IN THE SUPREME COURT OF THE STATE OF NEVADA

TYERRE LANELL WHITE-HUGHLEY, A/K/A TYERRE LANELL WHITE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

CASE NO: 80549

ANSWER TO PETITION FOR REVIEW

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, ALEXANDER CHEN, and answers this Petition for Review in obedience to this Court's order filed March 22, 2021, in the above-captioned case.

This answer is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 1st day of April, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565

BY */s/ Alexander Chen*
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

ARGUMENT

"Supreme Court review is not a matter of right but of judicial discretion." NRAP 40B(a). Pursuant to that statute, the Supreme Court considers certain factors when determining whether to review a Court of Appeals decision, including, "(1) Whether the question presented is one of first impression of general statewide significance; (2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or (3) Whether the case involves fundamental issues of statewide public importance." NRAP 40B(a). Appellants bear the burden of "succinctly stat[ing] the precise basis on which [they] seek[] review by the Supreme Court." NRAP 40B(d).

Appellant raises a single claim in support of Supreme Court review – that the Court of Appeals ("COA") decision regarding his alleged pre-sentence credit was incorrect under NRS 176.055(1). Petition for Review ("Petition") at 2. Specifically, Appellant asserts that his receiving of credit towards his sentence in his separate case on December 9, 2019 did *not* render his presentence confinement "pursuant to a judgment of conviction for another offense" for the purposes of NRS 176.055.

I. APPELLANT DOES NOT REFERENCE, MUCH LESS COGENTLY ARGUE AGAINST, THE COA OPINION

As a preliminary issue, the State respectfully requests that this Court reject Appellant's arguments as outside the scope of the instant proceedings. As stated *supra*., NRS 40B(a) allows for review in very limited scenarios. However, a review

of Appellant's Petition reflects that Appellant continues to argue against the district court's decision, and subsequently, the State's Answering Brief before the COA. See generally, Petition. Indeed, Appellant does not quote, or otherwise reference, the COA Opinion a single time in his Petition. See generally, id. Therefore, Appellant fails to cogently set forth a substantive basis for the review of the COA Opinion.

It is the responsibility of an appellant "to cogently argue, and present relevant authority, in support of his appellate concerns." Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); see also NRAP 28(a)(10)(A); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are summarily rejected on appeal); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation to relevant legal authority).

In his Petition, it appears that Appellant is simply arguing against the district court's *reasoning* in declining to award Appellant the presentence credit Appellant requested. See Petition at 5-8. Appellant does not mention, or refute, the COA interpretation of NRS 176.055 at all. See generally, id. As such, it would be illogical to conclude that Appellant has met his burden under NRS 40B(a), when Appellant

has failed to include any cogent argument in support of the same. Furthermore, the State respectfully submits that the *district court's* reasoning cannot form a basis for granting review of the COA Opinion, as the COA did not adopt the district court's reasoning, and "[a] correct result will not be reversed simply because it is based on the wrong reason." Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

II. THE COURT OF APPEALS CORRECTLY REJECTED APPELLANT'S ATTEMPTED APPLICATION OF NRS 176.055(1)

Moreover, the COA correctly determined that Appellant was not entitled to an additional seventy (70) days of presentence credit under NRS 176.055. As such, the COA Opinion does not warrant review pursuant to NRS 40B(a).

The COA, in affirming Appellant's Judgment of Conviction, summarized:

> …White-Hughley argues he is entitled to 70 days' presentence credit in the instant case for the period between his arrest and his sentencing in the abuse case, because the sentence in the instant case was imposed to run concurrently with the sentence in the abuse case. A district court must credit a sentence "for the amount of time which the defendant has actually spent in confinement before conviction, *unless [his] confinement was pursuant to a judgment of conviction for another offense."* NRS 176.055(1) (emphasis added); *see Poasa v. State*, 135 Nev. 426, 429, 453 P.3d 387, 390 (2019) (reaffirming that sentencing courts must grant presentence credit for time served). The district court had applied the 70 days' presentence credit to the sentence in the abuse case. Because White-Hughley served those 70 days pursuant to the judgment of conviction for another offense, we conclude the district court did not abuse its discretion by precluding the 70 days' presentence credit in the instant case.

COA Opinion at 1-2 (emphasis in original). The COA Opinion appears to be a plain reading of the statute, which Appellant does not recognize, much less refute. See

generally, Petition. Indeed, the State submits that any attempt at refuting the COA's logic would be unsuccessful, as a plain reading of NRS 176.055 comports with the COA's interpretation.

The Nevada Supreme Court has explained that "[w]hen a statute is facially clear, this court will give effect to the statute's plain meaning and not go beyond the plain language to determine the Legislature's intent." Sonia F. v. Eighth Judicial Dist. Court, 125 Nev. 495, 499, 215 P.3d 705, 707 (2009). Reviewing courts, then, must interpret statutes "without rendering words or phrases superfluous or rendering a provision nugatory." Haney v. State, 124 Nev. 408, 411-12, 185 P.3d 350, 353 (2008). Such is the case with NRS 176.055. Pursuant to that statute, as set forth by the COA, defendants are entitled to credit "'for the amount of time which the defendant has actually spent in confinement before conviction, *unless [his] confinement was pursuant to a judgment of conviction for another offense.*'" COA Opinion at 1 (quoting NRS 176.055) (emphasis in COA Opinion).

In the instant case, Appellant was sentenced on his other case on December 9, 2019, and credit for his presentence confinement between his October 1, 2019, arrest, and that sentencing date (seventy (70) days) was applied to *that* case. See, Petition at 3-4 (acknowledging that the presentence credit was thus applied). In other words, and seemingly crucial to the COA analysis, Appellant's presentence confinement was applied to "a judgment of conviction for another offense" rather

than the instant, underlying case. See NRS 176.055. As such, pursuant to a plain reading of NRS 176.055, as of the time of the judgment of conviction in Appellant's *other* case, he was no longer entitled to such credit in his instant case, as that confinement was rendered "pursuant to" his *other* judgment of conviction. See COA Opinion at 2 ("The district court had applied the 70 days' presentence credit to the sentence in the abuse case. *Because White-Hughley served those 70 days pursuant to the judgment of conviction for another offense*, we conclude the district court did not abuse its discretion by precluding the 70 days' presentence credit in the instant case." (Emphasis added)).

The Nevada Supreme Court has determined that the purpose of NRS 176.055 is to ensure defendants receive credit for all time served in confinement. Kuykendall v. State, 112 Nev. 1285, 1286, 926 P.2d 781, 782 (1996). Comparatively, the federal Sentencing Reform Act of 1984, 18 U.S.C. § 3551, follows a similar line to NRS 176.055 and provides for defendants to receive credit for time served in detention prior to the date their sentence commenced, so long as they had not received credit for that time in another sentence. NRS 176.035 is also instructive, as it, while authorizing district courts to run sentences concurrently, does *not* require that concurrent sentences be identical with respect to time served. Gaines v. State, 116 Nev. 359, 365, 998 P.2d 166, 170 (2000).

Critically, Appellant does not assert that he did not receive *any* credit for his presentence confinement prior to his sentencing in the *other* case. See generally, Petition. Nor does Appellant provide any statute or precedent that conflicts with the COA's plain reading of NRS 176.055. See generally, id. Instead, Appellant simply seems dissatisfied with his sentence. Therefore, the State respectfully submits that Appellant has failed to demonstrate that review is warranted under NRS 40B(a).

Additionally, Appellant's proposed reading would lead to absurd results, and/or would render the second clause of NRS 176.055(1) superfluous or nugatory. Haney, 124 Nev. at 411-12, 185 P.3d at 353. Indeed, according to Petitioner's reading of NRS 176.055(1), any presentence confinement coming *before* a judgment of conviction *cannot* be deemed "pursuant to [that] judgment of conviction." As such, that second clause of NRS 176.055(1) would be rendered meaningless, and would have no effect in the event of a defendant being in custody on multiple cases. That is a result the Nevada Legislature cannot have intended. See Speer v. State, 116 Nev. 677, 679, 5 P.3d 1063, 1064 (2000) ("statutory language should be construed to avoid absurd or unreasonable results…").

Therefore, because Appellant fails to demonstrate that the COA ruled in conflict with Nevada precedent, and because Appellant's proposed interpretation of NRS 176.055(1) would lead to absurd results, the State submits that Appellant has failed to demonstrate the need for Supreme Court review.

CONCLUSION

Based upon the foregoing and the record before this Court, the State respectfully submits that Appellant's Petition for Review should be denied.

Dated this 1st day of April, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this petition for review or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this petition complies with the page and type-volume limitations of NRAP 40, 40A and 40B because it is proportionately spaced, has a typeface of 14 points, contains 1,556 words and does not exceed 10 pages.

Dated this 1st day of April, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 1, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Nevada Attorney General

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