

IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0101

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MYCHAEL RICHARD PATTEN,
Defendant-Appellant.

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

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

THOMAS J. OGDEN
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
thomas.ogden@iowa.gov

ROSS BRADEN
Lee County Attorney

KIMBERLY A. AUGER
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW 4

ROUTING STATEMENT..... 5

STATEMENT OF THE CASE..... 5

ARGUMENT..... 6

I. The State Did Not Breach the Plea Agreement..... 6

CONCLUSION 11

REQUEST FOR NONORAL SUBMISSION..... 11

CERTIFICATE OF COMPLIANCE12

TABLE OF AUTHORITIES

Federal Case

United States v. Cachucha, 484 F.3d 1266 (10th Cir. 2007)..... 8

State Cases

State v. Boldon, 954 N.W.2d 62 (Iowa 2021).....6, 7, 8

State v. Brown, No. 16-2051, 2017 WL 4317315
(Iowa Ct. App. Sept. 27, 2017)..... 9

State v. Damme, 944 N.W.2d 98 (Iowa 2020)..... 6

State v. King, 576 N.W.2d 369 (Iowa 1998)..... 7

State v. Otero, No. 15-1175, 2016 WL 1133847
(Iowa Ct. App. Mar. 23, 2016)..... 9

State v. Pearl, No. 13-0796, 2014 WL 1714490
(Iowa Ct. App. Apr. 30, 2014)..... 9

State v. Schlachter, 884 N.W.2d 782 (Iowa Ct. App. 2016)..... 9

State Statute

Iowa Code § 814.6(1)(a)(3) 6

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. The State Did Not Breach the Plea Agreement.

Authorities

United States v. Cachucha, 484 F.3d 1266 (10th Cir. 2007)

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

State v. Brown, No. 16-2051, 2017 WL 4317315

(Iowa Ct. App. Sept. 27, 2017)

State v. Damme, 944 N.W.2d 98 (Iowa 2020)

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

State v. Otero, No. 15-1175, 2016 WL 1133847

(Iowa Ct. App. Mar. 23, 2016)

State v. Pearl, No. 13-0796, 2014 WL 1714490

(Iowa Ct. App. Apr. 30, 2014)

State v. Schlachter, 884 N.W.2d 782

(Iowa Ct. App. 2016)

Iowa Code § 814.6(1)(a)(3)

ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is a direct appeal from Mychael Patten's convictions for domestic abuse assault by strangulation, child endangerment, assault with a dangerous weapon, and false imprisonment. He argues that the State breached the plea agreement when it explained that the victim's request was the reason for agreeing to recommend a suspended sentence.

Course of Proceedings & Facts

The State accepts the course of proceedings and statement of facts as set forth in Patten's brief as adequate and essentially correct. Iowa R. App. P. 6.903(3). Any additional relevant facts will be discussed as part of the State's argument.

ARGUMENT

I. The State Did Not Breach the Plea Agreement.

Statement on Good Cause

Patten “bears the burden of establishing good cause to pursue an appeal of [his] conviction based on a guilty plea.” *State v. Boldon*, 954 N.W.2d 62, 69 (Iowa 2021) (quoting *State v. Damme*, 944 N.W.2d 98, 104 (Iowa 2020)); *see also* Iowa Code § 814.6(1)(a)(3). “A sentencing error invariably arises after the court has accepted the guilty plea. This timing provides a legally sufficient reason to appeal notwithstanding the guilty plea.” *Id.* Patten contends the State tainted the sentencing hearing when it breached the parties’ plea agreement at the time of sentencing. Because Patten challenges the sentencing hearing, he has established good cause to pursue this direct appeal as a matter of right. *See Boldon*, 954 N.W.2d at 69.

Preservation of Error

“While some forms of sentencing error require a timely objection or challenge to preserve an issue for appellate review, an allegation the prosecutor breached the plea agreement at the time of sentencing is a species of sentencing error to which the traditional rules of error preservation are inapplicable.”

Boldon, 954 N.W.2d at 70.

Standard of Review

Review of the State's alleged breach of the plea agreement is for errors at law. *State v. King*, 576 N.W.2d 369, 370 (Iowa 1998).

Merits

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. Where the prosecutor has agreed to make a particular sentencing recommendation, the prosecutor must do more than simply inform the court of the promise the State has made to the defendant with respect to sentencing. The State must actually fulfill the promise.

Boldon, 954 N.W.2d at 71 (cleaned up). In this case, the parties agreed that Patten would plead guilty as charged in exchange for a joint recommendation of a suspended sentence on each count, each running consecutive to one another, for a total suspended sentence of ten years. Written Plea; App. 8-11.

At sentencing, the State asked the court to adopt the recommendation of the plea agreement. Sent. Tr. P.5 Ls.1-5. It explained to the court that after having conversations with the victim, who expressed a "sincere desire for the Defendant to be able to have a relationship with his daughter," it concluded that a suspended

sentence was an appropriate recommendation provided that Patten obtain a mental health evaluation within 90 days, successfully complete all recommended treatment, and that a no contact order be put in place between Patten and the victim. Sent. Tr. P.5 Ls.9-25.

Patten argues that the State breached the plea agreement by explaining its motivation and the victim's desire to see Patten get a suspended sentence. But it did not. "While 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." *Boldon*, 954 N.W.2d at 71 (quoting *United States v. Cachucha*, 484 F.3d 1266, 1270–71 (10th Cir. 2007)). Examples of a "material reservation" include expressing regret for the agreement, referring to a different sentencing recommendation from the presentence investigation, reminding the district court that it is not bound by the agreement, or emphasizing the horrific nature of the offense using witnesses and exhibits. *Id.* at 71-72. The State did none of that in this case.

The State's explanation of its motivation for the agreement provided context for the district court and did not undermine its

recommendation. *See, e.g., State v. Brown*, No. 16-2051, 2017 WL 4317315, at *1 (Iowa Ct. App. Sept. 27, 2017) (finding no breach where State asked court to take judicial notice of prior deferred judgment but did not resist request for deferred judgment); *State v. Schlachter*, 884 N.W.2d 782, 786 (Iowa Ct. App. 2016) (holding no breach where the prosecutor's recitation of a defendant's criminal history provided context where the presentence investigation report was unavailable); *State v. Otero*, No. 15-1175, 2016 WL 1133847, at *3 (Iowa Ct. App. Mar. 23, 2016) (finding no breach where prosecutor referenced dismissed charges to inform the court an agreement had been reached); *State v. Pearl*, No. 13-0796, 2014 WL 1714490, at *3 (Iowa Ct. App. Apr. 30, 2014) (finding the context given by the prosecutor was appropriate and did not breach the plea).

The State explained that the victim's request for a suspended sentence so that Patten could have a relationship with his daughter motivated the State to agree to recommend one. It also explained that such a request ordinarily would not "drive the State's recommendation." Sent. Tr. P.5 Ls.9-17. In other words, the State would not recommend a suspended sentence based on such a request if it did not feel it was appropriate for that particular defendant. The

State emphasized that the suspended sentence recommendation was conditioned on Patten obtaining a mental health evaluation within 90 days and completing any recommended treatment. Sent. Tr. P.5 Ls.18-25. Further, the fact that the plea agreement included a recommendation of consecutive sentences on each count shows the State's commitment to punishing Patten if he is not successful on probation and reinforces the "give and take" nature of the negotiation. Written Plea; App. 8-11.

The State gave its full support to the recommendation contemplated by the plea agreement. It did not mention that the presentence investigator recommended incarceration. It did not mention that the district court was not bound by the agreement. It did not mention that Patten committed the offenses while on supervision for a prior offense, although the district court considered that fact significant. Sent. Tr. P.20 Ls.10-22. It also did not mention the terrifying and violent nature of Patten's offenses. In short, the State neither explicitly nor implicitly expressed a material reservation about the agreement. It complied with the letter and the spirit of the agreement, and Patten was not denied the benefit he bargained for

despite the sentence he received. Patten has failed to establish a breach of the plea agreement.

CONCLUSION

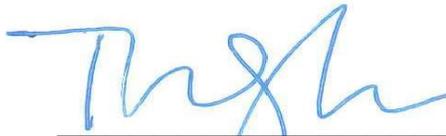
For the foregoing reasons, Patten's sentence should be affirmed.

REQUEST FOR NONORAL SUBMISSION

Nonoral submission is appropriate for this case.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



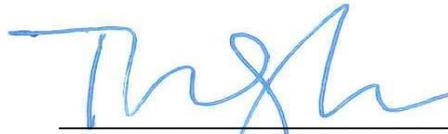
THOMAS J. OGDEN
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
thomas.ogden@iowa.gov

CERTIFICATE OF COMPLIANCE

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) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,177** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: July 27, 2021



THOMAS J. OGDEN

Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
thomas.ogden@iowa.gov