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IN THE SUPREME COURT FOR THE STATE OF NEVADA

TYERRE LANELL WHITE-HUGHLEY, A/K/A)	NO. 80549
TYERRE LANELL WHITE,)	Electronically Filed
)	Mar 08 2021 03:29 p.m.
Appellant,)	Elizabeth A. Brown
)	Clerk of Supreme Court
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
)	

PETITION FOR REVIEW

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TYERRE LANELL WHITE-HUGHLEY, A/K/A) NO. 80549
TYERRE LANELL WHITE,)
)
Appellant,)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)

COMES NOW Appellant, TYERRE LANELL WHITE-HUGHLEY,
by and through his attorney, DEWAYNE NOBLES, ESQ., of the Nobles &
Yanez Law Firm, and petitions, pursuant to NRAP 40B(c), this Honorable
Court for a review of the Order Denying Rehearing issued in this case on
February 17, 2021, by the Nevada Court of Appeals.

This petition is based on the following Memorandum of Points and Authorities and all papers and pleadings on file in this case.

Dated this 7th day of March, 2021.

Respectfully submitted,

NOBLES & YANEZ LAW FIRM

/s/ Dewayne Nobles
DEWAYNE NOBLES, ESQ.
Nevada Bar No.: 8207
Nobles & Yanez Law Firm
Attorney for Appellant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION**

3
4 On December 8, 2020, the Nevada Court of Appeals issued an Order
5 of Affirmance, affirming White-Hughley’s conviction and the district court’s
6 denial of any credit for time served. (Docket # 20-44516). On December 23,
7 2020, White-Hughley timely filed a Petition for Rehearing. (Docket # 20-
8 46348). On February 17, 2021, the Nevada Court of Appeals entered an
9 Order Denying Rehearing. (Docket # 21-04605).
10

11
12 NRAP 40B permits an aggrieved party to petition the Nevada
13 Supreme Court for review of a decision of the Court of Appeals within
14 eighteen (18) days after a decision on rehearing. **NRAP 40B(c)**. Therefore,
15 this Petition for Review is timely filed within the 18-day time period.
16
17

18 **II. QUESTION PRESENTED**

19 Whether the Nevada Court of Appeals’ decision misapprehended
20 whether the 70 days of pre-sentence credit earned by White-Hughley in this
21 case was “pursuant to a judgment of conviction for another offense” per
22 N.R.S. §176.055(1), thereby denying him any credit for time served.
23
24

25 **III. FACTUAL BACKGROUND**

26 On October 1, 2019, White-Hughley was arrested and booked into the
27 Clark County Detention Center (CCDC) for outstanding arrest warrants he
28

1 had on *two* separate cases. (Appellant's Appendix 035). He remained in
2 custody at CCDC throughout the course of both cases.
3

4 In the case presently before the Court, White-Hughley was charged
5 with Invasion of the Home in North Las Vegas Justice Court. (AA. 001). In
6 district court, pursuant to a Guilty Plea Agreement (GPA), White-Hughley
7 pled guilty to Invasion of the Home on November 7, 2019, and was
8 sentenced to prison on January 7, 2019. However, White-Hughley was
9
10 sentenced to prison on January 7, 2019. However, White-Hughley was
11 granted zero days of credit for time served. (AA. 034). Pursuant to the terms
12 of the GPA, the district court ordered that his sentence be served
13 concurrently to his second case. (AA. 034).
14

15 In the second case, White-Hughley was charged with Attempt Child
16 Abuse, Battery by Strangulation, and two counts of Battery Domestic
17 Violence in Las Vegas Justice Court. (AA. 002-003). In district court,
18 pursuant to a GPA, White-Hughley pled guilty to Attempt Child Abuse,
19 Battery by Strangulation, and Battery Domestic Violence on October 28,
20
21 2019. (AA. 004 & 008-017). He was sentenced to prison on December 9,
22 2019. (AA. 006). Pursuant to the terms of the GPA, the district court ordered
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1 that the two felony counts run concurrent to one another.¹ (AA. 006). White-
2 Hughley was granted 70 days of credit for time served. (AA. 006).

3
4 In sum, on the day White-Hughley was alleged to have committed the
5 Home Invasion in this case—January 15, 2017—he was not in custody on a
6 prior charge nor on probation or parole from a Nevada conviction.
7 Additionally, White-Hughley was not under a “judgment of conviction for
8 another offense,” until after he was sentenced on his second case on
9 December 9, 2019.
10
11

12 At his sentencing hearing, White-Hughley requested a total of 99 days
13 of credit for time served. (AA. 040). That is, all the time he served in
14 custody since his arrest on October 1, 2019, until he was sentenced on
15 January 7, 2020.
16

17
18 However, the district court granted zero (0) days of credit for time
19 served. (AA. 034). Of specific importance to this Petition, the district court
20 even refused to grant White-Hughley the 70 days of credit he earned up until
21 he was sentenced on his second case on December 9, 2019.
22

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26
27 ¹ As to the misdemeanor Battery Domestic Violence count, the district court
28 sat as a magistrate and sentenced Mr. White to credit for time served. (AA.
006).

IV. REASONS REVIEW IS WARRANTED

The Nevada Court of Appeals misapprehended the “pursuant to a judgment of conviction for another offense” language of N.R.S. §176.055 and failed to recognize that, up until December 9, 2019, White-Hughley was not confined pursuant to a judgment of conviction for another offense.

At his sentencing hearing, White-Hughley requested pre-sentence credit for all the time he spent in confinement from the date of his arrest, October 1, 2019, until his sentencing date on January 7, 2020. The State objected to White-Hughley’s request for 99 days of credit. The State responded to his request as follows: “And, unfortunately, it’s about 14 **unpublished** opinions by the Nevada Supreme Court that all state the contrary.” (AA. 041) (emphasis added).

The district court agreed with the State and denied White-Hughley any credit, including the 70 days of credit he earned up until he was sentenced on his second case on December 9, 2019. When counsel for White-Hughley asked the district court for any statute or case law that supported denying White-Hughley any pre-sentence credit, the court responded:

It’s the unpublished opinion. The Supreme Court has issued that I know of -- I don’t know if it’s 14, I know about 11 unpublished opinions that basically say we don’t double dip, that basically even though you get

1 picked up simultaneously, one case or the other, it gets credited to one.
2 You don't get to split. Basically that gives you 180 days or in this case
3 198 days of credit for time served.

4 (AA. 042).

5 Whether a defendant is entitled to any credit for the time spent in
6 presentence custody is governed by N.R.S. § 176.055. The statute
7 prescribes, in relevant part, that
8

9 whenever a sentence of imprisonment in the county jail or state
10 prison is imposed, a court may order that credit be allowed
11 against the duration of the sentence, including any minimum
12 term or minimum aggregate, as applicable, thereof prescribed
13 by law, for the amount of time which the defendant has actually
14 spent in confinement before conviction, unless the defendant's
15 confinement was pursuant to a judgment of conviction for
16 another offense.

17 **N.R.S. § 176.055 (1).**

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

4 At the sentencing hearing, the State also made a passing reference to a
5 Nevada Supreme Court unpublished opinion to support its position.² The
6 prosecutor told the district court: “The one off the top of my head I
7 remember is John Giordano.”³ (AA. 042).
8

9 In reality, Giordano v. State, supports White-Hughley’s argument that,
10 at a minimum, he is entitled to the pre-sentence credit he earned from the
11 date of his arrest on October 1, 2019, until he was sentenced on December 9,
12 2019, on his second case. The Nevada Court of Appeals erred in holding that
13 White-Hughley “served those 70 days pursuant to the judgement of
14 conviction for another offense.”
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18 In Giordano, the district court had granted the defendant all the pre-
19 sentence credit he earned until the date he was sentenced on a different case.
20
21 *See id.* at *2 (“Giordano specifically claims that the district court erred by
22

23 ² As this Court is aware, pursuant to NRAP 36 (c)(2), an unpublished
24 opinion “does not establish mandatory precedent.” Additionally, an
25 unpublished opinion may be cited for its persuasive value, if “issued by the
Supreme Court on or after January 1, 2016.” **NRAP 36 (c)(3).**

26 ³ Giordano v. State, 2014 Nev. Unpub. LEXIS 1738 * (2014), was issued on
27 October 16, 2014. Therefore, as explained above, not only does it not
28 support the State’s position as to the 70 days of credit White-Hughley earned
up until the date he was sentenced in his other case, it cannot even be cited
for persuasive value.

1 giving him credit for time served **only for** the period beginning with his
2 arrest in the instant case until the date of his sentencing in district court case
3 no. 272598.”). (emphasis added). In short, White-Hughley must at least be
4 granted 70 days of presentence credit as there is no legal basis to deny it.
5

6 Although White-Hughley argued at sentencing that he was entitled to
7 99 days of credit, White-Hughey concedes that §176.055 likely forecloses
8 any credit he earned after December 9, 2019, the day White-Hughley was
9 sentenced to prison in his second case. This argument is based on the
10 specific language contained in N.R.S. §176.055 (1), which states that a
11 defendant is entitled to pre-sentence credit “unless the defendant’s
12 confinement was pursuant to a judgment of conviction for another offense.”
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16 However, even conceding this argument, White-Hughley is at a
17 minimum entitled to 70 days of credit for time served—the time he spent in
18 custody from October 1, 2019 through December 9, 2019.
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Respectfully submitted,

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This petition for review has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

[x] Proportionately spaced, has a typeface of 14 points or more, and does not exceed 10 pages.

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