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### Summary of Johnson v. State

Christina H. Wang  
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# *Johnson v. State*, 89 P.3d 669 (Nev. 2004)<sup>1</sup>

## **CRIMINAL LAW AND PROCEDURE – PRESENTENCE CONFINEMENT CREDIT, CONCURRENT SENTENCES**

### **Summary**

Appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of uttering a forged instrument and one count of principal to commit uttering a forged instrument.

### **Disposition/Outcome**

Remanded to the district court with instructions to modify the sentence by applying the presentence confinement credit to both counts I and II.

### **Factual and Procedural History**

On July 14, 2002, Appellant Daniel Gene Johnson (Johnson) was arrested and charged with two counts of uttering a forged instrument (counts I-II) and one count of principal to commit uttering a forged instrument (count III). Johnson ultimately pled guilty to these charges, as well as to fifteen other felony counts. In exchange for his guilty plea to the three counts, the State agreed not to pursue the fifteen other felony counts.

Pursuant to Johnson's guilty plea, the district court sentenced him to serve concurrent prison terms of 12-48 months and 18-48 months for counts I and II and a consecutive prison term of 18-48 months for count III, and ordered him to pay \$424.40 in restitution jointly and severally with his codefendant. The district court gave Johnson credit for 128 days time served, and ordered that it be applied only to the sentence imposed for count I.

Johnson subsequently appealed his sentence, contending that the district court abused its discretion in ordering the credit for presentence confinement to be applied only to the sentence imposed for count I, a sentence concurrent to the sentence imposed for count II but with a shorter minimum term.

The Nevada Supreme Court agreed with Johnson's contention and remanded the case to the district court with instructions to modify the sentence by applying the presentence confinement credit to both counts I and II.

### **Discussion**

The purpose of NRS 176.055, the statute governing the application of credit for presentence confinement, is to ensure that all time served is credited towards a defendant's ultimate sentence.<sup>2</sup> The overwhelming majority of states adhere to the following generally

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<sup>1</sup> By: Christina H. Wang

<sup>2</sup> See generally NEV. REV. STAT. 176.055(1) ("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").

accepted principle when apportioning credit for time served in presentence confinement: when concurrent sentences are imposed, presentence credit is applied once.<sup>3</sup> The credit applied once, in effect, is applied against each concurrent sentence.<sup>4</sup> This is done because the longest term of the concurrent sentences determines the total length of the imprisonment.

Thus, credit for time served in presentence confinement may not be denied to a defendant by applying it to only one of multiple concurrent sentences. Johnson was taken into custody at the same time for all of the charges to which he pled guilty; therefore, he was entitled to have the 128 days credit for time served in presentence confinement applied to both of the concurrent sentences imposed for counts I and II, and not only to the sentence imposed for count I.

### **Conclusion**

This case establishes that when a criminal defendant receives concurrent sentences, credit for time served in presentence confinement must be applied against each concurrent sentence.

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<sup>3</sup> State v. Tauiliili, 29 P.3d 914, 918 (Haw. 2001); *see also* State v. Price, 50 P.3d 530, 534-35 (Mont. 2002) (listing cases and jurisdictions following the same general principle).

<sup>4</sup> *Id.*