

IN THE SUPREME COURT OF THE STATE OF NEVADA

JARROD ALAN BRADY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42259

FILED

MAR 24 2004

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 a guilty plea, of one count of possession of a stolen vehicle. The district court sentenced appellant Jarrod Alan Brady to serve a prison term of 12-30 months to run consecutively to the sentence imposed in district court case no. C163711.¹

Brady contends that the district court erred in granting the State's motion to correct an illegal sentence, thereby rescinding the court's previous sentencing award of 34 days credit for time served. Although Brady admits that he was on parole at the time he committed the instant offense, he argues that NRS 176.055(2)(b)² and Nieto v. State³ are in

¹Brady was initially charged by way of a criminal complaint with one count each of attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon, and grand larceny auto.

²NRS 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

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conflict, and therefore the district court still has the discretion to award him credit for time served in pretrial confinement.⁴ We disagree with Brady's contention.

A sentencing determination will not be disturbed on appeal absent an abuse of discretion by the district court.⁵ 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, however, that

. . . continued

of the prior sentence, regardless of whether any probation or parole has been formally revoked." (Emphasis added.)

³119 Nev. ___, ___, 70 P.3d 747, 748 (2003) (stating in dicta that "the granting of credit for pretrial confinement is not necessarily limited to the situations discussed in Anglin"). In Anglin v. State, this court stated that the purpose of the credit statute was "to provide credit for confinement . . . where (1) bail has been set for the defendant and (2) the defendant was financially unable to post the bail." 90 Nev. 287, 292, 525 P.2d 34, 37 (1974); see also Kuykendall v. State, 112 Nev. 1285, 1286, 926 P.2d 781, 782 (1996).

⁴Brady also alleges, without argument, that denying him credit towards his sentence for pretrial confinement in the instant case, based on his status as a parolee, is unconstitutional and violates his right to due process and equal protection. We disagree. See generally Dearing v. State, 90 Nev. 297, 298, 525 P.2d 601, 601 (1974); see also McGinnis v. Royster, 410 U.S. 263, 269-70 (1973) (holding that constitutional challenges to credit statutes are subject to the rational basis test).

⁵Parrish v. State, 116 Nev. 982, 12 P.3d 953 (2000).

“[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,”⁶ regardless of whether the term of probation or parole has been revoked.

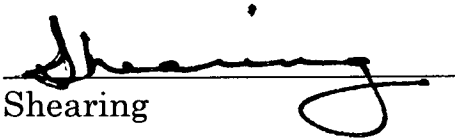
We conclude that the district court did not err in granting the State’s motion to correct an illegal sentence. After considering the State’s motion based on NRS 176.055(2), and Brady’s opposition, the district court granted the motion and subsequently filed an amended judgment of conviction correctly noting that Brady was not entitled to any pretrial confinement credit. As a result, the district court rescinded its previous sentencing award of 34 days. Brady never contested the fact that at the time of the instant offense, he was out of custody and on parole from his drug trafficking sentence. Further, we conclude that Brady’s reliance on Nieto for support is misplaced because: (1) unlike Brady, Nieto did not commit his offense while on either parole or probation; and (2) we perceive no inherent conflict in the holding of Nieto – “that a defendant is entitled to credit for time served in presentence confinement in another jurisdiction when that confinement was solely pursuant to the charges for which he was ultimately convicted” in Nevada⁷ – with NRS 176.055(2)(b).

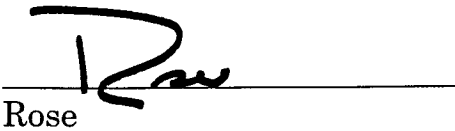
⁶Gaines v. State, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000).

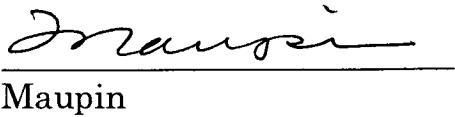
⁷Nieto, 119 Nev. at ___, 70 P.3d at 748.

Therefore, having considered Brady's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Michael A. Cherry, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk