

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ALAN DAVIDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42482

FILED

MAY 06 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
FY J. Richards
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of obtaining or using the personal identifying information of another. The district court sentenced appellant Robert Alan Davidson to serve a prison term of 48 to 240 months.

Davidson contends that the State breached the plea agreement by failing to concur with the sentencing recommendation of the Division of Parole and Probation. We disagree.

It is well settled that "[w]hen the State enters a plea agreement, it 'is held to "the most meticulous standards of both promise and performance.'"¹ Moreover, "[t]he violation of the terms or "the spirit" of the plea bargain requires reversal."²

In this case, although the State agreed to concur with the sentencing recommendation of the Division, under the terms of the written plea agreement, the State was relieved of that obligation if Davidson "fail[ed] to appear at any scheduled proceeding in this matter." Further,

¹Citti v. State, 107 Nev. 89, 91, 807 P.2d 724, 726 (1991) (quoting Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (citation omitted)).

²Id.; see also Echeverria v. State, 119 Nev. ___, ___, 62 P.3d 743, 745 (2003) (recognizing that State's breach of a plea agreement is not subject to a harmless-error analysis).


at the plea canvass, the State recommended that Davidson be released on his own recognizance to enable him to attend a residential drug treatment program but, in so doing, the State reserved the right to argue for an appropriate sentence if Davidson did not complete the program. Davidson failed to complete the drug treatment program as required.³ Subsequently, at the sentencing proceeding, the State recommended the maximum prison sentence, 8 to 20 years, a sentence greater than the Division's recommendation of 4 to 10 years.


We conclude that the State did not breach the plea agreement by refusing to concur with the sentencing recommendation of the Division. Under the terms of the plea bargain, the State was relieved of its obligation to concur with the Division's recommendation because Davidson failed to complete the drug treatment program. Accordingly, Davidson is not entitled to relief.

Having considered Davidson's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

³At the sentencing proceeding, Davidson's counsel explained that Davidson did not voluntarily leave the drug treatment program, but instead was kicked out after testing positive for controlled substances.

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk