

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY PENOLA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59346

FILED

MAR 07 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Handwritten Signature*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order revoking appellant Terry Penola's probation. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.


Penola 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 as a condition of his probation; the jail time sanctions were imposed due to violations of the conditions of his treatment program. The State contends that Penola 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."


"[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

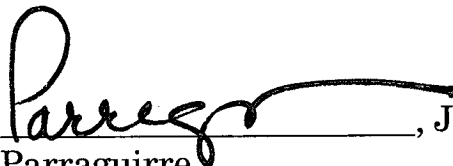
served on underlying sentence.” The form acknowledging that the participant, Penola, received the handbook, however, is unsigned and there is no other indication in the record that Penola was properly advised and/or executed a waiver. Therefore, although Penola does not dispute the State’s assertions, the State nevertheless fails to demonstrate that Penola 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 the district court’s order revoking Penola’s probation pertaining to credit for time served and remand the matter to the district court with instructions to conduct a hearing to determine whether Penola 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 Penola 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.<sup>1</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

<sup>1</sup>We also 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.

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