

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE LUTOMSKI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35197

**FILED**

APR 05 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony driving under the influence. The district court sentenced appellant to eighteen (18) to forty-eight (48) months in prison.

Appellant's sole contention is that the district court erred by refusing to grant him pre-sentence confinement credit for time served on house arrest. Initially, we note that appellant's plea agreement specifically provided that appellant would "receive no credit for time served for house arrest." We conclude that, as part of the plea negotiations, appellant waived any right to claim credit to time served on house arrest.

Moreover, under NRS 176.055(1), the district court may order credit for time which the defendant has "actually spent in confinement before conviction." A defendant is entitled to credit only for confinement that "is tantamount to incarceration in a county jail." *Grant v. State*, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983). We conclude that appellant's time spent under house arrest was not time "actually spent in confinement" pursuant to NRS 176.055. Accordingly, we conclude that even if appellant had not waived this issue, the district court properly denied appellant's request for jail time credit.

00-05487

Having considered appellant's contention and concluded it is without merit, we

ORDER this appeal dismissed.<sup>1</sup>

Maupin J.  
Maupin

Shearing J.  
Shearing

Becker J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General  
Clark County District Attorney  
Penrod & Associates  
Clark County Clerk

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<sup>1</sup>On February 22, 2000, counsel for appellant filed a motion to withdraw as counsel. We deny counsel's motion, as moot. Further, we have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.