

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALLEN RICHARD GEORGIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66340

ALLEN RICHARD GEORGIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66341

ALLEN RICHARD GEORGIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66342 ✓

FILED

FEB 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are appeals from judgments of conviction entered pursuant to guilty pleas. In each case, appellant pleaded guilty to one count of driving under the influence with two or more prior convictions. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge. We consolidate these appeals for disposition. NRAP 3(b)(2).

Appellant entered his guilty pleas in December of 2009. While awaiting sentencing, he was arrested for another DUI in Idaho. As a result, he failed to appear at his sentencing in these matters. Appellant was convicted in Idaho and sentenced to a fixed term of 4-10 years, to be served concurrently with the sentences for these matters. After serving 4

years in Idaho, appellant was paroled and returned to Nevada for sentencing in these matters.

At sentencing in these matters, appellant argued that comity should be given to the Idaho judge's order and the sentences in these matters should be deemed served concurrent to the Idaho sentence. Appellant also argued that he should receive credit for all time served on the Idaho sentence or, at a minimum, he should be given 132 days of credit for time he spent in confinement in Idaho prior to his sentencing in Idaho. He further asserted that he was denied his right to a speedy sentencing and the failure to sentence him in these matters until July 2014, violated his due process rights.

The district court rejected all of these claims. The district court noted that appellant had a history of DUI's that spanned 24 years and said it had an obligation to protect society. The court sentenced appellant to a term of 12-36 months in each case, with the sentences in district court case numbers 09-1775 and 09-1787 to run concurrently with each other and consecutive to the term imposed in district court case number 09-1357. In each case, appellant was given 166 days of credit for time served in presentence confinement.

On appeal, appellant first argues that the district court abused its discretion at sentencing by failing to (1) give comity to the Idaho judge's order and deem the sentences in these matters concurrent to the Idaho sentence and (2) give him credit for the 132 days spent in confinement in Idaho prior to his sentencing in Idaho. These claims lack merit.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379

(1987). We will refrain from interfering with the sentence imposed by the district court “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence,” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). It is within the district court’s discretion to impose any sentence for an offense committed in this state consecutive to a prior sentence pronounced by another jurisdiction. See NRS 176.045(1). A defendant is entitled to credit for all time “actually spent in confinement before conviction, unless the defendant’s confinement was pursuant to a judgment of conviction for another offense.” NRS 176.055(1).


The sentence imposed is within the parameters provided by the relevant statutes, see 2009 Nev. Stat., ch. 369, § 6, at 1868, and appellant does not allege that those statutes are unconstitutional. The Idaho judge’s order that the sentences run concurrent with each other was not binding on the district court. We conclude that the district court did not abuse its discretion by failing to give comity to that order. Further, because appellant was arrested in Idaho for a new crime and the record reveals that appellant was given 132 days of presentence credit in his Idaho case, we conclude appellant has failed to demonstrate that he was entitled to any additional credit for time spent in presentence confinement in these matters. See *Nieto v. State*, 119 Nev. 229, 70 P.3d 747 (2003).


Next, appellant argues that the failure to sentence him until July 2014, denied him of his right to a speedy sentencing and violated his due process rights. These claims also lack merit.

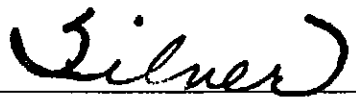
Even assuming that a defendant is entitled to a speedy sentencing hearing, application of the four-part test enunciated in *Barker*

v. Wingo, 407 U.S. 514, 530 (1972) (identifying the factors to consider as the “length of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant”), does not result in a conclusion that a constitutional violation occurred here. Appellant was initially scheduled for sentencing 60 days after he entered his pleas. He failed to appear at sentencing because he was arrested for another DUI in Idaho. While incarcerated in Idaho, appellant made multiple requests to be sentenced in these matters in absentia. See NRS 178.388(2)(b). The district court denied the requests because appellant was facing a number of charges with potentially severe sentences, and appellant has failed to demonstrate that the district court erred by denying these requests. Appellant was ultimately sentenced approximately four and one-half years after entering his pleas. Further, it appears that any prejudice resulting from the delay was minimal. See *Prince v. State*, 118 Nev. 634, 641, 55 P.3d 947, 951 (2002).

Having concluded that appellant’s claims lack merit, we
ORDER the judgments of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Nancy L. Porter, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk