
vs.)
THE STATE OF NEVADA,)
Respondent.)

_____)

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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 _____

3 TYERRE LANELL WHITE-HUGHLEY, A/K/A) NO. 80549
4 TYERRE LANELL WHITE,)
5)
6 Appellant,)
7)
8 vs.)
9)
10 THE STATE OF NEVADA,)
11)
12 Respondent.)
13 _____

11 **NRAP 26.1 DISCLSORE**

12

13 The undersigned counsel of record certifies that the following are persons and
14 entities as described in NRAP 26.1(a), and must be disclosed pursuant to that Rule.
15
16 These representations are made so that the judges of this court may evaluate
17 possible disqualification or recusal.

18 (1) Attorney of Record for Appellant: Dewayne Nobles, Esq.

19 (2) Parent and/or Publicly-held Corporations: None.

20 (3) Law Firm(s) Appearing in the District Court: Nobles & Yanez Law Firm.

21
22
23 Dated this 5th day of June, 2020.

24 _____
25 /s/ Dewayne Nobles
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 _____

4 TYERRE LANELL WHITE-HUGHLEY, A/K/A) NO. 80549
5 TYERRE LANELL WHITE,)
6)
7 Appellant,)
8))
9 vs.)
10 THE STATE OF NEVADA,)
11 Respondent.)
12 _____

13 **APPELLANT’S OPENING BRIEF**

14 **Jurisdictional Statement**

15 Appellant, Tyerre Lanell White-Hughley, brings this direct appeal from a final
16 District Court Judgment of Conviction, which was filed on January 16, 2020.
17 (Appellant's Appendix (AA), Volume I, pgs. 034). Appellant filed a timely Notice of
18 Appeal in district court on February 4, 2020. (AA. 036-037). Therefore, this
19 Honorable Court has jurisdiction pursuant to N.R.S. §177.015(3); *see also Griffin v.*
20 *State*, 122 Nev. 737, 744, 137 P.3d 1165, 1166 (2006) (holding that a claim for
21 presentence credits is a claim challenging the validity of the judgment of conviction
22 and sentence that must be raised on direct appeal or in a post-conviction petition for
23 writ of habeas corpus.).
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1 **Routing Statement**

2 Pursuant to NRAP 17(b)(1) the case is presumptively assigned to the Court of
3 Appeals, as the matter involves an appeal from a judgment of conviction based on
4 a guilty plea.
5

6 **Issues Presented for Review**

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8 **I. Did the district court err in awarding Appellant zero days of**
9 **presentence credit for time served.**

10 **II. Does Due Process require that Appellant be credited for all the time**
11 **he spent in presentence confinement.**
12

13 **Statement of the Case**

14
15 The State charged Appellant Tyerre Lanell White-Hughley (hereinafter “Mr.
16 White”), with Invasion of the Home in an Information filed on November 5, 2019.
17 (AA. 030-031). On November 7, 2019, Mr. White pled guilty to Invasion of the
18 Home. (AA. 005). The State and Defense stipulated to recommend a sentence of
19 twelve (12) to thirty (30) months sentence in the Nevada Department of
20 Corrections, and the State had no opposition to concurrent time with Case No. C-
21 19-344122-1. (AA. 018).
22
23

24 On January 7, 2020, the district court sentenced Mr. White to twelve (12) to
25 thirty (30) months in the Nevada Department of Corrections. (AA. 007 & 041).
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1 The court also ordered that the sentence be served concurrently with Case No. C-
2 19-344122-1. (AA. 034).

3
4 At the sentencing hearing, Mr. White requested a total of 99 days of credit
5 for time served, but the district court awarded zero (0) days of credit. (AA. 040 &
6 034). Mr. White filed a timely Notice of Appeal on February 4, 2020. (AA. 036-
7 037).

8 Statement of the Facts

9
10
11 On October 1, 2019, Mr. White was arrested and booked into the Clark
12 County Detention Center (CCDC) for outstanding arrest warrants he had on two
13 separate cases (AA. 035). He remained in custody at CCDC throughout the course
14 of both cases.

15
16 In the case presently before the Court, Mr. White was charged with Invasion
17 of the Home in North Las Vegas Justice Court Case No. 19FN1289X.¹ (AA. 001).
18 In district court, pursuant to a Guilty Plea Agreement (GPA), Mr. White pled
19 guilty to Invasion of the Home on November 7, 2019, and was sentenced² to prison
20 on January 7, 2019. Mr. White was granted zero days of credit for time served.
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26 ¹ District Court Case No. C-19-344519-1. The crime was alleged to have occurred
on January 15, 2017.

27 ² The district court used the Presentence Investigation Report from Mr. White's
28 other case discussed herein. The Report is not being transmitted to the Court as it is
not relevant to the issue raised in this appeal.

1 (AA. 034). Pursuant to the terms of the GPA, the district court ordered that his
2 sentence be served concurrently to his second case. (AA. 034).

3
4 In the second case, Mr. White was charged with Attempt Child Abuse,
5 Battery by Strangulation, and two counts of Battery Domestic Violence in Las
6 Vegas Justice Court Case No. 19F17475X.³ (AA. 002-003). In district court,
7 pursuant to a GPA, Mr. White pled guilty to Attempt Child Abuse, Battery by
8 Strangulation, and Battery Domestic Violence on October 28, 2019. (AA. 004 &
9 008-017). He was sentenced to prison on December 9, 2019. (AA. 006). Pursuant
10 to the terms of the GPA, the district court ordered that the two felony counts run
11 concurrent to one another.⁴ (AA. 006). Mr. White was granted 70 days of credit for
12 time served. (AA. 006).

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16 In sum, on the day Appellant was alleged to have committed the Home
17 Invasion in this case—January 15, 2017—he was not in custody on a prior charge
18 nor on probation or parole from a Nevada conviction. At his sentencing hearing,
19 Appellant requested a total of 99 days of credit for time served. (AA. 040). That is,
20 all the time he served in custody since his arrest on October 1, 2019, until he was
21 sentenced on January 7, 2020.

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³ District Court Case No. C-19-344122-1. The crimes were alleged to have
27 occurred on May 7, 2019.

28 ⁴ As to the misdemeanor Battery Domestic Violence count, the district court sat as
a magistrate and sentenced Mr. White to credit for time served. (AA. 006).

1 However, the district court granted zero (0) days of credit for time served.
2 (AA. 034). In rejecting Mr. White's request for 99 days of credit for time served,
3
4 the district court stated:

5 [W]e don't double dip, that basically even though you get picked up
6 simultaneously, one case or the other, it gets credited to one. You don't get to
7 split.

8 (AA. 042). The instant appeal follows.

9 10 **Summary of Argument**

11 Since the date of his arrest in this case, October 1, 2019, until the date he
12 was sentenced, January 7, 2020, Mr. White remained in custody at CCDC. Based
13
14 on the circumstances of this case and fundamental fairness, Mr. White should be
15 granted a total of 99 days of credit for time served. Alternatively, assuming that
16 Mr. White is not entitled to any credit after he was sentenced to prison in his other
17 case, he must be granted 70 days of credit for the time he served from October 1,
18 2019, until December 9, 2019, the day he was sentenced on his other case.
19
20

21 **ARGUMENT**

22 23 **I. The District Court Erred in Awarding Zero Days of Pre-Sentence** 24 **Credit for Time Served.**

25 At Mr. White's sentencing, Mr. White requested a total of 99 days of credit
26 for time served. (AA. 040). That is, all the time Mr. White spent in pre-sentence
27 confinement from the date of his arrest, October 1, 2019, until his sentencing date
28

1 on January 7, 2020. Mr. White argued that because his two cases were to run
2 concurrently and he was not on parole or probation at the time the offense was
3 alleged to have occurred, he was entitled to all the time he served in pre-sentence
4 confinement. (AA. 038-042).

5
6 The State objected to Mr. White's request for 99 days of credit. The State
7 responded to Mr. White's argument as follows: "And, unfortunately, it's about 14
8 unpublished opinions by the Nevada Supreme Court that all state the contrary."
9 (AA. 041). The district court agreed with the State and explained to Mr. White:
10 "Counsel, I do not give credit for time served in regards to if his -- done the other
11 matter. If you believe that's an error, please go ahead and file a brief on that matter
12 and we can hear it, but that's how I always rule." (AA. 041).

13
14 When Mr. White asked the district court for any statute or case law that
15 supported denying Mr. White any pre-sentence credit, the court responded:

16
17 It's the unpublished opinion. The Supreme Court has issued that I know of -- I
18 don't know if it's 14, I know about 11 unpublished opinions that basically say
19 we don't double dip, that basically even though you get picked up
20 simultaneously, one case or the other, it gets credited to one. You don't get to
21 split. Basically that gives you 180 days or in this case 198 days of credit for time
22 served.

23
24 (AA. 042).

25
26 Whether a defendant is entitled to any credit for the time spent in
27 presentence custody is governed by N.R.S. § 176.055. The statute prescribes, in
28 relevant part, that

1 whenever a sentence of imprisonment in the county jail or state prison
2 is imposed, a court may order that credit be allowed against the
3 duration of the sentence, including any minimum term or minimum
4 aggregate, as applicable, thereof prescribed by law, for the amount of
5 time which the defendant has actually spent in confinement before
6 conviction, unless the defendant's confinement was pursuant to a
7 judgment of conviction for another offense.

8 N.R.S. § 176.055 (1).

9 Although N.R.S. § 176.055 uses the discretionary language of “may order
10 that credit be allowed against the duration of the sentence,” this Supreme Court has
11 held “that the purpose of the statute is to ensure that all time served is credited
12 towards a defendant's ultimate sentence.” Kuykendall v. State, 112 Nev. 1285,
13 1287, 926 P.2d 781, 783 (1996). In fact, this Court very recently reiterated that
14 “Nevada law is well-settled that when a district court imposes a sentence in a
15 criminal case, it must give a defendant credit for any time the defendant has
16 actually spent in presentence confinement absent an express statutory provision
17 making the defendant ineligible for that credit.” Poasa v. State, 453 P.3d 387, 388,
18 2019 Nev. LEXIS 73 **, **1 (2019).

19 N.R.S. § 176.055 also provides that a defendant is not eligible for any credit
20 on a sentence if on the date the offense was committed, the defendant was in
21 custody on a prior charge or on probation or on parole from a Nevada conviction.
22 See N.R.S. § 176.055 (2)(a) & (b). Because on January 15, 2017, Mr. White was
23 not in custody on a prior charge, nor on probation or parole, these exceptions do
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1 not apply to him. Additionally, up until December 9, 2019, Mr. White was not
2 confined pursuant to a judgment of conviction for another offense. *See* N.R.S.
3 §176.055 (1). Simply stated, there is no statute nor case law that supports the
4 district court's decision to deny Mr. White at least 70 days of credit.
5

6
7 At the sentencing hearing, State also made a passing reference to a Nevada
8 Supreme Court unpublished opinion to support its position.⁵ The prosecutor stated
9 to the district court: "The one off the top of my head I remember is John
10 Giordano."⁶ (AA. 042).
11

12 In reality, Giordano v. State, supports Mr. White's argument that, at a
13 minimum, he is entitled to the pre-sentence credit he earned from the date of his
14 arrest on October 1, 2019, until he was sentenced on December 9, 2019, in Case
15 No. C-19-344122-1. In Giordano, the district court had granted the defendant all
16 the pre-sentence credit he earned until the date he was sentenced on a different
17 case. *See id.* at *2 ("Giordano specifically claims that the district court erred by
18 giving him credit for time served **only for** the period beginning with his arrest in
19 the instant case until the date of his sentencing in district court case no. 272598."").
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24 ⁵ As this Court is aware, pursuant to NRAP 36 (c)(2), an unpublished opinion
25 "does not establish mandatory precedent." Additionally, an unpublished opinion
26 may be cited for its persuasive value, if "issued by the Supreme Court on or after
27 January 1, 2016." NRAP 36 (c)(3).

28 ⁶ Giordano v. State, 2014 Nev. Unpub. LEXIS 1738 * (2014), was issued on
October 16, 2014. Therefore, as explained above, not only does it not support the
State's position as to the 70 days of credit Mr. White earned up until the date he
was sentenced in his other case, it cannot even be cited for persuasive value.

1 (emphasis added). In short, Mr. White must at least be granted 70 days of
2 presentence credit as there is no legal basis to deny it.
3

4 Although not specifically cited to or mentioned by either the State or the
5 district court at the sentencing hearing, it is arguable that Mr. White is not entitled
6 to any credit he earned after December 9, 2019, the day Mr. White was sentenced
7 to prison in his other case. This argument is based on the language in N.R.S.
8 §176.055 (1), which states that a defendant is entitled to pre-sentence credit
9 “unless the defendant’s confinement was pursuant to a judgment of conviction for
10 another offense.”
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13
14 However, even assuming this argument, Mr. White would at a minimum be
15 entitled to 70 days of credit for time served—the time he spent in custody from
16 October 1, 2019 through December 9, 2019.
17

18 **II. Due Process requires that Mr. White be Credited for all the Time he**
19 **Spent in Presentence Confinement.**

20 Notwithstanding the limiting language in N.R.S. § 176.055 (1), the specific
21 factual circumstances of this case and Due Process require that Mr. White be
22 granted the full 99 days of presentence credit he served.
23

24 The ultimate definition of what “Due Process” is and means can be summed
25 up in one word: Fairness. *See Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973)
26 (explaining that “fundamental fairness” is the “touchstone of due process.”). This
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1 Court has previously held that, in accordance with N.R.S. § 176.055, credit against
2 a sentence must sometimes be granted “as a matter of fundamental fairness.”
3
4 Merna v. State, 95 Nev. 144, 145, 591 P.2d 252, 253 (1979); Ward v. State, 93
5 Nev. 501, 504, 569 P.2d 399, 401 (1977) (“**Basic fairness** requires giving the
6 prisoner credit for the 153 days. . . .”) (emphasis added); Poasa, 453 P.3d at 389,
7 2019 Nev. LEXIS at **6 (2019) (“The mandatory construction also comports with
8 notions of **fundamental fairness**. . . .”) (emphasis added); Mays v. Eighth Judicial
9 Dist. Court, 111 Nev. 1172, 1178, 901 P.2d 639, 643 (1995) (“Under these
10 circumstances, it is **fundamentally unfair** and a violation of petitioner’s due
11 process rights for the state to refuse him credit for his prior parole.”) (emphasis
12 added).
13
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16 In this case, Mr. White was not in custody on a prior charge nor on probation
17 or parole on the day the crime he eventually pled guilty to occurred. Mr. White was
18 arrested on both cases on the exact same day, October 1, 2019, although the arrest
19 was based on two separate arrest warrants. In a nutshell, Mr. White’s presentence
20 custody has been equally caused and driven by both cases. Therefore, it would be
21 fundamentally unfair to deny him the full 99 days of presentence credit.
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25 The fact that Mr. White served 29 days of this presentence confinement
26 while also technically serving prison time for his other case shouldn’t, on the
27 specific facts of this case, deny him the additional 29 days he is entitled to. *See*
28

1 Nieto v. State, 119 Nev. 229, 232, 70 P.3d 747, 748 (2003) (quoting N.R.S.
2 §176.055, while explaining that “a defendant is entitled to credit against a sentence
3 for time ‘actually spent in confinement before conviction,’ and makes no
4 distinction between in-state or out-of-state presentence custody.”). Indeed, here,
5 Mr. White spent these 29 days at CCDC, not at a Nevada Department of
6 Corrections facility.
7

8
9 It’s not as if Mr. White hadn’t been sentenced to prison on December 9,
10 2019 on his other case he would have been out and about and enjoying the perks of
11 freedom on this case. Quite to the contrary, he would have remained locked up at
12 CCDC. As such, under these specific facts, it is fundamentally unfair to not credit
13 Mr. White with the full 99 days of presentence confinement he served.
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16
17 Both of Mr. White’s criminal cases were ordered to be served concurrently
18 with each other. In Johnson v. State, 120 Nev. 296, 89 P.3d 669 (2004), the
19 Nevada Supreme Court overruled the district court’s decision to apply presentence
20 credit to only one of two concurrent sentences imposed in the same case. The
21 Court stated:
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23
24 [W]e conclude that credit for time served in presentence confinement
25 may not be denied to a defendant by applying it to only one of
26 multiple concurrent sentences. To hold otherwise would render such
27 an award a nullity or little more than a ‘paper’ credit. Johnson was
28 taken into custody at the same time for all of the charges to which he
pleaded guilty, and therefore, he was entitled to have the 128 days
credit for time served in presentence confinement applied to both of

1 the concurrent sentences imposed for counts I and II, and not only to
2 the sentence imposed for count I.

3 Johnson, 120 Nev. at 299, 89 P.3d at 671 (footnotes omitted).

4 Admittedly, the facts in Johnson are **not** identical to the facts in this case, as
5 Johnson involved concurrent *counts* within the same case and this case involves
6 concurrent *cases*, the rationale and fairness aspects of Johnson are applicable to
7 Mr. White's case.
8

9 Perhaps there are other cases not before the Court where the language of
10 N.R.S. § 176.055 at issue here (i.e., “unless the defendant’s confinement was
11 pursuant to a judgment of conviction for another offense”) would not entitle a
12 defendant to all his presentence credit. But fundamental fairness and the factual
13 chronology of how the credits were earned in this case—including being arrested
14 on the exact same date in both cases—justify granting Mr. White all the 99 days of
15 presentence confinement he served.
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Respectfully submitted,

/s/ Dewayne Nobles

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14

1 with the requirements of the Nevada Rules of Appellate Procedure.

2 DATED this 5th day of June, 2020.

3
4
5 Respectfully submitted,

6 **NOBLES & YANEZ LAW FIRM**

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8 */s/ Dewayne Nobles*

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1 **CERTIFICATE OF MAILING**

2 I hereby certify and affirm that this document was filed electronically with the
3 Nevada Supreme Court on June 5th, 2020. Electronic Service of the foregoing
4 document shall be made in accordance with the Master Service List as follows:
5

6 AARON FORD
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15 I further certify that I served a copy of this document by mailing a true and
16 correct copy thereof, postage pre-paid, addressed to:
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