

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN TOMOVICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41216

FILED

AUG 29 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of level-one trafficking in a controlled substance. The district court sentenced appellant Bryan Tomovich to serve a prison term of 12 to 48 months.

Tomovich's sole contention is that the district court erred by refusing to grant him 97 days presentence confinement credit for time served on electronically supervised house arrest. In particular, Tomovich contends "that the Nevada legislature has established that residential confinement is equivalent to jail time" and, therefore, he is entitled to credit for time served on residential confinement pursuant to this court's holdings in Kuykendall v. State.¹ Tomovich relies on the following statutes in support of his contention: NRS 4.2762, NRS 5.076, NRS 176A.660, NRS 211.250, NRS 211.300, NRS 213.152, and NRS 483.560.²

¹112 Nev. 1285, 926 P.2d 781 (1996); see also Gaines v. State, 116 Nev. 359, 998 P.2d 166 (2000) (construing this court's holding in Kuykendall).


²Additionally, Tomovich notes that a defendant is entitled to good time credits for time spent in residential confinement. See NRS 209.446 (providing for good time credits "(a) [f]or the period he is actually incarcerated under sentence; (b) [f]or the period he is in residential

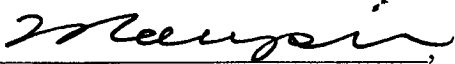
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actual confinement in jail.⁶ We therefore conclude that the time Tomovich spent under electronically supervised residential confinement was time spent outside of incarceration, and not "confinement" within the purview of NRS 176.055.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. David R. Gamble, District Judge
Derrick M. Lopez
Attorney General Brian Sandoval/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk

⁶See Webster, 109 Nev. at 1085, 864 P.2d at 295 ("The imposition of residential confinement as a condition of appellant's probation is insufficient to change the character of his probation from a conditional liberty to actual confinement.").

Those statutes provide that, in certain instances, a defendant may serve a sentence of residential confinement in lieu of jail or prison time. We conclude that Tomovich was not entitled to credit for time served in residential confinement.

NRS 176.055(1) provides that a defendant is entitled to credit "for the amount of time which the defendant has actually spent in confinement before conviction."³ This court has recognized, however, that a defendant is not entitled to credit for time served in residential confinement because it is time spent "outside of incarceration."⁴ Likewise, in construing NRS 176.055, this court has held that a defendant is only entitled to credit for time served for confinement that so restrains a defendant's liberty that it "is tantamount to incarceration in a county jail."⁵ The mere fact that, in certain circumstances, a criminal defendant may serve his sentence in residential confinement in lieu of prison time does not mean that these two forms of punishment are equally restraining on an individual's liberty. In this case, Tomovich's residential confinement was more tantamount to a form of conditional liberty than to

... continued

confinement; and (c) [f]or the period he is in the custody of the division of parole and probation").

³Emphasis added. See also Kuykendall, 112 Nev. 1285, 926 P.2d 781 (holding that purpose of NRS 176.055(1) is to ensure that a criminal defendant receives credit for all time served).

⁴See Webster v. State, 109 Nev. 1084, 1085, 864 P.2d 294, 295 (1993) (discussing residential confinement as a condition of probation).

⁵Grant v. State, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983).