

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060837-CA
v.)	
)	F I L E D
Cleveland Feranda Felder,)	(May 17, 2007)
)	
Defendant and Appellant.)	2007 UT App 172

Second District, Ogden Department, 061901771
The Honorable Ernest W. Jones

Attorneys: Randall W. Richards, Ogden, for Appellant
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Cleveland Feranda Felder appeals his sentence after entering a guilty plea. Felder asserts that the State breached the plea agreement by commenting at the sentencing hearing. This is before the court on a joint motion for remand and specific performance of the plea agreement.

The record establishes that the State breached the plea agreement when it failed to remain silent regarding sentencing. "[A] defendant who pleads guilty has a constitutional right to a remedy when a plea agreement is broken." State v. Smit, 2004 UT App 222, ¶9, 95 P.3d 1203 (quoting Santobello v. New York, 404 U.S. 257, 262 (1971)). The parties agree that the remedy should be specific performance of the agreement at a new sentencing hearing before a new judge. See State v. Hale, 2005 UT App 305, n.4 (mem.) (noting that re-sentencing "should take place before a different judge").

Accordingly, Felder's sentence is vacated and this case is remanded for reassignment to a different judge for re-sentencing.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

James Z. Davis, Judge