

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICKOLAS MARK ANDREWS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59781

FILED

DEC 13 2012

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

ORDER OF AFFIRMANCE

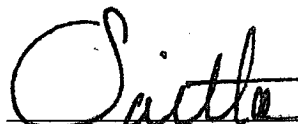
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of voluntary manslaughter with the use of a deadly weapon. Sixth Judicial District Court, Pershing County; Michael Montero, Judge.

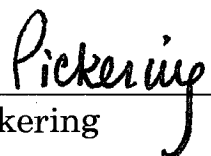
Appellant Nickolas Mark Andrews claims that the district court abused its discretion by crediting him with only 311 days, rather than 1972 days, for time spent in presentence confinement. Andrews acknowledges that, except for the 311 days for which he received credit in this case, he was always confined for other offenses in addition to the instant offense and the additional credit he is seeking was credited to him in his other cases. However, he asserts that the sentence for the instant offense is concurrent to his sentences in his other cases and pursuant to Johnson v. State, 120 Nev. 296, 299, 89 P.3d 669, 671 (2004), credit for one sentence must be applied to all concurrent sentences. Relying on Johnson, he also asserts that, at a minimum, he is entitled to credit for the time he served pursuant to his burglary conviction because he was taken into custody for the instant offense and the burglary at the same time and both counts were charged in the same document. We disagree.

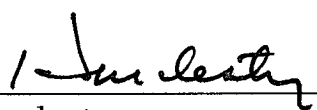
Contrary to Andrews' assertion, his sentence for the instant offense could not be imposed to run concurrent with the sentences for his

other offenses because he completed his sentences for his other offenses before being sentenced for the instant offense. See Godwin v. Looney, 250 F.2d 72, 73 (10th Cir. 1957) (“A period cannot be concurrent with a period that anteceded it.”). Further, Johnson is distinguishable and Andrews is not entitled to credit for time he served pursuant to his burglary conviction. Johnson addressed concurrent sentences imposed in a single judgment of conviction and not concurrent sentences imposed in separate judgments of conviction. Johnson, 120 Nev. at 297-98, 89 P.3d at 669-70. Here, although Andrews was taken into custody for the instant offense and burglary at the same time and charged with both counts in the same charging document, two separate judgments of conviction were entered—a judgment of conviction for burglary was entered pursuant to a jury verdict in 2007 and the instant judgment of conviction was entered pursuant to a guilty plea in 2011, after he had served his sentence for burglary. Because Andrews was confined for other offenses in addition to the instant offense and the additional credit he is seeking was credited to him in his other offenses, he is not entitled to the additional credit. NRS 176.055(1) (allowing for credit “for the amount of time which the defendant has actually spent in confinement before conviction, unless the defendant’s confinement was pursuant to a judgment of conviction for another offense”). Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Michael Montero, District Judge
Dolan Law, LLC
Attorney General/Carson City
Pershing County District Attorney
Pershing County Clerk