

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL ISOM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41400

FILED

NOV 05 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of living from the earnings of a prostitute. The district court sentenced appellant Darryl Isom to serve a prison term of 12 to 48 months to run concurrently with an unrelated case in California.

Isom's sole contention is that the district court erred in refusing to grant him 131 days credit for time he served on the instant charge in presentence confinement between December 5, 2002, and April 15, 2003.¹ While acknowledging that Isom was also in custody on a California parole hold, Isom argues that "fairness" dictates that Isom should be granted credit against his Nevada sentence for his presentence confinement because he has never been transferred back to California,


¹We reject the State's argument that this issue is not cognizable in a direct appeal because a challenge involving credit for time served may only be raised in a post-conviction petition for a writ of habeas corpus pursuant to NRS 34.724. Issues involving credit for time served may be raised on direct appeal from the judgment of conviction because credit for time served is included as part of the judgment of conviction. See NRS 176.105(1)(d); see also *McMichael v. State*, 94 Nev. 184, 577 P.2d 398 (1978) (addressing the issue of credit for time served on direct appeal), overruled on other grounds by *Braunstein v. State*, 118 Nev. 68, 40 P.3d 413 (2002).

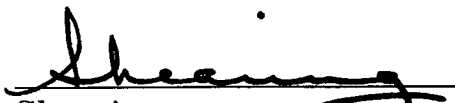
"and thus [his] pretrial confinement has ultimately become 'dead time' in the common vernacular."


NRS 176.055(1) states, in part, "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, unless [the] confinement was pursuant to a judgment of conviction for another offense." Here, the time spent in presentence confinement for the instant charge was also time spent pursuant to the judgment of conviction for another offense, namely, the California parole violation. Accordingly, Isom has failed to show that he is entitled to credit for the time served in presentence confinement. Moreover, because Isom was confined pursuant to his conviction in California, we discern no undue fairness merely because California has not yet chosen to pursue the parole violation against him.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk