

IN THE SUPREME COURT OF THE STATE OF NEVADA

HEATH GRABE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48496

**FILED**

AUG 24 2007

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY A. Alvarado  
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion for an amended judgment of conviction. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On June 1, 2005, the district court convicted appellant, pursuant to a plea of guilty, of attempted sexual assault. The district court sentenced appellant to serve a term of 15 years in the Nevada State Prison. The district court also credited him with 120 days' time served. This court dismissed appellant's untimely appeal for lack of jurisdiction.<sup>1</sup>

On July 8, 2005, appellant filed a proper person motion for an amended judgment of conviction. On November 15, 2006, the district court denied the motion.<sup>2</sup> This appeal followed.

---

<sup>1</sup>Grabe v. State, Docket No. 45671 (Order Dismissing Appeal, October 3, 2005).

<sup>2</sup>The district court properly considered appellant's claim on the merits as our holding in Griffin v. State, 122 Nev. \_\_\_, 137 P.3d 1165 (2006), which provided that a challenge to presentence credit is a challenge to the validity of the judgment of conviction and sentence and

*continued on next page . . .*

In his motion, appellant contended that the district court incorrectly determined that his jail credit started when he was extradited to Nevada on February 1, 2005. He asserted that he should have received credit for the time spent in custody in North Carolina on a Nevada detainer prior to his extradition to Nevada.

A court may order credit against a sentence it imposes for the amount of time a defendant "has actually spent in confinement before conviction," provided that the pre-conviction confinement was not pursuant to a conviction for another offense.<sup>3</sup> A defendant is "entitled to credit for time served in presentence confinement in another jurisdiction when that confinement was solely pursuant to the charges for which he was ultimately convicted."<sup>4</sup>

This court's preliminary review revealed that the district court may have erred in denying appellant's claim for credits without conducting an evidentiary hearing. The State of North Carolina paroled

---

... continued

must be raised in a post-conviction petition for a writ of habeas corpus, has prospective effect only. Griffin, 122 Nev. at \_\_\_, 137 P.3d at 1170.

<sup>3</sup>NRS 176.055(1). While the language of the statute is discretionary, this court has interpreted the statute "to ensure that *all time served* is credited towards a defendant's *ultimate sentence*." Johnson v. State, 120 Nev. 296, 299, 89 P.3d 669, 771 (2004) (quoting Kuykendall v. State, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996)).

<sup>4</sup>Nieto v. State, 119 Nev. 229, 232, 70 P.3d 747, 748 (2003).

appellant on January 25, 2005. Appellant claimed that North Carolina authorities detained him until February 2, 2005, when he was extradited to Nevada to face the instant charges. This assertion is not belied by the record.<sup>5</sup> As appellant was no longer serving a sentence in North Carolina and was purportedly held solely on the basis of the Nevada charges, he may have been entitled to credit for the seven days he was detained in North Carolina awaiting extradition.

Therefore, on July 5, 2007, this court ordered the State to show cause why appellant's appeal should not be remanded to the district court for an evidentiary hearing concerning whether appellant was entitled to seven more days of credit for time served.<sup>6</sup> In its response to our order, the State did not oppose such a remand. Therefore, we remand this matter to the district court for a hearing to establish whether appellant's judgment of conviction correctly reflects the amount of jail time credits to which appellant is entitled.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that oral argument and further briefing are unwarranted in this matter.<sup>7</sup> Accordingly, we

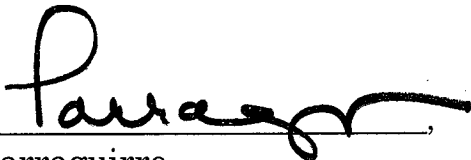
---

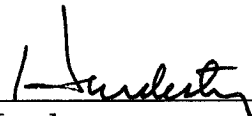
<sup>5</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).


<sup>6</sup>Grabe v. State, Docket No. 48496 (Order to Show Cause, July 5, 2007).

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>8</sup>

  
\_\_\_\_\_, J.  
Parraguirre

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Janet J. Berry, District Judge  
Heath Grabe  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

---

<sup>8</sup>We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.