

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY JAMES JOHN K. CABEBE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51410

FILED

APR 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking probation. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

Appellant Casey James John K. Cabebe was convicted, pursuant to a guilty plea, of one count of possession of a stolen vehicle. The district court sentenced Cabebe to a prison term of 12 to 32 months with 28 days' credit for time served. The district court suspended Cabebe's sentence, placed him on probation, and ordered him to serve a six-month jail term as a condition of probation. Cabebe did not file a direct appeal.

Cabebe absconded from probation after his release from the Elko County Jail. The district court issued a warrant for his arrest. An Idaho court also issued a warrant for Cabebe's arrest for violating the conditions of his Idaho probation. Upon his arrest, Cabebe executed a waiver of extradition on the Nevada warrant, was booked into an Idaho jail, appeared before an Idaho district court, and was sentenced to serve time in an Idaho jail. Cabebe's Idaho probation expired with the completion of his jail sentence and he was extradited to Nevada.

In Nevada, Cabebe appeared before a district court and admitted to violating the conditions of his probation. The district court continued Cabebe's probation revocation hearing so that he could review his presentence investigation report and the parties could brief issues regarding the amount of credit that Cabebe was due for time served. Thereafter, the district court revoked Cabebe's probation, reinstated his original sentence, and awarded him 189 days' credit for time served. This appeal followed.

First, Cabebe contends that his Nevada sentence was imposed to run concurrent with his Idaho case and therefore he is entitled to credit for the time he spent in the Idaho jail for violating the conditions of his Idaho probation. Relying upon NRS 176.035(1), Cabebe claims that the Nevada sentence must run concurrently with his Idaho case because the district court did not specify whether his sentence for the Nevada crime would run concurrently or consecutively with his Idaho case. Cabebe further argues that NRS 176.035(2) is not applicable because "Idaho law does not consider probation as a result of a withheld judgment to be 'a sentence of imprisonment.'" See Franklin v. State, 392 P.2d 552, 555 (Idaho 1964).

Cabebe's reliance upon NRS 176.035(1) is misplaced. NRS 176.045 is the controlling statute for imposing concurrent or consecutive sentences on a person who is serving a sentence in another jurisdiction. It provides that "[w]henver a person convicted of a public offense in this State is under sentence of imprisonment pronounced by another jurisdiction . . . the court in imposing any sentence for the offense committed in this State may, in its discretion, provide that such sentence shall run either concurrently or consecutively with the prior sentence."

NRS 176.045(1). And it goes on to state that “[i]f the court makes no order pursuant to this section, the sentence imposed in this State shall not begin until the expiration of all prior sentences imposed by other jurisdictions.”

NRS 176.045(4). In Nevada, a probationer is under a sentence of imprisonment for purposes of determining the order in which sentences are to be served. Adams v. Warden, 97 Nev. 171, 173, 626 P.2d 259, 260 (1981).

Here, the record reveals that 14-year-old Cabebe was certified as an adult by an Idaho court and pleaded guilty to the offense of battery with intent to commit a serious felony.¹ The Idaho court withheld judgment and placed Cabebe in the legal custody of the Idaho State Department of Juvenile Corrections. The Idaho court further ordered Cabebe to serve 180 days in an approved juvenile detention facility, suspended the 180 days of detention so that it could be used to enforce the conditions of his probation, and placed him on probation until he turned 21 years old. While he was 18 years old, Cabebe pleaded guilty to the criminal offense that he committed in Nevada.

Under these circumstances, we conclude that Cabebe was under a sentence of imprisonment in Idaho when he was sentenced for the

¹Although we have elected to file the fast track statement submitted, we note that it does not comply with the requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2). Cabebe’s “statement of facts” section does not contain any citations to the specific pages of the appendix. Counsel for Cabebe is cautioned that failure to comply with the requirements for fast track statements in the future may result in the statement being returned, unfiled, to be correctly prepared. Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).

Nevada offense. Since the district court did not specify whether Cabebe's sentence for the Nevada offense would run concurrently or consecutively with his Idaho case, the sentence was imposed to run consecutively pursuant to NRS 176.045(4). Accordingly, Cabebe is not entitled to credit for the time he served in an Idaho jail for an Idaho probation violation.

Second, Cabebe contends that his incarceration in Idaho was not a result of a judgment of conviction and therefore NRS 176.055(1) allows him to receive credit for the time he served in the Idaho jail for violating the conditions of his Idaho probation.

NRS 176.055(1) states in relevant part that a defendant is entitled to credit against a sentence for time "actually spent in confinement before conviction, unless his confinement was pursuant to a judgment of conviction for another offense." In construing this statute, we have held "that 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." Nieto v. State, 119 Nev. 229, 232, 70 P.3d 747, 748 (2003) (emphasis added). We have also held that NRS 176.055 "cannot be interpreted to grant our judiciary the right to give credit for time spent in federal custody for non-state purposes. Only incarceration pursuant to a charge for which sentence is ultimately imposed can be credited against that sentence." McMichael v. State, 94 Nev. 184, 194, 577 P.2d 398, 404 (1978), overruled on other grounds by Meador v. State, 101 Nev. 765, 770, 711 P.2d 852, 856 (1985). It is clear from our caselaw construing this statute that Cabebe is not entitled to credit for the time he served in an Idaho jail for an Idaho probation violation.

Third, Cabebe contends that, in addition to the 101 days he actually served in the Elko County Jail as a condition of his probation, he should get credit against his prison sentence for the 55 days that were deducted from his jail term for good behavior pursuant to NRS 211.320. He argues that “[i]f inmates are not actually given the credit that they think they have earned, then they are not likely to take the incentive seriously, making the statute essentially moot.”

“The district court’s authority to award credit for time spent in presentence confinement comes from NRS 176.055(1).” State v. Dist. Ct. (Jackson), 121 Nev. 413, 416, 116 P.3d 834, 836 (2005). NRS 176.055(1) states in relevant part that a defendant is entitled to credit against a sentence “for the amount of time which the defendant has actually spent in confinement before conviction.” (Emphasis added.) We attribute the plain meaning to a statute that is not ambiguous. Firestone v. State, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004). Because time deducted from a jail term is not time “actually spent in confinement,” Cabebe is not entitled to credit against his prison sentence for the 55 days that were deducted from his jail term for good behavior.

Fourth, Cabebe contends that he should receive credit for the time that he spent in jail awaiting his probation revocation hearing. Cabebe specifically claims that he is entitled to credit for the 5 days he spent in an Idaho jail pending extradition and the 54 days he spent in the Elko County Jail awaiting his revocation hearing. However, the probation revocation hearing transcript and the order revoking probation clearly show that the district court awarded Cabebe 60 days’ credit for the time he served between the expiration of his Idaho jail term on January 31, 2008, and the revocation of his probation on March 31, 2008. Accordingly,

Cabebe received credit for the time he spent in jail pending his extradition and awaiting his probation revocation hearing.

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

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk