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### Summary of Sparks v. State, 120 Nev. Adv. Op. 12

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*Nevada Law Journal*

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***Sparks v. State*, 120 Nev. Adv. Op. 12,  
100 P.3d 486 (April 28, 2005)<sup>1</sup>**

**CRIMINAL LAW – FAILURE TO APPEAR CLAUSES**

**Summary**

The Nevada Supreme Court held that “Failure to Appear” clauses are not unconscionable in plea agreements and upheld one in this case.

**Disposition/Outcome**

The Court affirmed the lower court’s judgment of conviction.

**Factual and Procedural History**

Jason Robert Sparks was arrested and charged with possession of a controlled substance and intent to sell and transport a controlled substance. Sparks entered into a plea bargain with the State. The plea bargain contained the following Failure to Appear (“FTA”) clause: “I understand that if I fail to appear for the scheduled sentencing date or I commit a new criminal offense prior to sentencing the State of Nevada would regain the full right to argue for any lawful sentence.” Thereafter, Sparks failed to appear for his sentencing hearing and was later arrested on additional criminal charges. The State asserted its right under the FTA clause and argued for consecutive prison terms. Sparks filed this timely appeal.

**Discussion**

The Court began its discussion of the issues by referencing the high standard imposed on the State for plea agreements: “[the State] is held to ‘the most meticulous standards of both promise and performance’ with respect to both the terms and the spirit of the plea bargain.”<sup>2</sup> Sparks clearly acknowledges that the FTA clause is applicable in this case, however, he argues that the FTA clause is unenforceable because it is contrary to Nevada law. The Court disagrees.

Sparks first argues that FTA clauses do not follow the written statutory form for plea agreements set forth in NRS 174.063. The Court refuted this argument by noting that under the plain language of the statute, a plea agreement must only “substantially” comply with the statutory form. Thus, the Court opined, the legislature allowed for modifications by merely requiring “substantial” compliance with the form.

The Court then delved into the legislative history of the statute, even though by the Court’s own admission it is unnecessary to review legislative history when the language of the statute is unambiguous, as it is in this case. The legislative history reveals that the legislature

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<sup>1</sup> Summarized by Bryce Loveland.

<sup>2</sup> Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986).

intended to allow flexibility in plea bargains to “retain some discretion as to the form of the written agreement, to facilitate the various 'fact patterns' that arise in criminal law.”<sup>3</sup>

The Court similarly rejected Sparks’ argument that the FTA clause is void under Nevada case law because it contravenes this court's holdings in Gamble v. State<sup>4</sup> and Villalpando v. State.<sup>5</sup> The Court explained that neither case is applicable here because neither case involved a plea agreement containing an FTA clause or other similar clause. The Court explained that there were cases, however, that supported its holding in this case. The Court noted that in Citti v. State it had implicitly approved of a plea agreement containing an explicit reservation of a conditional right to argue by the State.<sup>6</sup> Similarly, in other cases, the Court has recognized that a defendant is entitled to enter into a plea agreement affecting fundamental rights.<sup>7</sup>

The Court also rejected Sparks’ next argument, that the FTA clause is unconscionable because he was not aware of it. Sparks signed the plea containing the FTA clause and also acknowledged that he had read it. Additionally, the proper time for Sparks to object to the FTA clause was before he signed the plea.

The Court also rejected Sparks’ argument that the FTA clause is unconscionable because it gives the State the unilateral right to withdraw from the plea. The Court explained that it is the criminal defendant who actually controls whether the State will be allowed to argue for a particular sentence. Further, the FTA clause is reasonable because it relies on the criminal defendant’s ability to follow the law and show up for his sentencing hearing, which if he cannot do, should not be rewarded with a lesser sentence from a plea bargain.

## **Conclusion**

The Court held that the FTA clause in Sparks’ plea agreement was lawful and enforceable. Because Sparks violated the terms of the clause, the Court held that the State properly argued for consecutive sentences and the State did not breach the plea agreement.

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<sup>3</sup> *Hearing on S.B. 549 Before the Senate Judiciary Comm.*, 68th Leg. (Nev., June 9, 1995) (summarizing statement of Clark County Chief Deputy District Attorney Ben Graham).

<sup>4</sup> 95 Nev. 904, 604 P.2d 335 (1979).

<sup>5</sup> 107 Nev. 465, 814 P.2d 78 (1991).

<sup>6</sup> 107 Nev. 89, 92, 807 P.2d 724, 726 (1991).

<sup>7</sup> *See Krauss v. State*, 116 Nev. 307, 310, 998 P.2d 163, 165 (2000).