

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOE HUNTER, A/K/A JOE SAVALES
HUNTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39744

FILED

DEC 04 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to an Alford¹ plea, of one count of open and gross lewdness, a gross misdemeanor violation of NRS 201.210. The district court sentenced appellant Joe Hunter to serve a term of one year in the Clark County Detention Center. The district court then suspended execution of the sentence and placed Hunter on a term of probation not to exceed three years. One of the conditions of probation was that Hunter was required to spend the first 90 days of the three-year period incarcerated in the Clark County Detention Center. This appeal followed.²

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Hunter filed an emergency motion seeking a stay of execution of his sentence and an order for his immediate release from custody pending appeal. This court granted the stay of execution of the 90-day jail term and directed Hunter's release from the Clark County Detention Center on June 11, 2002.

Hunter argues that the district court abused its sentencing discretion by ordering the jail term for the first part of his sentence. In particular, Hunter argues that this jail term is improper because the commonly-understood meaning of probation is that the probationer will not be incarcerated until he violates some particular term of the probation. Hunter also points out that his plea agreement specifically allowed him to withdraw his plea if he did not receive probation. We disagree with Hunter's contention and affirm his conviction.

In Creps v. State, this court addressed a nearly identical claim to Hunter's.³ The defendant in Creps argued that a 60-day term of incarceration in the county jail was beyond the power of the district court to impose as a condition of probation for a drug offense.⁴ This court rejected that claim, and we likewise reject Hunter's claim in this case. We also note that the more recent case of Miller v. State is inapplicable to this case.⁵ In Miller, this court distinguished that case from Creps by emphasizing that the statutes violated in Miller specified mandatory probation.⁶ In the instant case, as in Creps, there was no statutory requirement that the defendant receive probation. Therefore, we conclude

³94 Nev. 351, 581 P.2d 842 (1978).

⁴Id. at 359-63, 581 P.2d at 848-51.

⁵113 Nev. 722, 941 P.2d 456 (1997), limited on other grounds by Daniels v. State, 115 Nev. 330, 988 P.2d 791 (1999).


⁶Id. at 726, 941 P.2d at 458-59.

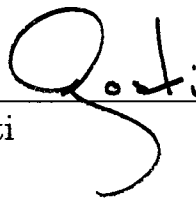
that the district court did not abuse its discretion by sentencing Hunter to 90 days in jail as a term of his probation.

Having considered Hunter's claim and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Young


_____, J.
Rose


_____, J.
Agosti

cc: Hon. Joseph T. Bonaventure, District Judge
Law Offices of Marc D. Risman
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk