

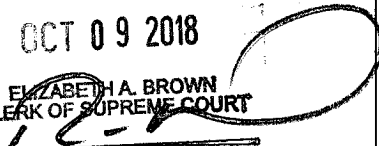
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHANIE ANNE FAST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73547

FILED

OCT 09 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND REMANDING TO CORRECT
JUDGMENT OF CONVICTION*

Stephanie Anne Fast appeals from a judgment of conviction, pursuant to a guilty plea, for burglary, fraudulent use of a credit card, and unlawful transportation of a controlled substance. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Fast first contends the State violated the guilty plea agreement at the sentencing hearing. The State is held "to the most meticulous standards of both promise and performance in fulfillment of its part of a plea bargain." *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999) (internal quotation marks omitted). But where a defendant materially breaches a plea agreement, the State is released from its obligations under the agreement. *Villalpando v. State*, 107 Nev. 465, 468, 814 P.2d 78, 80 (1991). We review an unpreserved allegation that the State breached a plea agreement for plain error. *See Sullivan v. State*, 115 Nev. 383, 387 n.3, 990 P.2d 1258, 1260 n.3 (1999). In conducting plain error analysis, we must determine whether there was error and whether the error was plain from the record. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

In exchange for Fast's guilty plea, the State agreed not to oppose probation or running all sentences concurrently. However, the plea agreement also provided that the State would be relieved from this obligation "if prior to the date of [Fast's] sentencing [she is] arrested . . . for a violation of law." After Fast entered her guilty plea on December 1, 2016, she was arrested for crimes committed on February 8, 2017. Fast's arrest constituted a material breach of the plea agreement that relieved the State of its obligations to perform under the agreement. Thus, when the State later requested a "lengthy" prison sentence, it was not in breach of the plea agreement.

Fast does not dispute she was arrested for crimes committed after she entered the plea agreement. Instead, she argues the State violated the plea agreement's implied covenant of good faith and fair dealing such that the State was not released from its own obligations despite Fast's breach. According to Fast, the State knew or should have known at the time of the plea agreement that she was under ongoing surveillance by the repeat offender program and, thus, that there was a "high probability" she would be arrested before her sentencing, preventing her from meeting her obligations. Fast fails to demonstrate the State has violated any implied covenant in the plea agreement. There is no evidence in the record before this court as to when the surveillance began or that the district attorney's office had any knowledge of it at the time of the plea negotiations.¹ And Fast essentially agreed she would not receive any benefit from her bargain if she were arrested for new crimes. Fast was arrested for crimes that

¹In contrast, the record indicates Fast herself knew of the surveillance because the confidential informant tipped her off.

occurred after she entered the agreement. We therefore conclude Fast is not entitled to relief on this ground.

Fast next contends the “harsh disparity” between her and her codefendants’ sentences for burglary violate her due-process rights. Disparate sentences among codefendants do not violate the Due Process Clause. *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990). We therefore conclude Fast is not entitled to relief on this ground.


Finally, Fast and the State seek a remand to the district court to correct a typographical error in the judgment of conviction. However, they disagree on which portion is erroneous. The judgment of conviction reflects a sentence structure of 48 to 120 months for count 1, 12 to 34 months for count 2, and 12 to 48 months for count three, with counts 1 and 2 running concurrent to one another and count 3 running consecutive to count 2. Under this structure, the aggregated term of imprisonment should be 48 to 120 months. However, the judgment of conviction reflects an aggregated term of 60 to 168 months, which would be correct only if count 3 were run consecutive to count 1. The judgment of conviction reflects the sentence orally announced at Fast’s hearing. The district court did not announce any aggregated term at the hearing. Fast contends the aggregated term of imprisonment contains a typographical error, while the State contends the error lies in the sentence structure.

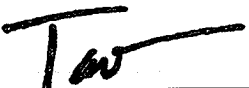
We agree with Fast that the judgment of conviction must be amended to bring the aggregated terms in line with the sentence structure imposed. Fast’s *sentences* are comprised of the minimum and maximum terms imposed. See NRS 176.033(1)(b). The aggregated term is simply the sum of the maximum and minimum terms of the controlling consecutive sentences. See NRS 176.035. And once an inmate has begun to serve her

sentence, the district court lacks jurisdiction to amend it unless the amendment is made to correct a sentence that was based on untrue assumptions or mistakes that worked to the defendant's extreme detriment. *Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 413, 957 P.2d 1141, 1142-43 (1998). There is no allegation here that Fast's sentences were based on untrue assumptions or mistakes. The possibility that the district court misapprehended the legal consequences of Fast's sentences—i.e., believed the aggregated terms would be 60 to 168 months—does not create jurisdiction to amend the sentence. *See id.* at 413, 957 P.2d at 1143. For this reason, the State's argument that the court's true intentions are reflected in a November 1, 2017, order indicating the intent that Fast serve the longer aggregated term is of no consequence. Because the district court cannot amend Fast's sentences but the judgment of conviction contains an internal discrepancy, we direct the district court to amend the judgment of conviction to reflect an aggregated term of imprisonment of 48 to 120 months.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED AND REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Michael V. Roth
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk