

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES DALE WALTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48011

FILED

DEC 21 2006

ORDER OF REMAND

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

This is an appeal from a district court order revoking appellant's probation. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

In revoking probation, the district court awarded appellant Charles Dale Walters credit for 25 days time served. Walter contends that the district court erred because he was actually entitled to credit for 110 days time served. Walter argues that he was entitled to additional credit for time he spent in custody awaiting two probation revocation hearings. The State concedes that there is insufficient evidence in the record to determine whether Walters is entitled to the additional credit for time served and suggests that this court remand this case to the district court for a hearing. We agree.

In construing NRS 176.055(1), this court has held that time spent in presentence incarceration should be credited towards the defendant's ultimate sentence.¹ Further, we have held that time served in a county jail as a condition of probation must be credited against a state

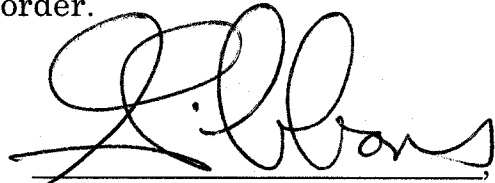
¹Kuykendall v. State, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996).

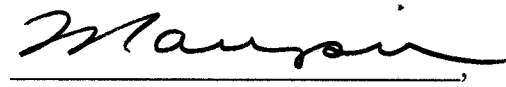
prison sentence imposed after probation revocation.² However, there is no entitlement to credit for time spent on probation but not in actual confinement.³

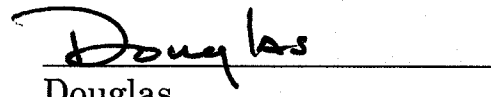
The record before us does not contain documentation indicating the time period during which Walters was in custody for this conviction.⁴ Under the circumstances, we remand this case to the district court for a hearing to determine the amount of additional time spent in custody, if any, for which Walters is entitled to receive credit.

Accordingly, we

ORDER this matter REMANDED to the district court for proceedings consistent with this order.


Gibbons J.


Maupin J.


Douglas J.

²Merna v. State, 95 Nev. 144, 145, 591 P.2d 252, 253 (1979).

³Van Dorn v. Warden, 93 Nev. 524, 526, 569 P.2d 938, 939 (1977).

⁴We decline to consider whether a probationer may validly waive credit for time served as a condition to reinstatement of probation because it is unclear from the record whether Walters actually waived any credit for time spent in custody.

cc: Hon. Brent T. Adams, District Judge
Charles Dale Walters
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk