


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON JOHN LEE BARNES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89154-COA

FILED

JUL 01 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, VACATING IN PART, REVERSING IN
PART AND REMANDING*

Brandon John Lee Barnes appeals from a judgment of conviction, entered pursuant to a no contest plea, of unlawful possession for sale of a schedule I or II substance and possession of a controlled substance. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

First, Barnes argues the district court erred in neglecting to provide him with presentence credit on each concurrent sentence. Although Barnes concedes this error was not preserved with a contemporaneous objection, the record indicates the court did not clearly indicate that Barnes would not receive credit toward the concurrent sentence for the second count until the judgment of conviction issued. Because Barnes could not object below, this contention may be raised for the first time on appeal. *See Johnson v. State*, 120 Nev. 296, 298, 89 P.3d 669, 670 (2004) (observing that a sentencing issue is appropriately raised for the first time on appeal where defendant had no opportunity to object below). We therefore review for an abuse of discretion. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

A district court is to credit a sentence “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." NRS 176.055(1); *see also White-Hughley v. State*, 137 Nev. 472, 472, 495 P.3d 82, 83 (2021) ("[A] district court must give a defendant credit for any time the defendant has actually spent in presentence confinement absent an express statutory provision making the defendant ineligible for that credit." (internal quotation marks omitted)). Because Barnes was in pretrial detention based on both charges to which he pleaded guilty and those sentences were imposed concurrently, he was entitled to have the presentence credit applied to both sentences. *Johnson*, 120 Nev. at 299, 89 P.3d at 671 ("[W]e conclude that credit for time served in presentence confinement may not be denied to a defendant by applying it to only one of multiple concurrent sentences."). Accordingly, we reverse and remand to the district court to apply presentence credit to both concurrent sentences.

Second, Barnes argues the district court erred in prospectively precluding him from earning credit for time served toward his underlying sentence on potential drug court jail sanctions.

The judgment of conviction provides that "any [drug court] jail sanction shall not be considered by the Court as credit for time served should the Defendant be terminated from the program and sentenced to serve time in prison or jail." But a probationer is generally entitled to credit for any time served while awaiting a hearing to determine if a probation violation occurred and time served that was imposed as part of the temporary revocation of his probation. NRS 176A.630(4), (5); *see also Merna v. State*, 95 Nev. 144, 145, 591 P.2d 252, 253 (1979) (holding a probationer whose probation has been revoked is entitled to credit for jail time served as a condition of probation). Similarly, "a defendant imprisoned due to

violating the terms and conditions of a drug court is entitled to credit time.” *House v. State*, 901 N.E.2d 598, 601 (Ind. Ct. App. 2009). We recognize that a defendant may waive the right to receive credit for drug court sanctions as a condition of entering drug court, *see id.*, and observe that the judgment of conviction contains language requiring Barnes to execute the drug court agreement and waivers. However, the record on appeal does not contain any specific waiver of the right to earn credit from a drug court sanction. Accordingly, we vacate this provision of the judgment of conviction so that the district court may determine if Barnes waived the right to receive credit for drug court sanctions or amend this provision so that it is consistent with Nevada law.

Third, Barnes contends the district court improperly conditioned good time credit toward his probation term on the full payment of fees and fines during probation. However, Barnes has not alleged that he has been denied credit toward his probation term for failure to pay any fees or fines in full. Accordingly, this issue is not ripe for review. *See Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 38 n.1, 175 P.3d 906, 907 n.1 (2008) (holding a case is not ripe for review when the harm alleged is remote or hypothetical).¹

¹The judgment of conviction provides “[t]hat the Defendant not be granted any good time credits or an early release from probation unless all of the Defendant’s court-ordered and supervision fines, fees, and restitution are paid in full and all conditions of probation are met.” Because the district court did not provide a specific repayment schedule, the Division of Parole and Probation will establish Barnes’ monthly payment schedule and recognize credit against Barnes’ probation so long as he is current on those payments. NRS 176A.500(6)(a); NAC 213.230. We view this provision in the judgment of conviction as recognizing Barnes’ general obligation to the successful completion of probation and not clearly in contradiction to the

Fourth, Barnes argues the district court erred in failing to hold a prompt, second pretrial release hearing after he was arrested for violating the terms of pretrial release.


At the time of the scheduled hearing regarding alleged pretrial release violations, Barnes pleaded no contest.² Barnes' no contest plea "represents a break in the chain of events which has preceded it in the criminal process." *Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)). Barnes may not "thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the [no contest] plea." *Id.* (quoting *Tollett*, 411 U.S. at 267). Additionally, because Barnes is no longer in pretrial custody, he cannot be granted relief, and his arguments are moot. *Johnston v. Eighth Jud. Dist. Ct.*, 138 Nev. 700, 708, 518 P.3d 94, 102 (2022) ("[W]e deny mandamus relief as to Johnston's pretrial release claims because they are moot, as he is no longer in custody."); see also *Chittenden v. Justice Ct. of Pahrump Twp.*, 140 Nev., Adv. Op. 5, 544 P.3d 919, 925 (Ct. App. 2024) (noting that an unconditional waiver of a preliminary hearing and subsequent plea rendered any pretrial detention issue moot).

more specific provision in NRS 176A.500(6)(a). Nevertheless, we recognize that the judgment of conviction's language may cause confusion. Although we are remanding this matter on other issues, nothing in this order prohibits the district court from harmonizing the above-quoted provision with NRS 176A.500(6)(a) on remand.

²A no contest plea is equivalent to a guilty plea insofar as how the court treats a defendant. See *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 335 P.3d 791, 793-94 (2015).

Having considered Barnes' contentions and concluded that relief is warranted, we

ORDER the judgment of conviction AFFIRMED IN PART, VACATED IN PART, REVERSED IN PART, AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Michael Montero, District Judge
Nevada State Public Defender's Office
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk