

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20080217-CA	
v.)		
)	F I L E D	
Michael A. Bacon,)	(August 7, 2008)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2008 UT App 297</td></tr></table>	2008 UT App 297
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Sixth District, Richfield Department, 071600082
The Honorable David L. Mower

Attorneys: Michael A. Bacon, Draper, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and Orme.

PER CURIAM:

Michael A. Bacon appeals the trial court's denial of his motion to set aside his sentence and plea based on an alleged breach of the plea agreement. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Bacon argued in the trial court that the prosecutor breached the agreement that no officer would make a recommendation to the Board of Pardons when Adult Probation and Parole (AP&P) filed a postsentencing report recommending that Bacon serve the maximum time. It is well settled that AP&P is not bound by a prosecutor's agreement for any sentencing recommendation as part of a plea agreement. See State v. Smit, 2004 UT App 222, ¶ 19 n.4, 95 P.3d 1203; State v. Thurston, 781 P.2d 1296, 1299-1300 (Utah Ct. App. 1989). Because the plea agreement did not bind AP&P, there is no breach of the agreement. Accordingly, the trial court did not err in denying Bacon's motion.

In response to this court's motion, Bacon argues that the prosecutor's promise was illusory, thereby making Bacon's plea involuntary. Bacon does not now argue that the AP&P report breached the agreement. Instead, he relies on case law to argue

that the prosecutor could not bind other agencies. See Smit, 2004 UT App 222, ¶ 19 n.4; Thurston, 781 P.2d at 1299-1300. Accordingly, he claims, the prosecutor misrepresented his authority in the plea agreement and prevented Bacon from entering the plea voluntarily. Bacon raises this issue for the first time on appeal. Below, he argued an alleged breach of the plea agreement. Here, he changes his focus to the voluntariness of the plea. Generally, this court does not review issues raised for the first time on appeal. See Salt Lake City v. Ohms, 881 P.2d 844, 847 (Utah 1994). As a result, we decline to address this issue further.

Affirmed.

Russell W. Bench, Judge

James Z. Davis, Judge

Gregory K. Orme, Judge