

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050005-CA
v.	)	
	)	
Marty Joe Galvan,	)	F I L E D
	)	(February 2, 2006)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 28</span>

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Third District, Salt Lake Department, 041904272  
The Honorable John Paul Kennedy

Attorneys: Elizabeth Hunt, Salt Lake City, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake  
City, for Appellee

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Before Judges Greenwood, Davis, and Orme.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

Galvan appeals his sentence, alleging that he did not receive the benefit of his plea agreement because the State made an initial sentence recommendation that violated the agreement. He argues that, although the State later withdrew its initial recommendation and made an affirmative recommendation that conformed to the plea agreement, he is entitled to specific performance of the agreement and resentencing in front of a new judge.

The State argues that this issue was not properly preserved for appeal because Galvan did not object to the sentencing but, after noting the apparent breach, actually asked the judge to consider the State's corrected recommendation and go forward with the sentencing--never mentioning the issue of being entitled to sentencing before a new judge. The State's argument is well taken. See State v. Brown, 856 P.2d 358, 361 (Utah Ct. App.

1993) ("An oblique reference to an issue in the absence of an 'objection to the trial court's failure to rule on the issue' does not put that issue properly before the court.") (citation omitted).

But even if the issue were properly before us, Galvan's argument would be unavailing. Utah case law is clear that when the State initially breaches the plea agreement, is made aware of its mistake, and then changes its recommendation to conform to the agreement, the initial breach is cured unless there is evidence the trial court was influenced by the initial recommendation. See State v. Smit, 2004 UT App 222, ¶21, 95 P.3d 1203. There is no such evidence here.

Affirmed.<sup>1</sup>

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Gregory K. Orme, Judge

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WE CONCUR:

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Pamela T. Greenwood,  
Associate Presiding Judge

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James Z. Davis, Judge

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<sup>1</sup>Galvan also appeals the trial court's ruling that it no longer had jurisdiction to rule on Galvan's rule 22(e) motion that was submitted after he initiated this appeal. See Utah R. Crim. P. 22(e). We need not reach this issue, as the sentence here was not illegally imposed, and thus, any rule 22(e) motion based on the State's initial breach of the plea agreement would have been futile.