

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE STROUGHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40201

FILED

FEB 03 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to an Alford¹ guilty plea, of one count of attempted aggravated stalking. The district court sentenced appellant Willie Stroughter to serve a prison term of 48-120 months.

Stroughter's sole contention is that the district court abused its discretion at sentencing by giving him 282 days of credit for time served and applying the credit exclusively to his probation revocation case (district court case no. C172385, attempted possession of a controlled substance with the intent to sell). Stroughter argues that the 282 days credit should have been applied not only to the probation revocation case, but also to the instant case (district court case no. C182499) and to an additional case that he pleaded guilty to at the same time (district court case no. C180806, battery with a deadly weapon); all three sentences were ordered to run concurrently with each other. We disagree with Stroughter's contention.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

A sentencing determination will not be disturbed on appeal absent an abuse of discretion by the district court.² NRS 176.055(1) states: “whenever a sentence of imprisonment . . . is imposed, the court may order that credit be allowed against the duration of the sentence . . . for the amount of time which the defendant has actually spent in confinement before conviction” This court has stated that “[t]he 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.”³


Stroughter does not contest the fact that he was on probation at the time of the instant offense. In addition, Stroughter signed a written plea agreement stating that he understood if the offense to which he was pleading had been committed while he was on probation, that he was not eligible for credit for time served toward the instant offense. As a result, the 282 days credit for time served that Stroughter contended should have been applied to all three of his cases, including the instant case, was properly applied by the district court only to his probation revocation case. Therefore, we conclude that the district court did not abuse its discretion at sentencing.


²Parrish v. State, 116 Nev. 982, 12 P.3d 953 (2000).

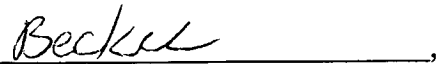
³Gaines v. State, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000). NRS 176.055(2)(b) states: “A defendant who is convicted of a subsequent offense which was committed while he was . . . (b) Imprisoned in a county jail or state prison or on probation or parole from a Nevada conviction is not eligible for any credit on the sentence for the subsequent offense for the time he has spent in confinement which is within the period of the prior sentence, regardless of whether any probation or parole has been formally revoked.” (Emphasis added.)

Having considered Stroughter's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender
Attorney General Frankie Sue Del Papa/Carson City
Clark County District Attorney
Clark County Clerk