

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0352
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
ESTELLE G. ROBERTS,) 111, Rules of the Arizona
) Supreme Court)
Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-105470-001 DT

The Honorable Carolyn K. Passamonte, Judge Pro Tempore

AFFIRMED

Richard M. Romley, Acting Maricopa County Attorney Phoenix
By Andrea L. Keever, Deputy County Attorney
Appeals and Westside Juvenile Division
Attorneys for Appellant

James J. Haas, Maricopa County Public Defender Phoenix
By Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellee

N O R R I S, Judge

¶1 The State timely appeals the superior court's
imposition of sentence on Estelle G. Roberts, arguing the court
imposed a sentence contrary to the plea agreement, and thus

should have granted its request to withdraw from the agreement.¹ Because Roberts's sentence was consistent with the language of the plea agreement, we disagree and affirm her sentence.

FACTS AND PROCEDURAL BACKGROUND

¶12 A grand jury indicted Roberts on two counts of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs ("DUI"), both class four felonies. Pursuant to a plea agreement, Roberts pled guilty to one count of aggravated DUI. The superior court "suspend[ed] imposition of sentence and plac[ed] [Roberts] on three years of supervised probation," and "further ordered [Roberts] shall serve four months in prison for felony DUI."

DISCUSSION

¶13 On its face, the plea agreement contemplated probation. Term number one specifically states "[p]robation **is** available," and further notes, consistent with the applicable statute, "**[i]f granted probation, Defendant must serve a minimum of four (4) months in the Department of Corrections.**" See Ariz. Rev. Stat. ("A.R.S.") § 28-1383(D) (Supp. 2009)² ("[a] person is

¹We review the superior court's denial of a motion to withdraw from a plea agreement for abuse of discretion. See *State v. Diaz*, 173 Ariz. 270, 272, 842 P.2d 617, 619 (1992).

²Although certain statutes cited in this decision were amended after the date of Roberts's offenses, the revisions are immaterial. Thus, we cite to the current versions of these statutes.

not eligible for probation . . . until the person has served not less than four months in prison"). The State argues the parties' stipulation in term number two that Roberts "**shall be sentenced to the Department of Corrections for a term to be determined by the Court**" meant a "prison-only" term for a class four felony, which carries a minimum term of one year.³ We disagree with the State and agree with Roberts the language in term number two calling "for a term [of imprisonment] to be determined by the Court" is unambiguous and the superior court complied with this term when it sentenced her to the Department of Corrections for four months, followed by probation.⁴

¶4 Moreover, the State's assertion the superior court effectively "rejected" the plea agreement flies in the face of the court's explanation of the possible sentencing options available should Roberts choose to accept the plea. At the change-of-plea hearing, the court stated, *inter alia*, pursuant

³See A.R.S. §§ 13-701(C)(3) (2001) (presumptive prison term for class four felony is 2.5 years); -702(A) (Supp. 2007) (class four felony prison term may be reduced to 1.5 years or increased to three years, depending on mitigating/aggravating circumstances); -702.01(A), (B) (Supp. 2007) (class four felony prison term may be further reduced to one year or increased to 3.75 years if trier of fact finds at least two mitigating/aggravating circumstances). Sections 13-701(C)(3), -702(A), and -702.01(A) are renumbered and combined into A.R.S. § 13-702(D) (2010).

⁴Because the language in the plea agreement is unambiguous, we need not address Roberts's alternative argument that if it were ambiguous, we should construe the ambiguities in her favor.

to the plea agreement, "[p]robation is available," and "if granted probation [Roberts] would have to serve a minimum of four months in prison," to which the State raised no objections. Thus, we reject the State's contention the superior court imposed a sentence contrary to the plea agreement.

CONCLUSION

¶15 For the foregoing reasons, we affirm Roberts's sentence.

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

DONN KESSLER, Judge