

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL PASILLAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44399

**FILED**

JUN 08 2005

*M. J. Blum*  
MARIE W. BLUM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. First Judicial District Court, Carson City; Michael R. Griffin, Judge. The district court sentenced appellant Paul Pasillas to serve a prison term of 30 to 86 months and gave him credit for 84 days spent in presentence confinement.

Pasillas's sole contention is that the district court erred by refusing to grant him an additional 44 days presentence confinement credit for time served on electronically-supervised house arrest. In particular, Pasillas contends that, pursuant to NRS 211.250-.300,<sup>1</sup> residential confinement is equivalent to incarceration and, therefore, he is entitled to credit for time served on residential confinement under this court's holdings in Kuykendall v. State<sup>2</sup> and Nieto v. State.<sup>3</sup> We conclude that Pasillas's contention lacks merit.

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<sup>1</sup>NRS 211.250-.300 provide for electronic supervision of criminal defendants prior to conviction under certain circumstances.

<sup>2</sup>112 Nev. 1285, 926 P.2d 781 (1996).

<sup>3</sup>119 Nev. 229, 70 P.3d 747 (2003).

NRS 176.055(1) provides that a defendant is entitled to credit "for the amount of time which the defendant has actually spent in confinement before conviction."<sup>4</sup> This court has recognized, however, that a defendant is not entitled to credit for time served in residential confinement because it is time spent "outside of incarceration."<sup>5</sup> Likewise, this court has recognized that a defendant is only entitled to credit for time served for confinement that so restrains a defendant's liberty that it "is tantamount to incarceration in a county jail."<sup>6</sup> The mere fact that, in certain circumstances, a criminal defendant may serve his sentence in residential confinement in lieu of prison time does not mean that these two forms of punishment are equally restraining on an individual's liberty.

In this case, Pasillas's residential confinement was more tantamount to a form of conditional liberty than to actual confinement in jail.<sup>7</sup> We therefore conclude that the time Pasillas spent under electronically-supervised residential confinement was time spent outside

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<sup>4</sup>Emphasis added. See also Kuykendall, 112 Nev. at 1287, 926 P.2d at 782-83, and Nieto, 119 Nev. at 231-32, 70 P.3d at 748 (recognizing that the purpose of NRS 176.055(1) is to ensure that a criminal defendant receives full credit for all time served in confinement prior to conviction). We note that neither Kuykendall nor Nieto hold that house arrest is tantamount to confinement.

<sup>5</sup>See Webster v. State, 109 Nev. 1084, 1085, 864 P.2d 294, 295 (1993) (discussing residential confinement as a condition of probation).


<sup>6</sup>Grant v. State, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983).

<sup>7</sup>See Webster, 109 Nev. at 1085, 864 P.2d at 295 ("The imposition of residential confinement as a condition of appellant's probation is insufficient to change the character of his probation from a conditional liberty to actual confinement.").


of incarceration, and not "confinement" within the purview of NRS 176.055.

Having considered Pasillas's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Michael R. Griffin, District Judge  
Crowell Susich Owen & Tackes  
Attorney General Brian Sandoval/Carson City  
Carson City District Attorney  
Carson City Clerk