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### White-Hughley v. State, 137 Nev. Adv. Op. 47 (Sept. 16, 2021)

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CRIMINAL LAW: CLARIFYING THE STATUTORY PARAMETERS OF CRIMINAL SENTENCING

**Summary**

The Supreme Court of Nevada reviewed the Court of Appeal’s affirmance of the Eighth District Court’s sentencing decision en banc. The defendant was simultaneously arrested and detained on two warrants for two separate offenses and entered into one “package deal” plea agreement for both. The sentencing for the two offenses was not simultaneous however, and the issue arose regarding whether the defendant could be credited for the time served against both concurrent sentences. The lower court took NRS 176.055(1)<sup>2</sup> to mean that allowing the defendant credit for time served in the instant offense when he had received credit in the earlier sentencing for another offense would constitute impermissible “double dipping”. The Court of Appeals upheld the decision. The Supreme Court of Nevada, relying on their previous holdings<sup>3</sup>, clarified under precedent in tandem with NRS 176.055(1) a defendant is entitled to credit for all time served in presentencing confinement and when confined on multiple cases simultaneously, credit shall be given for the time served from the beginning of confinement until sentenced for the first offense. The Supreme Court vacated the judgment of conviction and remanded for sentencing in accordance with the clarifying opinion. Justice Herndon dissented.

**Facts and Procedural History**

On October 1, 2019, appellant White-Hughley was arrested and detained on outstanding warrants in both a child-abuse related case and another for home invasion. White-Hughley plead guilty to both charges pursuant to an agreement that the sentences would run concurrently. Sentencing proceedings for each of the charges was handled separately, with two different judges presiding. In December of 2019, Judge Tierra Jones sentenced White Hughley to 12-36 months for the child-abuse charge, with credit for time for served. In January of 2020, however, Judge David Jones handed down a 12-30 month sentence in the home invasion case and denied to apply time-credit. On appeal, the Court of Appeals affirmed the decision and the Supreme Court of Nevada granted the petition for review.

**Discussion**

In a de novo review, the Supreme Court of Nevada considered whether the District Court erred in denying credit for time served against the sentence for home invasion. The prosecution opposed the grant, arguing that the credit granted in the earlier sentencing precluded White-Hughley from receiving credit against the latter sentence. Judge Jones accepted this argument, relying on a series of unpublished opinions by the court and the fact that this is always how he

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<sup>1</sup> Candace Mays.

<sup>2</sup> NEV. REV. STAT. 176.055(1) (providing that a court may grant credit against the sentence for time spent in confinement prior to conviction unless served pursuant a judgment of conviction for another offense, or unless otherwise prohibited by statute).

<sup>3</sup> *Kuykendall v. State* 112 Nev. 1287, 926 P.2d 781 (1996); *Poasa v. State*, 135 Nev. 426, 453 P.3d 387 (2019); *Johnson v. State* 120 Nev. 296, 89 P.3d 669 (2004).

ruled in his court. White-Hughley rebutted to the Court of Appeals that he should have “at least” gotten credit for the time in confinement prior to the initial sentencing.

In their analysis, the Supreme Court relied on their earlier decision in *Kuykendall* and reiterated their holdings in *Poasa v. State* and *Jackson v. State* to clarify the proper interpretation of NRS 176.055(1). In *Kuykendall*, the court held that, in an interest of fairness and ensuring equal protection, NRS 176.055 should broadly construed in favor of granting a defendant credit for all presentencing time served. The court reasserted the *Kuykendall* principle, that despite the discretionary language of the statute, a defendant shall not be denied credit for time served absent any statutory provision negating the defendant’s eligibility. In *Jackson*, the court applied the *Kuykendall* holding and awarded credit for time served on each of the multiple counts within the same case.

Here, the court acknowledged the distinctions between the precedent cited and the instant case. White-Hughley, unlike the defendant in *Jackson*, was seeking to credit for two charges under two different cases. Unlike White-Hughley, the defendants in *Kuykendall* and *Poasa* had a single charge and case for which time-credit was being sought. The Court nevertheless held that “...the takeaway from *Poasa*, *Kuykendall*, and *Johnson* is uniform and applicable here...”, that absent some statutory prohibition, defendants are entitled to credit for any presentence time they serve. Anything else would be an impermissible deprivation that “renders such an award a nullity or little more than a paper credit.”<sup>4</sup> Here, whereas the sentences for both charges were similar in time and were essentially conjoined by the package-deal plea agreement, there would be no proper purpose to treat them as fully distinct for the purposes of disqualifying application of time served to the latter.

### **Conclusion**

The Court held that the District Court’s decision was inconsistent with the interpretation of NRS 176.055(1) that governed in the jurisdiction. The court determined that any time served prior to sentencing shall be credited as time served on all offenses relating to the simultaneous confinement at that time. Thus, the judgment is vacated and remanded for sentencing in accordance with the opinion.

### **Dissent**

Justice Hendon, in his dissenting opinion, insisted that the majority’s opinion constituted an alteration of the statute rather than mere clarification. He reasoned that since the language of NRS 176.055(1) says that a court *may* order credit against time served, the majority decision impermissibly thwarted the District Court’s discretion to decide these cases on a case-by-case basis. Under *stare decisis* he argued, he would have affirmed the lower court decisions. He cited the majority’s distinction between White-Hughley’s case and the precedent relied on in the majority decision to reject the argument that the similarities of the charges in the instant case rendered it necessary for them to be taken as the same for the purposes of sentencing.

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<sup>4</sup> *Johnson v. State*, 120 Nev. 296, 299, 89 P.3d 669, 671 (2004).