrest. Appellant subsequently filed a presentence motion to withdraw his guilty plea, which the district court denied.

Appellant first contends that he should have been allowed to withdraw his plea because the State did not fulfill its part of the plea agreement. We disagree.

In Van Buskirk v. State,¹ we explained that 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, and that due process requires that the bargain be kept when the guilty plea is entered. We have held that the "violation of either the terms or the spirit of the agreement requires reversal."²

Here, the prosecutor did not oppose appellant's release on house arrest. The fact that appellant was not actually released on house arrest was not due to any action or inaction by the State. We therefore conclude that the State did not breach the plea agreement at the sentencing hearing.

Appellant also contends that he should be allowed to withdraw his guilty plea because his plea was induced by the State's promise that he would be released on house arrest. The State promised that it would not oppose appellant's release on house arrest, not that appellant would actually be released. As previously noted, the State did not oppose appellant's release on house arrest, and the district court ordered

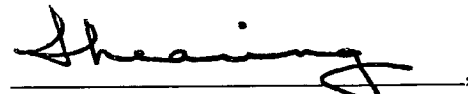
¹102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).


²Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).


appellant's release. Neither the State nor the district court violated the terms or the spirit of the plea agreement.³

Based on the foregoing, we conclude that the district court did not err by denying the motion to withdraw his guilty plea, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Shearing


_____, J.
Becker


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³Cf. VanBuskirk, 102 Nev. at 243, 720 P.2d at 1216 (holding that appellant was entitled to relief where the district court violated both the terms and the spirit of the plea agreement).