

IN THE SUPREME COURT OF THE STATE OF NEVADA

IRA LEON ARCHER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38740

**FILED**

JAN 17 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony manufacture of a controlled substance.

On December 14, 1998, the district court sentenced appellant Ira Archer to serve a term of 24-72 months in prison; the sentence was suspended and Archer was placed on probation with conditions for an indeterminate period not to exceed five years. On May 4, 2000, after a probation revocation hearing in the district court, an amended judgment of conviction was filed reinstating probation but with additional conditions. On August 14, 2000, after another probation revocation hearing, Archer's probation was revoked and he was sentenced to serve a term of 24-72 months in prison; he was given credit for 30 days time served.

Archer subsequently filed a motion for credit for time served in the district court, where he requested credit for an additional 118 days (for a total of 148 days). Archer requested credit for an additional 55 days

of confinement based on time spent in custody in the instant case (district court case no. 97141826B), and for 63 days of confinement in another case (district court case no. 96F23806X) that was ultimately dismissed. The State conceded that Archer should receive the additional 55 days of credit for time served in case no. 97141826B, but opposed any additional credit for the other case, arguing that it was resolved separately from the instant case. The district court concurred with the State's argument and granted Archer's motion in part and denied it in part, and on October 15, 2001, filed another amended judgment of conviction reflecting an additional 55 days of credit for time served (for a total of 85 days). Archer now appeals from the latest judgment of conviction denying him the full amount of requested credit for time served.

We conclude that the district court erred in not granting Archer credit for the time served in confinement in district court case no. 96F23806X. NRS 176.055 states in relevant part:

2. A defendant who is convicted of a subsequent offense which was committed while he was:

(a) In custody on a prior charge is not eligible for any credit on the sentence for the subsequent offense for time he has spent in confinement on the prior charge, unless the charge was dismissed or he was acquitted.<sup>1</sup>

The district court criminal minutes for February 17, 1998, state that Archer's guilty plea agreement in the instant case was filed in open court. The minutes indicate that the plea negotiations included the State agreeing to not oppose the dismissal of case no. 96F23806X in exchange for Archer's guilty plea to one of the charged counts. Therefore, we

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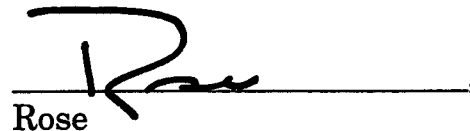
<sup>1</sup>Emphasis added.

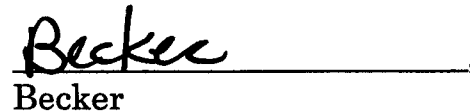
conclude that the dismissal of case no. 96F23806X was part of the plea agreement in the instant case, and that pursuant to NRS 176.055(2)(a), Archer is entitled to an additional 63 days credit for time served.

Having considered Archer's contention and concluded that it has merit, we

ORDER the amended judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for the entry of a corrected judgment of conviction consistent with this order.<sup>2</sup>

  
Shearing, J.

  
Rose, J.

  
Becker, J.

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk

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<sup>2</sup>Although Archer has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered his proper person documents.