

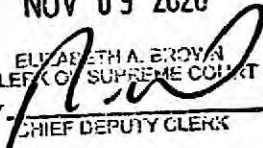
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES WESLEY FARR, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80070-COA

FILED

NOV 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION*

James Wesley Farr, II, appeals from a judgment of conviction entered pursuant to a guilty plea of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

After Farr was placed in confinement pending resolution of the charges in this case, he was convicted and sentenced for charges in two other cases. He began serving those sentences before the charges in this case were resolved. Thereafter, he entered a guilty plea in this case, he was sentenced to an aggregate term of life with the possibility of parole, and he was awarded 477 days' credit for time served.

First, Farr claims the district court abused its discretion by not awarding him credit for the entire time he was confined following his arrest in the instant case. He argues that due process and public policy require he receive 1,128 days' credit for time served notwithstanding the fact that 651 of those days were spent serving his sentences for two other cases. He asserts that his sentence for this case was imposed to run concurrently with

his sentences for the two other cases. And he cites to *Johnson v. State*, 120 Nev. 296, 89 P.3d 669 (2004), in support of his claim.

NRS 176.055(1) allows a district court to credit a sentence “for the amount of time which the defendant has actually spent in confinement before conviction, *unless his confinement was pursuant to a judgment of conviction for another offense.*” (Emphasis added.) The plain language of this statute limits the credit to time served pending sentencing for the instant conviction. And because this statute is unambiguous, there is no need to construe it “in line with what reason and public policy would indicate the Legislature intended.” *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (internal quotation marks omitted).

Farr’s reliance on *Johnson* is misplaced. *Johnson* relates to concurrent sentences imposed within a single judgment of conviction and not to concurrent sentences imposed in separate judgments of conviction. See 120 Nev. at 297-98, 89 P.3d at 669-70. Moreover, the record belies Farr’s claim that the instant sentence was imposed to run concurrently with the sentences from his previous two judgments of conviction. We conclude Farr was not entitled to credit for the time he spent confined pursuant to his other judgments of conviction and he has not shown the district court abused its discretion in this regard.


Second, Farr claims the district court miscalculated the credit for time served. He argues that, even if he was not entitled to credit for the days he was incarcerated pursuant to the judgments of conviction in the other cases, he should have received 517 days’ credit for presentence confinement instead of the 477 days the district court awarded. And he asserts the district court’s miscalculation was likely due to a clerical error

in the presentence investigation report.¹ The State concedes the error, and we agree. Accordingly, this case must be remanded so the district court can enter a corrected judgment of conviction that reflects the correct number of days' credit for time served. See NRS 176.565; *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Nobles & Yanez Law Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The presentence investigation report incorrectly indicates the duration between October 5, 2016, and November 23, 2016, is 9 days instead of 49 days. Therefore, the district court's credit-for-time-served calculation was off by 40 days.