

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN RAMIREZ MORAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41710 FILED

FEB 18 2004

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

ORDER AFFIRMING IN PART, VACATING IN PART AND  
REMANDING

This is an appeal from a district court order revoking appellant Steven Ramirez Moran's probation.

On October 25, 2001, Moran was convicted, pursuant to a guilty plea, of one count of burglary. The district court sentenced Moran to a prison term of 24 to 60 months and then suspended execution of the sentence, placing Moran on probation for a time period not to exceed 5 years. Moran did not file a direct appeal.

On May 13, 2003, the Division of Parole and Probation filed a probation violation report, alleging that Moran had violated the conditions of his probation by drinking alcohol, testing positive for marijuana, failing to maintain steady employment, and missing several counseling appointments. Thereafter, on June 6, 2003, the district conducted a probation revocation hearing. At the hearing, defense counsel conceded that Moran violated the conditions of his probation and requested that Moran be allowed to remain on probation so that he could attend a residential drug treatment program. Additionally, Moran informed the court that he had made up the missed counseling appointments and also admitted that he needed help for his substance abuse problem. After entertaining arguments from counsel, the district court continued the hearing so that defense counsel could obtain additional information from

Moran's counselor. After a second probation revocation hearing, the district court revoked Moran's probation. Moran filed the instant appeal.

Moran first contends that the district abused its discretion in revoking his probation because it never gave him the opportunity to attend a residential drug treatment program.<sup>1</sup> Additionally, Moran contends that the district court violated his constitutional rights by revoking his probation without admitting evidence of those violations pursuant to Anaya v. State.<sup>2</sup> We conclude that Moran's contentions lack merit.

The decision to revoke probation is within the broad discretion of the district court and will not be disturbed absent a clear showing of abuse.<sup>3</sup> Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation.<sup>4</sup> In this case, we conclude that the district court acted within its discretion in revoking Moran's probation because Moran conceded that he violated the conditions of probation. Moreover, Moran's admission that he violated the conditions of his probation eliminated the need to admit evidence of those violations at an Anaya hearing. Accordingly, Moran's constitutional rights were not violated.

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<sup>1</sup>Moran notes that, due to a prison mishap, he was never placed in the regimental discipline program, as ordered by the district court at the time Moran entered his guilty plea, but instead spent that presentence time period in custody.

<sup>2</sup>96 Nev. 119, 606 P.2d 156 (1980).

<sup>3</sup>Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

<sup>4</sup>Id.

Moran also contends that the district court erred in revoking his probation because the sentence imposed in the original judgment of conviction is too harsh. Citing to the dissent in Tanksley v. State,<sup>5</sup> Moran asks this court to review the sentence to see that justice was done. We conclude that Moran has waived this issue by failing to challenge the sentence imposed in a direct appeal from the original judgment of conviction. We therefore decline to consider it.<sup>6</sup>

Finally, Moran contends that the district court erred in failing to give him 190 days presentence incarceration credit. Relying on Kuykendall v. State,<sup>7</sup> Moran contends that the district court erred as a matter of law by refusing to grant him credit based on its ruling that it had "discretion to grant time served or not grant it." In its appellate brief, the State concedes that NRS 176.055(1) is mandatory and that Moran should have been given credit for the 190 days he spent in presentence confinement. We agree.

In construing NRS 176.055, this court has held that time spent in presentence incarceration should be credited towards the defendant's ultimate sentence.<sup>8</sup> A defendant is therefore entitled to presentence incarceration credit unless one of the statutory exceptions set forth in NRS 176.055(2) is applicable. In this case, there is no allegation that one of the statutory exceptions is applicable and, in fact, the State

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<sup>5</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

<sup>6</sup>We note, however, that the sentence imposed was within the parameters of the relevant sentencing statute. See NRS 205.060(2) (providing for a prison term of 1 to 10 years).


<sup>7</sup>112 Nev. 1285, 926 P.2d 781 (1996).


<sup>8</sup>Id.


concedes that Moran is entitled to an additional 190 days credit for time spent in custody before sentencing. Accordingly, we vacate the award of 42 days credit for time served in the order revoking probation and remand this matter to the district court for the imposition of an additional 190 days presentence incarceration credit; Moran is entitled to 232 days credit for time spent in custody prior to sentencing in this case.<sup>9</sup>

Having considered Moran's contentions, we affirm the district court order revoking probation, but vacate the order with regard to presentence incarceration credit and remand this matter to the district court for the limit purpose of recalculating credit for time served. Accordingly, we

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

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

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<sup>9</sup>We note that any additional request for presentence incarceration credit should be raised in the district court in the first instance by filing a post-conviction petition for a writ of habeas corpus. See NRS 34.724.

cc: Hon. James W. Hardesty, District Judge  
Jenny Hubach  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk