

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES KINSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35321

FILED

APR 11 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a controlled substance with intent to sell. The district court sentenced appellant James Kinsey to serve twelve (12) to thirty (30) months in the Nevada State Prison. The court gave Kinsey credit for eight (8) days of presentence incarceration.

Kinsey first contends that the district court abused its discretion at sentencing by considering improper, inaccurate, and mistaken information. We conclude that the record does not demonstrate prejudice resulting from consideration of information founded on facts supported only by impalpable or highly suspect evidence, and therefore, we decline to interfere with the sentence imposed. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

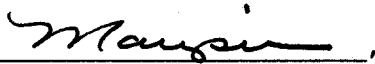
Kinsey next contends that the district court erred by failing to give him credit for an additional seventy-nine (79) days of presentence incarceration.¹ Based on our review

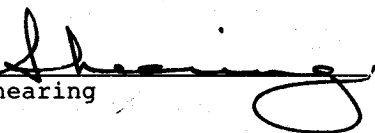
¹Kinsey contends that he is entitled to credit for time served from November 29, 1998 (his arrest in this case) to December 31, 1998 (his O.R. release in this case) and from October 3, 1999 (his arrest on the bench warrant in this case) to November 17, 1999) (sentencing date in this case). Kinsey

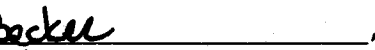
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of the documents submitted with this appeal, we conclude that Kinsey is entitled to credit for a total of sixty-nine (69) days of presentence incarceration. This credit accounts for the following time periods: (1) December 7, 1998, to December 31, 1998;² and (2) October 3, 1999, to November 17, 1999. During these periods of time, Kinsey was incarcerated as a result of the charges in this case, and therefore, he did not receive credit for these periods of time in his other district court case. Accordingly, we remand this matter to the district court for the sole purpose of amending the judgment of conviction to give Kinsey credit for a total of sixty-nine (69) days of presentence incarceration.³

It is so ORDERED.


Maupin J.


Shearing J.


Becker J.

. . . continued

calculates these periods as encompassing eighty-seven (87) days; therefore, argues Kinsey, he is entitled to an additional seventy-nine (79) days of credit. However, by our calculations, the dates referenced by Kinsey cover seventy-seven (77) days, not eighty-seven (87) days. Thus, if Kinsey's arguments have merit, he would be entitled to an additional sixty-nine (69) days of credit.

²We conclude that Kinsey is not entitled to credit for time served from November 29, 1998, to December 7, 1998, because he received credit for that time in another district court case.

³We reject the State's contention that Kinsey was on probation in district court case C154284 when he committed the instant offense. We conclude that Kinsey's placement in Drug Court while the proceedings in C154284 were stayed is not the equivalent of being "on probation or parole from a Nevada conviction" for purposes of NRS 176.055(2)(b).

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk