

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN DEWAYNE JENKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82960-COA

FILED

NOV 05 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin DeWayne Jenkins appeals from the district court's third order reinstating probation with added conditions. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Jenkins argues the district court abused its discretion by ordering him to serve 364 days in the Nye County Detention Center as a condition of his probation and doing so without crediting his previously served time in custody toward that jail term. Jenkins contends that the district court's refusal to apply his previous time spent in custody toward his jail term violates NRS 193.130(2)(e), because his total time spent in the county jail will be greater than one year.

We review a district court's imposition of a condition of probation for an abuse of discretion. *Igbinovia v. State*, 111 Nev. 699, 707, 895 P.2d 1304, 1309 (1995). When a district court places a defendant on probation, NRS 176A.400(1)(c) permits the district court to impose "[a]ny reasonable conditions to protect the health, safety or welfare of the community." Moreover, when the district court places a defendant on probation pursuant to a conviction for a category E felony, the "conditions of probation may include, but are not limited to, requiring the person to

serve a term of confinement of not more than 1 year in the county jail.” NRS 193.130(2)(e).

Jenkins was convicted of possession of a controlled substance, a category E felony. *See* NRS 453.336(2)(a). The district court suspended the execution of Jenkins’ prison sentence, placed him on probation, and ordered him to remain in jail until he could secure a place in a long-term, comprehensive substance abuse rehabilitation facility. Jenkins eventually secured an appropriate placement in a rehabilitation facility¹ but subsequently violated the conditions of his probation. During the relevant probation revocation hearing, the district court decided to reinstate Jenkins to probation and order Jenkins to serve 364 days in the Nye County Detention Center as a condition of his probation. The district court credited Jenkins with 228 days of presentence credit but ordered those credits be applied only toward Jenkins’ suspended prison sentence.

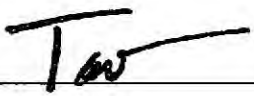
Pursuant to NRS 176A.400(1)(c) and NRS 193.130(2)(e), the district court had the discretion to order Jenkins to serve a 364-day jail term as a condition of his reinstated probation. Jenkins has identified no authority to support his contention that the one-year limit in NRS 193.130(2)(e) is a limit on the aggregated time an offender may spend in jail regardless of how many times he violates probation. Accordingly, we cannot conclude the district court abused its discretion in imposing the confinement condition of Jenkins’ probation. *See Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (“An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” (internal quotation marks omitted)); *see also*

¹The parties agree Jenkins spent 145 days in jail awaiting the placement.

Daniels v. State, 115 Nev. 330, 332-33, 988 P.2d 791-92 (1999) (explaining that a limit in an older version of NRS 193.130(2)(e) on a district court's authority to impose a term of confinement at the initial sentencing hearing did not limit the district court's authority to impose a term of confinement as a condition of probation following a revocation of and subsequent reinstatement to probation). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
The Law Firm of Nathan L. Gent, PLLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk