

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BAXTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58883

FILED

MAR 07 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of being under the influence of a controlled substance. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.


Appellant David Baxter contends that the district court erred at sentencing by not awarding him credit for time served in jail while he was participating in a drug court treatment program pursuant to NRS 453.3363; the jail time sanctions were imposed due to violations of the conditions of his program.¹ The State contends that Baxter agreed to abide by the drug court policies prior to entry into the program, and those policies included the possibility of jail time sanctions and “that sanctions would not be considered to be credit for time served if he ultimately were to be sentenced on the initial charge.”

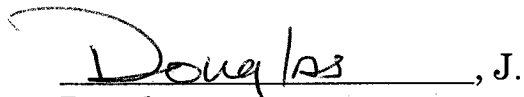
¹Baxter also contends that he was entitled to an additional 30 days’ credit for time served in a residential treatment center. Baxter fails to offer any persuasive argument in support of his contention and we conclude that he is not entitled to this credit. See Webster v. State, 109 Nev. 1084, 1085, 864 P.2d 294, 295 (1993); Grant v. State, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983).

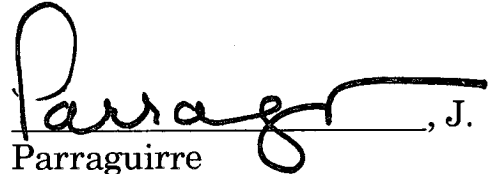
“[A] defendant imprisoned due to violating the terms and conditions of a drug court is entitled to credit time. The defendant, however, may waive credit time for any period of sanction imposed by the drug court by entering into a drug court agreement.” House v. State, 901 N.E.2d 598, 601 (Ind. Ct. App. 2009). Here, the State provided this court with the 6th Judicial Drug Court Client Handbook, which states within, in bold, capital letters, “Drug Court sanctions shall not be credit for time served on underlying sentence.” The form acknowledging that the participant, Baxter, received the handbook, however, is unsigned and there is no other indication in the record that Baxter was properly advised and/or executed a waiver. Therefore, although Baxter does not dispute the State’s assertions, the State nevertheless fails to demonstrate that Baxter entered into an agreement whereby he waived the right to receive credit for the time he spent in jail due to drug court sanctions.

As a result, we reverse the portion of Baxter’s judgment of conviction pertaining to credit for time served and remand the matter to the district court with instructions to conduct a hearing to determine whether Baxter was properly advised and waived the right to receive credit for his time in jail due to drug court sanctions. If the State is unable to prove the existence of a waiver, then the district court shall conduct a hearing to determine the proper amount of jail time Baxter shall be credited. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


Gibbons, J.


Douglas, J.


Parraguirre, J.

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk

²Baxter also contends that “[a]llowing the district court to fix the punishment for participants who violate terms and conditions of a 453.3363 program creates an impermissible assignment of legislative functions to the judiciary.” Baxter did not raise this below or object, and in light of the disposition of this appeal, we need not address it.

Further, we take this opportunity to point out that, in the future, it would be better practice to have the documents purportedly signed by drug court participants prior to their enrollment, including those provided in the State’s supplemental appendix, file-stamped by the district court clerk and made part of the district court record.