

IN THE SUPREME COURT OF THE STATE OF NEVADA

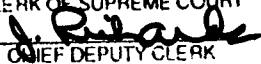
LUKE ANTHONY STELLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45109

FILED

JUN 1 6 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to amend a judgment of conviction to include jail-time credits. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 11, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted possession of stolen property. The district court sentenced appellant to serve a term of nineteen to forty-eight months in the Nevada State Prison. The district court suspended the sentence and ordered that appellant was to serve a term of probation not to exceed four years. On February 10, 2004, the district court entered an order revoking probation and executing the original sentence. The district court further imposed this sentence to run consecutively to any other prison term. The district court ordered that no credits were to be given. No appeal was taken.

On March 23, 2005, appellant filed a motion to amend the judgment of conviction to include jail-time credits. The State opposed the

motion. On April 8, 2005, the district court summarily denied the motion. This appeal followed.

In his motion, appellant claimed that he was entitled to 249 days of credit for time spent in a residential treatment program. Appellant noted that the program was a condition of his probation.

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."¹ 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."² Likewise, in construing NRS 176.055, this court has held 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."³ Appellant failed to demonstrate that his time in a residential treatment facility was tantamount to incarceration in a county jail. Therefore, we conclude that the district court did not err in denying appellant's motion.


¹Emphasis added. See also Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996) (holding that purpose of NRS 176.055(1) is to ensure that a criminal defendant receives credit for all time served).

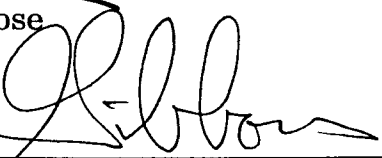
²See Webster v. State, 109 Nev. 1084, 1085, 864 P.2d 294, 295 (1993) (discussing residential confinement as a condition of probation).

³Grant v. State, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983).

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Donald M. Mosley, District Judge
Luke Anthony Stella
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).