

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOAN KATHRYN WENGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84003-COA

FILED

SEP 09 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Joan Kathryn Wenger appeals from a judgment of conviction, entered pursuant to a guilty plea, of vehicular homicide. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Wenger argues the State breached the guilty plea agreement by implicitly arguing for a higher sentence than the sentence it had agreed to recommend. Wenger did not object to the State's comments at the sentencing hearing below; therefore, we review for plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). To demonstrate plain error, an appellant must show there was an error, the error was plain, meaning that it is clear under current law from a casual inspection of the record, and the error affected appellant's substantial rights. *Id.* "[A] plain error affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a 'grossly unfair' outcome)." *Id.* at 51, 412 P.3d at 49.

The State is held "to the most meticulous standards of both promise and performance in fulfillment of its part of a plea bargain" and

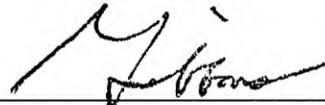
must avoid violating either the terms or the spirit of the agreement. *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999). Although “a promise to recommend a sentence is not a promise to stand silent, . . . in arguing in favor of a sentencing recommendation that the state has agreed to make, the prosecutor must refrain from either explicitly or implicitly repudiating the agreement.” *Id.* at 389, 990 P.2d at 1261-62.

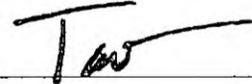
In the guilty plea agreement, the parties agreed to jointly recommend a sentence of 25 years in prison with eligibility for parole beginning after 10 years. The State reserved the right to present arguments, facts, and witnesses in support of the plea agreement at sentencing. The State also reserved the right to provide the court with relevant information not in the court’s possession, to call victims to make victim impact statements, and to comment on the circumstances of the crime and Wenger’s criminal history.

At the sentencing hearing, the State affirmed it was standing by the joint recommendation. The prosecutor’s comments about the circumstances of the case and Wenger’s criminal history were offered in support of the recommendation and were permitted by the guilty plea agreement. Moreover, the prosecutor’s stated belief that a sentence of 10 to 25 years in prison was similar to a sentence of 10 years to life in prison due to Wenger’s age did not indicate the State was seeking a higher sentence. Finally, Wenger does not demonstrate that the prosecutor’s reading of a letter written by the deceased’s son to the deceased was for the purpose of seeking a higher sentence. Accordingly, Wenger fails to demonstrate error plain from the record, *see* NRS 176.015(6) (“This section does not restrict

the authority of the court to consider any reliable and relevant evidence at the time of sentencing.”), or that any alleged errors affected her substantial rights. Therefore, we conclude Wenger is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Thomas W. Gregory, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Douglas County District Attorney/Minden  
Douglas County Clerk