

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMARCUS DWIGHT BURSE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48471

FILED

MAR 07 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of voluntary manslaughter. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant DeMarcus Dwight Burse to serve a prison term of 48-120 months.

Burse contends that the district court erred at sentencing by not granting him credit for time served in pretrial confinement. Burse concedes that he was on probation for a prior offense¹ at the time he committed the instant offense, yet he argues that “the simplest and most correct exercise of [j]udicial discretion would be to grant [him] credit for the entire amount of time served from the date of arrest.” Burse also claims that he was discharged from the prior sentence before he was sentenced in the instant case and therefore is entitled to credit for time spent in custody between sentences. We disagree with Burse’s contention.

¹In district court case no. C197573, Burse was convicted, pursuant to a guilty plea, of one count of stop required on the signal of a police officer. See NRS 484.348. Burse’s probation was revoked on October 19, 2004, and he was sentenced to serve a prison term of 12-30 months with 86 days credit for time served.

A sentencing determination will not be disturbed on appeal absent an abuse of discretion by the district court.² NRS 176.055(1) provides that “whenever a sentence of imprisonment . . . is imposed, the court may order that credit be allowed against the duration of the sentence . . . for the amount of time which the defendant has actually spent in confinement before conviction” This court has stated that “[t]he plain and unequivocal language of NRS 176.055(2)(b) prohibits a district court from crediting a parolee or probationer for time served on a subsequent offense if such offense was committed while on probation or parole.”³

At the sentencing hearing, the State informed the district court that Burse’s probation in district court case no. C197573 had been revoked and that all of the credit for time served “was going to that offense.” The State also explained that the Division of Parole and Probation recommended that no credit be applied to the instant case because the offense was committed while Burse was on probation.⁴ The

²Parrish v. State, 116 Nev. 982, 12 P.3d 953 (2000).


³Gaines v. State, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000). NRS 176.055(2)(b) states: “A defendant who is convicted of a subsequent offense which was committed while he was (b) Imprisoned in a county jail or state prison or on probation or parole from a Nevada conviction is not eligible for any credit on the sentence for the subsequent offense for the time he has spent in confinement which is within the period of the prior sentence, regardless of whether any probation or parole has been formally revoked.” (Emphasis added.)

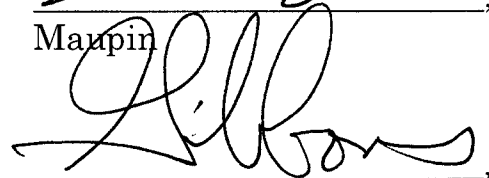
⁴In addition, although Burse argued for credit to be applied, he previously signed a written plea agreement stating that he understood if the offense to which he was pleading had been committed while he was on
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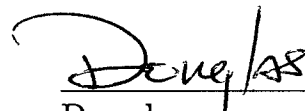
district court agreed with the State and denied Burse credit. Although Burse claims that his sentence in district court case no. C197573 had expired and therefore he was entitled to credit for time spent in custody awaiting sentencing in the instant case, the State contests this claim, and at no point in the proceedings, either below or on appeal, has Burse provided any supporting documentation.⁵ Based on all of the above, we conclude that Burse was not entitled to credit in the instant case.

Accordingly, having considered Burse's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas

... continued

probation, then he was not eligible for credit for time served toward the instant offense.

⁵See Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”).

cc: Eighth Judicial District Court Dept. 17, District Judge
Special Public Defender David M. Schieck
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk