IN THE SUPREME COURT OF THE STATE OF NEVADA

JACOB T. MAXFIELD A/K/A ROBERT R. REAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56537

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted pandering. Eighth Judicial District Court, Clark County; David B. Barker, Judge. Appellant Jacob T. Maxfield raises three issues on appeal.

First, Maxfield argues that the district court erred in denying his motion to withdraw his guilty plea. Maxfield asserts that he entered into the plea agreement under the belief that if he did not show up for sentencing, the State would not make a recommendation but would leave to the court's discretion whether he should receive gross misdemeanor or felony treatment. In denying Maxfield's motion, the district court noted that there was some confusion about whether the State retained its right to argue felony treatment, but the court determined that it would treat the offense as a gross misdemeanor in adherence to the "spirit" of the plea negotiations. Because the district court enforced the plea agreement consistent with Maxfield's understanding of it, we conclude that the

district court did not abuse its discretion in denying Maxfield's motion to withdraw.[1] See Doane v. State, 98 Nev. 75, 78, 639 P.2d 1175, 1176-77 (1982) ("Withdrawal of guilty pleas typically is allowed to restore the accused to a position he enjoyed prior to the breached agreement, because breach has denied him the benefit for which he bargained. Such a result is not required where the accused can be assured the full benefit of the bargain." (citation omitted)).

Second, Maxfield argues that the State breached the plea agreement when it recommended felony treatment at sentencing and provided argument as to Maxfield's criminal history. Because Maxfield did not object to the prosecutor's statements at the sentencing hearing, we review this claim for plain error affecting his substantial rights. See Sullivan v. State, 115 Nev. 383, 387-88 n.3, 990 P.2d 1258, 1260-61 n.3 (1999); Puckett v. United States, 556 U.S. 129, 140-43 (2009). The State is held "to the most meticulous standards of both promise and performance in fulfillment of its part of a plea bargain," and must avoid violating either the terms or the spirit of the agreement. See Sullivan, 115 Nev. at 387, 990 P.2d at 1260 (internal quotation marks omitted). Here, the written plea agreement provided that the State "agreed to make no

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[1]To the extent that Maxfield argues that the district court failed to canvass him adequately about his plea, he did not provide a transcript of the plea canvass. Thus, we are unable to meaningfully review this claim. See Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) ("Appellant has the ultimate responsibility to provide this court with 'portions of the record essential to determination of issues raised in appellant's appeal.'" (quoting NRAP 30(b)(3))); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant.").

recommendation." The plea agreement further stated that if Maxfield appeared for sentencing, the State would recommend gross misdemeanor treatment, but if Maxfield failed to appear at sentencing, the State would not make any recommendation as to the offense level. Maxfield did not appear for his initial sentencing hearing and subsequently was arrested and convicted for other offenses. At his sentencing in the instant offense, the State did not explicitly request felony treatment but argued that "a substantial punishment [was] appropriate" because Maxfield was a career criminal who had committed "substantial violent offenses." We conclude that the State's comments violated the terms and spirit of the plea agreement, and that Maxfield has demonstrated plain error warranting relief. Accordingly, Maxfield is entitled to a new sentencing hearing before a different district court judge, see Echeverria v. State, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003), at which the State is held to the terms of the plea agreement.

Third, Maxfield contends that the district court abused its discretion by issuing an order compelling him to display his tattoos to the jail for photographs. Maxfield initially objected to having photographs taken of his tattoos but then consented to the photographs after the district court agreed that he would be returned to federal custody immediately following the photographing. Because Maxfield specifically consented to the district court order, he cannot now complain that the district court erred in ordering the photographs.[2] See Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited

[2]Even if any error had occurred in this regard, it would not constitute grounds for vacating Maxfield's sentence or conviction.

error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." (internal quotation marks omitted)); see also Rhyne v. State, 118 Nev. 1, 9, 38 P.3d 163, 168 (2002) (recognizing that a defendant who invited the error would be estopped from raising the error as a claim on appeal).

Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. David B. Barker, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk