

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIA CHRISTINA FURTADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73009

FILED

NOV 15 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Maria Christina Furtado appeals from a judgment of conviction entered pursuant to a guilty plea of child abuse, neglect, or endangerment and conspiracy to engage in torturing, maiming, mutilating, or killing an animal. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Furtado claims the district court abused its discretion at sentencing (1) by refusing to apply the remainder of Furtado's credit for time served to her sentence for conspiracy and (2) by placing her on probation over her objection, particularly in light of her substantial amount of presentence confinement credit. The State concedes both claims of error.

We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (internal quotation marks omitted).


The Nevada Supreme Court has previously ruled "the purpose of [NRS 176.055] is to ensure that *all* time served is credited towards a

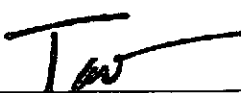
defendant's *ultimate* sentence," *Kuykendall v. State*, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996) (emphasis added), and credit for time served is "mandatory," *Haney v. State*, 124 Nev. 408, 413, 185 P.3d 350, 354 (2008).

The Nevada Supreme Court has also acknowledged, "[i]f the defendant considers the conditions of probation more harsh than the sentence the court would otherwise impose, he has the right to refuse probation and undergo the sentence." *Himmagine v. State*, 88 Nev. 296, 299, 496 P.2d 763, (1972) (quoting *People v. Mason*, 488 P.2d 630, 632 (Cal. 1971), *disapproved on other grounds by People v. Lent*, 541 P.2d 545, 548 n.1 (Cal. 1975)).

We conclude the district court abused its discretion by failing to apply all 527 days of Furtado's presentence credit toward her ultimate jail sentence of 728 days and by placing her on probation despite her unequivocal rejection of probation and request to be allowed to serve the remainder of her sentence. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court with instructions to enter a corrected judgment of conviction that applies all 527 days of Furtado's presentence credit to her ultimate sentence of 728 days in the Nye County Detention Center and requires her to serve the remainder of her sentence without probation.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kimberly A. Wanker, District Judge
The Law Office of David Rickert
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk