

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH NATHAN SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43868

FILED

DEC 02 2004

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

ORDER AFFIRMING IN PART, VACATING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Joseph Nathan Scott to serve a prison term of 35 to 156 months.

Scott's sole contention is that the district court erred in failing to grant him credit for presentence confinement for the time he spent in custody from May 16, 2004, to July 29, 2004. Relying on Anglin v. State,¹ Scott argues that the district court erred as a matter of law by denying him presentence incarceration credit based on its ruling that it had discretion to grant time served.² In its appellate brief, the State concedes that NRS 176.055(1) is mandatory and that Scott should have been given credit for the 74 days he spent in presentence confinement. We agree.

In construing NRS 176.055, this court has held that time spent in presentence incarceration should be credited towards the


¹90 Nev. 287, 525 P.2d 34 (1974).


²In particular the district court explained: "I was considering increasing the sentence and I decided I would follow the recommendation and not award any credit. That's within my discretion."

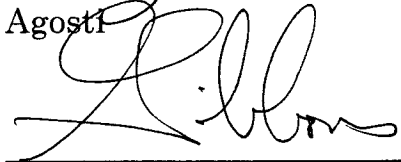
defendant's ultimate sentence.³ A defendant is therefore entitled to presentence incarceration credit unless one of the statutory exceptions set forth in NRS 176.055(2) is applicable. In this case, there is no allegation that one of the statutory exceptions is applicable and, in fact, the State concedes that Scott is entitled to credit for time served. Accordingly, we vacate the award of zero days credit for time served in the judgment of conviction and remand this matter to the district court for the award of 74 days credit for time served.

Having considered Scott's contention, we

ORDER the judgment of conviction AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996).