

STATE V. CARRANZA

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
PEDRO CARRANZA,
Defendant-Appellant.

NO. 30,133

COURT OF APPEALS OF NEW MEXICO

March 16, 2010

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Lisa C. Schultz,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Liane E. Kerr, Albuquerque, NM, for Appellant

JUDGES

CYNTHIA A. FRY, Chief Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Chief Judge.

Defendant appeals from the district court's judgment and sentence, entered pursuant to a guilty plea, convicting him for fourth offense DWI. Defendant challenges the length of the period of his probation. We issued a notice of proposed summary disposition, proposing summary affirmance. Defendant responded to our notice with a

memorandum in opposition. We have given his response due consideration and remain unpersuaded. We therefore affirm.

Defendant argues that the district court imposed an illegal five-year term of supervised probation, which should be reduced to two-and-a-half years. [MIO 3] Defendant argues that the term of probation is illegal because it exceeds and is disproportionate to the eighteen-month maximum term of incarceration permitted for fourth offense DWI. [Id.] Defendant contends that because a violation of his probation may result in serving the remainder of probation in custody, the five-year period of his probation exposes him to a term of incarceration that far exceeds the term of incarceration required for the offense. [Id.]

In the present case, Defendant was convicted, pursuant to a guilty plea, for fourth offense DWI, in violation of NMSA 1978, Section 66-8-102(G) (2008). The mandatory sentence is “a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement.” Section 66-8-102(G). The probation statute requires a term of probation where a sentence is suspended, see *State v. Leslie*, 2004-NMCA-106, ¶ 7, 136 N.M. 244, 96 P.3d 805, but “the total period of probation for district court shall not exceed five years and the total period of probation for the magistrate or metropolitan courts shall be no longer than the maximum allowable incarceration time for the offense or as otherwise provided by law.” NMSA 1978, Section 31-20-5(A) (1985) (amended 2003) (emphasis added). The district court sentenced Defendant to a term of eighteen months, ordered him to serve six months in the Doña Ana County Detention Center, suspended the year-long remainder of his sentence, and ordered five years of probation. [RP 90] As we stated in our notice, we see no illegality in Defendant’s sentence. It is only in magistrate or metropolitan court that probation is not permitted to exceed the maximum incarceration time for the offense. See § 31-20-5(A).

Defendant’s response to our notice does not refer this Court to any authority that suggests that the Legislature intended to restrict the period of probation a district court may impose to reflect the term of incarceration permitted for the offense. Also, Defendant does not refer us to, and we are not aware of, any authority that makes us question the Legislature’s decision to expose Defendant or a defendant in his position to a greater term of incarceration by way of authorizing a five-year term of probation. We understand Defendant’s request, but we see no reason to reconsider our reading of the statute or clarify that the statute permits the proportionally lengthy probation in light of the shorter term of incarceration involved.

For these reasons and those stated in our notice, we affirm the sentence imposed by the district court.

IT IS SO ORDERED.

CYNTHIA A. FRY, Chief Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

RODERICK T. KENNEDY, Judge