

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOYCE T. QUIROZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39470

FILED

SEP 12 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOTT,
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of embezzlement, both category C felonies. The district court sentenced appellant Joyce T. Quiroz to serve two consecutive prison terms of 12-30 months; the second prison term was suspended and Quiroz was ordered to be placed on probation for an indeterminate period not to exceed 60 months after the expiration of the first prison term. The district court ordered Quiroz to pay \$22,814.49 in restitution.

Quiroz contends that the sentence imposed by the district court is illegal. Citing to Wicker v. State¹ and Miranda v. State² for support, Quiroz argues that the granting of probation for the second sentence is in violation of NRS 176A.500(1)(b), and that the proper remedy is to order the sentences to run concurrently. The State agrees with Quiroz and asks this court to remand the matter to the district court for the imposition of an amended judgment of conviction. We disagree with both parties.

¹111 Nev. 43, 888 P.2d 918 (1995).

²114 Nev. 385, 956 P.2d 1377 (1998).

NRS 176A.500 states in relevant part:

1. The period of probation or suspension of sentence may be indeterminate or may be fixed by the court and may at any time be extended or terminated by the court, but the period, including any extensions thereof, must not be more than:


...

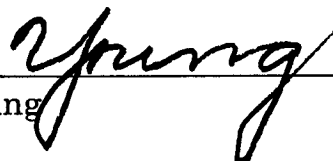
(b) Five years for a felony.

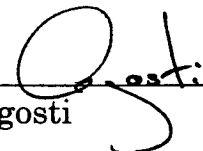
(Emphasis added.) In this case, if Quiroz served the maximum period of incarceration on her first sentence, she would have served two and one half years in prison. Accordingly, her second sentence is not inevitably suspended for more than five years, and therefore does not run afoul of Wicker. In fact, Quiroz's reliance on Wicker for support is misplaced. We therefore conclude that the district court did not err in sentencing Quiroz, and that her sentence is not illegal.

Having considered Quiroz's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Rose

 _____, J.
Young

 _____, J.
Agosti

cc: Hon. Richard Wagner, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk