

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANTHONY THOMAS A/K/A  
ANTONIO L. HICKMAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37175

**FILED**

**MAY 08 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's motion for credit for time served. Appellant was originally convicted, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve 36 to 96 months in prison. Appellant filed a motion to amend the judgment of conviction to add credit for the 145 days appellant was incarcerated prior to sentencing.

Appellant contends that the district court erred in denying appellant's motion. Appellant argues that such credit is constitutionally mandated pursuant to NRS 176.055 and this court's holding in *Kuykendall v. State*.<sup>1</sup> We conclude that the district court properly denied appellant credit for time served because appellant was on probation for a prior offense at the time that he committed the burglary.<sup>2</sup> We further

<sup>1</sup>112 Nev. 1285, 926 P.2d 781 (1996).

<sup>2</sup>See NRS 176.055(2)(b) (providing that a probationer is not eligible for credit for time served for a subsequent offense if the time served is within the period of his prior sentence); see also *Gaines v. State*, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000) ("The plain and unequivocal language of NRS 176.055(2)(b) prohibits a district court from crediting a parolee or probationer for time served on a subsequent offense if such offense was committed while on probation or parole."), cert. denied, 121 S. Ct. 138 (2000).

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conclude that credit for time served prior to sentencing is not constitutionally mandated under these circumstances.<sup>3</sup>

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

Young J.  
Young

Leavitt J.  
Leavitt

Becker J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk

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<sup>3</sup>See Gaines, 116 Nev. at 365-66, 998 P.2d at 170 (recognizing that this court's holding in Kuykendall did not affect the unequivocal prohibition of incarceration credit set forth in NRS 176.055(2)(b)).