

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM MICHAEL FARMER,

No. 35514

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAY 25 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of larceny from the person. The district court sentenced appellant to serve twelve (12) to thirty-six (36) months in the Nevada State Prison.

Appellant contends that the district court abused its discretion by requiring appellant to waive his right to credit for time served awaiting placement in a treatment program in exchange for the court continuing appellant on deferred status under NRS Chapter 458 after appellant had violated the conditions imposed on his election of treatment. In particular, appellant argues that the agreement violates NRS 176.055(1), various decisions of this court, and "principles of fundamental fairness" that "seem to prohibit" such agreements. Appellant also contends that his waiver was coerced. We conclude that appellant's contentions lack merit.

Generally, a defendant is entitled to credit for presentence incarceration. See *Kuykendall v. State*, 112 Nev. 1285, 926 P.2d 781 (1996); see also NRS 176.055(1). However, we conclude that this general rule does not preclude a criminal defendant from agreeing to waive such credit. Moreover, under the circumstances of this case, we conclude that the threat of being sentenced did not coerce appellant into agreeing to waive credit for time served while awaiting placement in a treatment program. Cf. *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225-26 (1984) (explaining that defendant's desire to plead guilty to original charge to avoid threat of habitual criminal statute does not give rise to claim of coercion).

However, it is not entirely clear that as a result of his waiver appellant is entitled to no credit whatsoever for time served. The record indicates that appellant agreed to waive "credit for time served here while he's waiting for an opportunity to go into WestCare." Nothing in the record suggests that appellant agreed to waive any credit to which he was entitled for time served other than while waiting for placement in WestCare. Moreover, the record before this court is not sufficient to determine whether there was any other such time for which appellant is entitled to credit. We therefore remand this matter to the district court to determine whether appellant was incarcerated for any period of time that falls outside of the limited agreement to waive credit for time served while waiting for placement in WestCare, and to give appellant credit for such presentence incarceration if appellant is otherwise legally entitled to that credit.

It is so ORDERED.

<u>Young</u>	J.
<u>Agosti</u>	J.
<u>Leavitt</u>	J.

cc: Hon. Peter I. Breen, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk