

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
HONORABLE JOHN M. WRIGHT, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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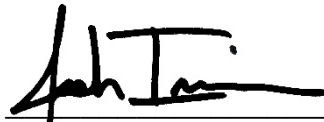
ATTORNEYS FOR DEFENDANT-APPELLANT

FINAL

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

State v. Bearnse, 748 N.W.2d 211, 215 (Iowa 2008)

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

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State v. Schlachter, 884 N.W.2d 782, 786 (Iowa Ct. App. 2016)

State v. Otero, No. 15-1175, 2016 WL 1133847, at *4 (Iowa Ct. App. Mar. 23, 2016)

State v. Pearl, No. 13-0796, 2014 WL 1714490, at *3 (Iowa Ct. App. Apr. 30, 2014)

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about July 6, 2021. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

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

“Iowa courts ‘are compelled to hold prosecutors and courts to the most meticulous standards of both promise and performance’” regarding plea agreements, and “[a]ccordingly, ‘violations of either the terms or the spirit of the agreement’ require reversal of the conviction or vacation of the sentence.” State v. Beres, 943 N.W.2d 575, 582 (Iowa 2020) (quoting State v. Bearse, 748 N.W.2d 211, 215 (Iowa 2008)). Because this is the case, “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).

The prosecutor in this case failed to indicate the State's approval, commendation, and support of the recommended sentence. Admittedly, she began by "asking that the Court adopt the plea agreement that is outlined in the Presentence Investigation Report that was agreed to by the parties." (Sentencing Tr. p. 5 L. 2-5). But immediately following this act of bare-minimum technical compliance, she gave the court "a wink and a nod" which signaled her reservations about the agreement. See Bearse, 748 N.W.2d at 218 ("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.").

Stating twice in quick succession that the victim's wishes were "the sole reason" and "sole driving force" for the State's

recommendation did not provide “context” to the court. See (Sentencing Tr. p. 5 L. 7, p. 6 L. 16; State’s Proof Brief p. 8). To the contrary, these statements signaled the State’s material reservations about the recommendation it had agreed to make in exchange for Patten’s waiver of his constitutional right to trial. See State v. Frencher, 873 N.W.2d 281, 284 (Iowa Ct. App. 2015) (citing United States v. Cachucha, 484 F.3d 1266, 1270–71 (10th Cir. 2007)) (“Where the State technically complied with the agreement by explicitly recommending the agreed-upon sentence but expressed material reservations regarding the plea agreement or sentencing recommendation, it can be fairly said the State deprived the defendant of the benefit of the bargain and breached the plea agreement.”).

The cases the State points to as examples of a prosecutor providing “context” to the sentencing court involved statements which were drastically different from those in the case at bar. See (State’s Proof Brief pp. 8–9). In Brown, the prosecutor mentioned that the defendant had previously received a deferred judgment—an aspect of the defendant’s

criminal history, which is generally a permissible sentencing consideration—but also said that fact did not change the prosecutor’s choice not to resist the defendant’s request for another deferred judgment. State v. Brown, No. 16-2051, 2017 WL 4317315, at *1 (Iowa Ct. App. Sept. 27, 2017) (unpublished table decision). Schlachter also involved a prosecutor’s discussion of a defendant’s criminal history, which the Court of Appeals found strengthened the prosecutor’s recommendation by showing it was made with full knowledge of that history. State v. Schlachter, 884 N.W.2d 782, 786 (Iowa Ct. App. 2016). In Otero, the prosecutor referenced dismissed charges, but did so only because assessment of court costs related to those charges was an aspect of the plea agreement. State v. Otero, No. 15-1175, 2016 WL 1133847, at *4 (Iowa Ct. App. Mar. 23, 2016) (unpublished table decision). In Pearl the prosecutor mentioned that, after pleading guilty, the defendant left a halfway house and failed to participate in his presentence investigation interview, but did so only to clarify that those

acts did not constitute crimes which would relieve the State of its obligation to follow the plea agreement, and concluded by “urg[ing]” the court to follow that agreement. State v. Pearl, No. 13-0796, 2014 WL 1714490, at *3 (Iowa Ct. App. Apr. 30, 2014) (unpublished table decision). None of these statements implied reservation on the part of the State. They made the court aware of the defendant’s criminal history while also emphasizing that history did not affect the State’s position (in Brown and Schlachter), made the court aware of a specific aspect of the plea agreement (in Otero), and clarified that the State’s recommendation was not affected by the defendant’s post-plea actions (in Pearl).

The prosecutor’s actions in this case, unlike those in the cases cited by the State, implied disapproval of the State’s sentencing recommendation. A statement that the victim supports the recommendation, standing alone, would have cast the recommendation in a positive light (as the State was required to do to fulfill its promise to Patten). However, repeatedly emphasizing that was “the sole” reason for the

recommendation transformed that information into a negative. It indicated that the recommendation had no other positive attributes, and invited the district court to part from that recommendation. And while a prosecutor's potential misstep may in some instances be corrected by advocacy in favor of the recommended sentence, the prosecutor in this case provided no advocacy whatsoever. The prosecutor failed to endorse the agreed-upon sentencing recommendation.

CONCLUSION

The prosecutor breached the plea agreement by expressing reservation about its promise to recommend a suspended sentence. Patten's sentence should be vacated and the case should be remanded for sentencing before a different judge, with the State required to properly endorse its agreed-upon recommendation.

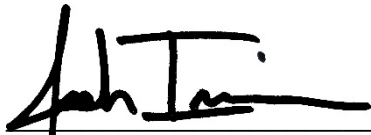
ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$1.21, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

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:

this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 981 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 7/20/21

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