

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASSIO DURMAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44577

**FILED**

JUL 21 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a "Motion [for] Reconsideration [of Sentence]" and a "Motion Seeking Credit for Time Served." Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On December 9, 2004, the district court convicted appellant, pursuant to a guilty plea, of possession of a credit or debit card without the cardholder's consent. The district court sentenced appellant to serve a term of twelve to thirty-six months in the Nevada State Prison. Appellant was also given sixty days' credit for time served. No direct appeal was taken.

On January 20, 2005, appellant filed a proper person motion for reconsideration of her sentence and a proper person motion for credit for time served in the district court. The State opposed the motions. The district court conducted a hearing regarding appellant's motions. On January 24, 2005, the district court denied appellant's motions, but granted appellant an additional ten days credit for time served. On

January 26, 2005, the district court entered an amended judgment of conviction. This appeal followed.

In her motion for reconsideration of sentence, appellant claimed that she had two medical conditions, a brain aneurism and broken ankle, that needed immediate medical attention and requested that the court change her sentence to either probation or house arrest.

Because appellant sought to modify her judgment of conviction, we conclude that the motion is properly construed as a motion to modify a sentence. A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."<sup>1</sup> A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>2</sup> Appellant failed to establish that her sentence was based on a mistaken assumption about her criminal record that worked to her extreme detriment. Accordingly, the district court did not err in denying her motion.

In her motion for credit, appellant argued that she was entitled to additional credit for time served for the time she spent in custody in California and in Reno.<sup>3</sup> NRS 176.055(1) provides:

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<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>2</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

<sup>3</sup>We note that NRS 34.724(2)(c) specifically provides that a post-conviction petition for a writ of habeas corpus is "the only remedy  
*continued on next page . . .*

whenever a sentence of imprisonment in the county jail or state prison 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, unless his confinement was pursuant to a judgment of conviction for another offense.<sup>4</sup>

The record on appeal reveals that the district court determined that appellant was entitled to 10 days additional credit for the time she was in custody in Washoe County awaiting transportation to Clark County for the instant offense. Appellant failed to demonstrate that the remaining time she was in custody in California and in Washoe County was a result of the instant offense rather than unrelated offenses.<sup>5</sup> Accordingly, we conclude the district court did not err in denying appellant's motion.

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*. . . continued*


available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction." Accordingly, appellant should have filed a post-conviction petition for a writ of habeas corpus, not a motion for credit. However, because the motion is supported by sufficient factual allegations, we conclude that the procedural label is not critical in this case.


<sup>4</sup>Emphasis added.

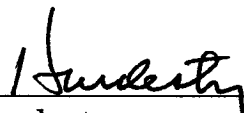
<sup>5</sup>See McMichael v. State, 94 Nev. 184, 194, 577 P.2d 398, 404 (1978) ("Only incarceration pursuant to a charge for which sentence is ultimately imposed can be credited against that sentence"), overruled on other grounds by Meador v. State, 101 Nev. 765, 711 P.2d 852 (1985).

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge  
Cassio Durmas  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).