

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

v.

MYCHAEL RICHARD PATTEN,

Defendant-Appellant.

SUPREME COURT
NO. 21-0101

APPEAL FROM THE IOWA DISTRICT COURT
FOR NORTH LEE COUNTY
THE HONORABLE JOHN M. WRIGHT, JUDGE

APPELLANT'S BRIEF AND ARGUMENT
AND
REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF SERVICE

On the 20th day of July, 2021, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Mychael Patten, No. 6837232, Newton Correctional Facility, 307 S. 60th Ave. W., Newton, IA 50208.

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the State breached the plea agreement by indicating to the court that it did not endorse the agreed-upon sentencing recommendation?

Authorities

State v. Boldon, 954 N.W.2d 62, 71 (Iowa 2021)

State v. King, 576 N.W.2d 369, 370 (Iowa 1998)

State v. Frencher, 873 N.W.2d 281, 284 (Iowa Ct. App. 2015)

State v. Beres, 943 N.W.2d 575, 582 (Iowa 2020)

State v. Horness, 600 N.W.2d 294, 299 (Iowa 1999)

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

The defendant-appellant, Mychael Richard Patten, appeals from his sentences for domestic abuse assault causing bodily injury (strangulation) in violation of Iowa Code sections 708.2A(1) and 708.2A(5) (2019), child endangerment in violation of Iowa Code sections 726.6(1)(a) and 726.6(7) (2019), assault with a dangerous weapon in violation of Iowa Code sections 708.1(2)(c) and 708.2(3), and false imprisonment in violation of Iowa Code section 710.7 (2019).

Course of Proceedings

The State charged Mychael Patten with domestic abuse assault causing bodily injury (strangulation), a class D felony, child endangerment, an aggravated misdemeanor, assault with

a dangerous weapon, an aggravated misdemeanor, and false imprisonment, a serious misdemeanor, by trial information filed September 14, 2020. (Trial Information pp. 1–2) (App. pp. 4-5). Patten filed a written arraignment, plea of not guilty, and speedy trial demand on September 22, 2020. (Written Arraignment) (App. p. 7).

On November 20, 2020, Patten filed a written plea of guilty, indicating his consent to plead guilty as charged to all counts. (Guilty Plea p. 1) (App. p. 8). Patten agreed to “obtain a mental health evaluation within 90 days of the Judgment Entry,” “complete any and all recommendations as a result of that evaluation, and provide proof of compliance with the Court.” (Guilty Plea p. 1) (App. p. 8). Additionally, the written plea form stated that a sentencing no contact order would be “entered between the Defendant and Mary French.” (Guilty Plea p. 1) (App. p. 8). In exchange for Patten’s guilty plea, the State agreed to recommend “a suspended sentence on each count, each running consecutive to one another for a

total suspended sentence of 10 years,” as well as recommending “the minimum fine on each Count, plus court costs and surcharges,” and that Patten “be placed on formal probation for a term of at least 2 years, but no more than 5 years.” (Guilty Plea p. 1; Memorandum to Plea Agreement) (App. pp. 8, 15). The form contained factual basis language which tracked the applicable portions of the code sections involved, and also permitted the court to determine whether a factual basis existed by “examining the Minutes of Testimony attached, by reviewing the investigative reports of law enforcement agencies who have investigated the offense, or by asking counsel or [Patten] for a recitation and summary of the material facts that would be offered at trial.” (Guilty Plea p. 2) (App. p. 9). The district court accepted Patten’s plea, ordered a presentence investigation report, and scheduled sentencing for January 8, 2021. (Order Setting Sentencing p. 1) (App. p. 12).

During the sentencing hearing, the prosecutor emphasized that the “sole reason” the State was agreeing to recommend a suspended sentence was because of the victim’s request. (Sentencing Tr. pp 5–6). The district court sentenced Patten to a term of incarceration not to exceed five years on count I, a term of incarceration not to exceed two years on count II, a term of incarceration not to exceed two years on count III, and a term of incarceration of one year on count IV. (Sentencing Tr. p. 15 L. 22–p. 16 L. 8). During the hearing, the court stated that “[t]he balance is suspended,” but in its written order the court indicated that only the one year sentence on count IV was being suspended. (Sentencing Tr. p. 16 L. 8–9; Order of Disposition pp. 2–3) (App. pp. 17-18). The court further stated “Counts II and III shall run concurrent with each other. Those terms shall run consecutive to Count I, for a total of seven years. And Count IV shall run consecutive to Counts I, II, and III.” (Sentencing Tr. p. 17 L. 1–5).

Patten filed a timely notice of appeal on January 22, 2021. (Notice of Appeal) (App. p. 20).

Facts

Mary French reported to the Fort Madison Police Department that on the morning of September 6, 2020, she was asleep in bed when her husband Mychael Patten woke her at approximately 1:00 a.m. (Minutes Attachment p. 1) (Conf. App. p. 6). She reported Patten was very upset because he had seen something on her phone that made him believe she was seeing another man. (Minutes Attachment p. 1) (Conf. App. p. 6). She reported their three-year-old child had been asleep in another room but was awakened by Patten's shouting. (Minutes Attachment p. 1) (Conf. App. p. 6). French began packing to leave, but Patten stopped her, grabbed her neck, and threw her onto a bed. (Minutes Attachment p. 1) (Conf. App. p. 6). She stated that when Patten grabbed her neck, she had difficulty breathing. (Minutes Attachment p. 1) (Conf. App. p. 6).

French reported Patten retrieved a handgun, sat down near her, and threatened to kill her. (Minutes Attachment p. 1) (Conf. App. p. 6). French reported Patten told her to stay in the bedroom and pointed the gun at her several times.

(Minutes Attachment p. 1) (Conf. App. p. 6). French reported that at one point the child entered the room; French stated Patten asked the child if she “wanted to shoot mommy.”

(Minutes Attachment p. 1) (Conf. App. p. 6). French stated Patten did not offer the child the gun, but that the child likely saw it. (Minutes Attachment p. 1) (Conf. App. p. 6).

Police spoke with Patten, who admitted grabbing French by the neck and asking French why he should not shoot her. (Minutes Attachment p. 2) (Conf. App. p. 7). He denied ever pointing the gun at French, but acknowledged it had been in his lap. (Minutes Attachment p. 2) (Conf. App. p. 7). He admitted he told French that she could not leave. (Minutes Attachment p. 3) (Conf. App. p. 8).

Police conducted a warrant search of Patten's home and located a handgun after Patten told them where it was.

(Minutes Attachment p. 3) (Conf. App. p. 8).

Jurisdictional Statement

Iowa Code section 814.6(1)(a)(3) requires an appellant who has pled guilty to establish "good cause" to appeal. Iowa Code § 814.6(1)(a)(3) (Supp. 2020). Patten alleges the State breached the plea agreement by failing to endorse the agreed-upon sentencing recommendation, and therefore he has "good cause to pursue this direct appeal as a matter of right." See State v. Boldon, 954 N.W.2d 62, 68 (Iowa 2021).

ARGUMENT

The State breached the plea agreement by indicating to the court that it did not endorse the agreed-upon sentencing recommendation.

Preservation of Error

"A prosecutor's breach of the plea agreement at sentencing irreparably taints the sentencing proceeding and a claim of breach is reviewable on direct appeal even in the

absence of contemporaneous objection.” State v. Boldon, 954 N.W.2d 62, 71 (Iowa 2021).

Standard of Review

Review of an allegation that the State breached a plea agreement during sentencing is for errors at law. State v. King, 576 N.W.2d 369, 370 (Iowa 1998). “The relevant inquiry in determining whether the prosecutor breached the plea agreement is whether the prosecutor acted contrary to the common purpose of the plea agreement and the justified expectations of the defendant and thereby effectively deprived the defendant of the benefit of the bargain.” State v. Boldon, 954 N.W.2d 62, 71 (Iowa 2021) (quoting State v. Frencher, 873 N.W.2d 281, 284 (Iowa Ct. App. 2015)).

Discussion

In State v. Beres, the Iowa Supreme Court summarized the prosecutorial duty with regard to plea agreements:

“Plea bargains are akin to contracts.” *State v. Macke*, 933 N.W.2d 226, 238 (Iowa 2019) (Mansfield, J., concurring in part and dissenting in part); see also *Rhoades v. State*, 880 N.W.2d 431, 449 (Iowa

2016) (“A plea bargain also may be regarded as a contract where both sides ordinarily obtain a benefit.”). “[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration [for the plea], such promise must be fulfilled.” *State v. Lopez*, 872 N.W.2d 159, 170 (Iowa 2015) (second alteration in original) (quoting *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 499, 30 L.Ed.2d 427 (1971)). A “prosecutor's obligation to scrupulously comply with the letter and spirit of the agreements” means that even technical compliance will not suffice if the prosecutor otherwise “undercut[s] the plea agreement.” *Id.* at 173.

We have “recogniz[ed] the important role plea agreements play in our scheme of justice and the concomitant need for strict compliance with those agreements.” *State v. Bearse*, 748 N.W.2d 211, 215 (Iowa 2008). For this reason, Iowa courts “are compelled to hold prosecutors and courts to the most meticulous standards of both promise and performance.” *Id.* (quoting *State v. Horness*, 600 N.W.2d 294, 298 (Iowa 1999)). Accordingly, “‘violations of either the terms or the spirit of the agreement’ require reversal of the conviction or vacation of the sentence.” *Id.* (quoting *Horness*, 600 N.W.2d at 298).

State v. Beres, 943 N.W.2d 575, 582 (Iowa 2020). Justice Appel’s concurrence in Beres emphasized that a plea bargain is more than just an average contract; it is “a constitutional contract” which “obviously has procedural and substantive

due process implications.” Id. at 587 (Appel, J., concurring specially).

“It is clear that the State's promise to recommend specific sentences to the court requires the prosecutor to present the recommended sentences with his or her approval, to commend these sentences to the court, and to otherwise indicate to the court that the recommended sentences are supported by the State and worthy of the court's acceptance.” State v. Horness, 600 N.W.2d 294, 299 (Iowa 1999). This requirement “complements the prosecutor’s duty ‘to assure that a fair and informed judgment is made on the sentence.’ If the prosecutor keeps this duty in mind when negotiating a plea agreement, so that any agreed-upon sentencing recommendation is ‘fair’ under the circumstances, then the prosecutor should have no problem in truly recommending the negotiated sentence to the court.” Id. at 299 (internal citation omitted) (quoting ABA Standards for Criminal Justice 3-6.1(a) (2d ed.1980)). “Violations or casual withdrawals of these

agreements after detrimental reliance by the defendant are intolerable and adversely impact the integrity of the prosecutorial office and the entire judicial system.” State v. King, 576 N.W.2d 369, 370 (Iowa 1998) (citing State v. Edwards, 279 N.W.2d 9, 11 (Iowa 1979)). “Our system of justice . . . does not allow prosecutors to make sentencing recommendations with a wink and a nod. The concept of justice has a far greater meaning.” State v. Bearse, 748 N.W.2d 211, 218 (Iowa 2008).

The Iowa Supreme Court has quoted with approval federal authority which stated “[w]hile a prosecutor normally need not present promised recommendations to the court with any particular degree of enthusiasm, it is improper for the prosecutor to inject material reservations about the agreement to which the government has committed itself.” State v. Lopez, 872 N.W.2d 159, n. 7 (Iowa 2015) (quoting United States v. Cachucha, 484 F.3d 1266, 1270–71 (10th Cir. 2007)).

The Iowa Court of Appeals noted after surveying cases on the subject that “[i]n each case, as set out above, where the prosecutor has been held to have breached the plea agreement, there was something the prosecutor said that implicitly or explicitly undermined the plea agreement.” State v. Schlachter, 884 N.W.2d 782, n. 7 (Iowa Ct. App. 2016); see Lopez, 872 N.W.2d at 179–80; State v. Fannon, 799 N.W.2d 515 (Iowa 2011); Bearse, 748 N.W.2d at 216; Horness, 600 N.W.2d at 296–97.

When the State breaches a plea agreement by failing to honor its promise to endorse a particular sentencing recommendation, the remedy is “to remand the case for resentencing by a different judge, with the prosecutor obligated to honor the plea agreement and sentencing recommendation.” Lopez, 872 N.W.2d at 181 (citations omitted).

In the case at bar, the prosecutor failed to voice her approval of the sentencing recommendation, and instead

implied her disapproval. When asked for the State's sentencing recommendation, the prosecutor said:

Your Honor, the State is asking that the Court adopt the plea agreement that is outlined in the Presentence Investigation Report that was agreed to by the parties.

For the Court's information, the sole reason for this recommendation by the State is based on conversations with the victim herself. And ordinarily that doesn't necessarily drive the State's recommendation, but based on the conversations with her and her sincere desire for the Defendant to be able to have a relationship with his daughter, she felt that that was of utmost importance and priority to give him this opportunity for a suspended sentence on these matters, with the special provision that he obtain a mental health evaluation and successfully complete all recommended treatment; that that evaluation occur within ninety days of today's date, if that has not already been done, but as well issue a sentencing no contact order between herself and the Defendant.

(Sentencing Tr. p. 5 L. 1–25). A moment later, the prosecutor repeated: “for the Court's information, that is the sole driving force and the reason for the State's recommendation in this matter.” (Sentencing Tr. p. 6 L. 15–18).

The prosecutor's comments fell well short of the prosecutorial duty “to present the recommended sentences

with his or her approval, to commend these sentences to the court, and to otherwise indicate to the court that the recommended sentences are supported by the State and worthy of the court's acceptance.” See Horness, 600 N.W.2d at 299 (citing United States v. Brown, 500 F.2d 375, 377 (4th Cir. 1974)). She never recited the agreed-upon recommendation herself, instead merely directing the court to the recitation contained in the PSI. (Sentencing Tr. p. 5 L. 1–5). She never indicated that Patten was worthy or deserving of the recommended sentence. She never indicated that the recommended sentence would be an appropriate or just outcome. In fact, she made no recommendation of her own at all, and instead expressed her disapproval of the plea agreement by twice emphasizing that “the sole” reason the State entered into the agreement was the victim’s request, repeated to the court with palpable reluctance. (Sentencing Tr. p. 5 L. 7, p. 6 L. 16). The prosecutor “inject[ed] material reservations about the agreement to which the government

[had] committed itself.” See Lopez, 872 N.W.2d at n. 7 (citing Cachucha, 484 F.3d at 1270–71)).

“Iowa courts ‘are compelled to hold prosecutors and courts to the most meticulous standards of both promise and performance.’” Beres, 943 N.W.2d at 582 (quoting Bearse, 784 N.W.2d at 215)). The prosecutor’s statements to the sentencing court did not meet those meticulous standards; they were contrary to the spirit of, and actively undermined, the plea agreement. The State breached the plea agreement by implying its disapproval of the agreed-upon sentencing recommendation.

Conclusion

The prosecutor’s comments during sentencing fell far short of the requirement that the State endorse the agreed-upon sentencing recommendation. Instead, the prosecutor implied her disapproval of the agreement, repeatedly stating that the “sole reason” for the State’s recommendation was the request of the victim. The State breached the plea agreement

by implying its disapproval of the agreed-upon sentencing recommendation. As a result, Patten's sentence should be vacated and the case remanded for re-sentencing before a different judge.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$2.13, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR
BRIEFS**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,572 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



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