

IN THE SUPREME COURT OF THE STATE OF NEVADA

KELVIN DEWAYNE HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51102

FILED

FEB 11 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of statutory sexual seduction. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Kelvin Dewayne Howard to serve one year in jail, imposed the sentence to run consecutive to a sentence Howard was serving in Arizona, and awarded Howard 151 days credit for time served.

First, Howard argues that the district court erred in awarding him credit for time served. Specifically, he asserts that he should have been awarded credit for pretrial confinement in Arizona because, even if he did post bail in Arizona, he would not have been released because of the Nevada warrant. Thus, he should have been entitled to credit against his Nevada sentence for the presentence confinement in Arizona. He further contends that he may be entitled to more credit for the time served in Arizona jail as a condition of the Arizona probation term.

A sentencing determination will not be disturbed on appeal absent an abuse of discretion by the district court. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). “[W]henver 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.” NRS 176.055(1). “[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” in Nevada. Nieto v. State, 119 Nev. 229, 232, 70 P.3d 747, 748 (2003) (emphasis added).

Howard concedes that he did not post bail on the Arizona charges. Thus, he was not entitled to credit for the time spent in presentence confinement in Arizona because he was not being held solely pursuant to the Nevada charges. Further, he was not entitled to credit for the time spent while he was serving a jail sentence in Arizona because that confinement was “pursuant to a judgment of conviction for another offense.” NRS 176.055(1). Therefore, we conclude that the district court did not err in its determination of the credit award.


Second, Howard contends that the district court erred in imposing his sentence consecutive to his Arizona sentence. Specifically, he claims that he was sentenced to 15 years probation in Arizona and therefore, his sentence may not be imposed consecutively to a prison sentence that may never be imposed. He further claims that, because he was ineligible for probation on the instant offense, imposing the sentence to run consecutive to his Arizona sentence impermissibly suspended the sentence for the instant offense.

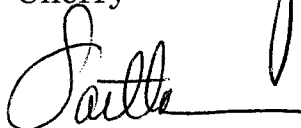
We conclude that this claim lacks merit. A district court has discretion to impose a sentence to run concurrently or consecutively to a sentence imposed in another jurisdiction. NRS 176.045(1). The district court did not abuse its discretion by imposing a consecutive sentence.


Further, the imposition of a consecutive sentence to the Arizona probation term did not impermissibly suspend Howard's sentence in violation of NRS 176A.110.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk