

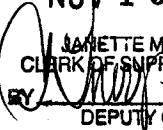
IN THE SUPREME COURT OF THE STATE OF NEVADA

BURT RENDON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49937

FILED

NOV 13 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REMAND

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

On May 25, 2007, appellant Burt Rendon was convicted, pursuant to a guilty plea, of one count of gross misdemeanor conspiracy to engage in an obscene act. The district court sentenced Rendon to a prison term of 12 months, but then suspended execution of the sentence and placed Rendon on probation for a time period not to exceed 2 years. The district court ordered Rendon to serve a jail term of 60 days as a condition of probation. The 60-day jail term was ordered to commence on May 25, 2007, the date of the sentencing hearing.

On June 13, 2007, the Division of Parole and Probation filed a violation report against Rendon. In the report, the Division alleged that, in the course of an intake interview conducted in the Washoe County Jail, Rendon advised the probation officer that because "the rules of Probation are too difficult to follow . . . it would be easier for him to remain in Washoe County Jail for twelve (12) months." After conducting a brief hearing, the district court revoked Rendon's probation with no credit for time served. Rendon filed this timely appeal.

Rendon contends that the district court erred by refusing to award him 48 days for time served in the Washoe County Jail. The State concedes error in part. In particular, the State admits that Rendon is entitled to time he served in jail as a condition of probation, but maintains that he was not entitled to time spent awaiting the probation revocation hearing.

This court has held that time served in a county jail as a condition of probation must be credited against a state prison sentence imposed after probation revocation.¹ However, this court had also held that a probationer is not entitled to credit for time served awaiting a probation revocation hearing because he is not being incarcerated for the "same crime"; but instead for "engaging in a separate course of proscribed conduct."²

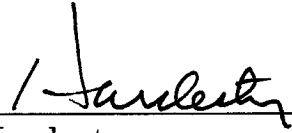
The record before us does not contain documentation indicating the time period during which Rendon was in custody for this conviction. We note, however, that Rendon is entitled to credit for all time he served in county jail as a condition of probation. And it appears that Rendon had not yet completed serving the 60-day sentence in jail as a condition of probation when he decided to refuse the grant of probation. Under the circumstances, we remand this case to the district court for a hearing to determine the amount of credit for time spent in jail that Rendon is entitled to receive.

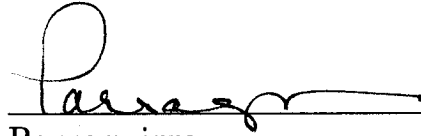
¹Merna v. State, 95 Nev. 144, 145, 591 P.2d 252, 253 (1979).

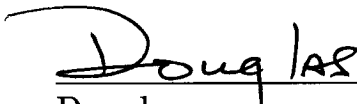
²Id.

Having considered Rendon's contention and concluded that it has merit, we

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


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk