

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL D. DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45403

FILED

AUG 18 2005


ORDER OF AFFIRMANCE

FILED
J. Richards
CLERK

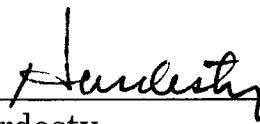
This is a proper person appeal from an order of the district court denying a motion for credit. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

We have reviewed the record on appeal and we conclude that the district court did not err in denying appellant's motion for the reasons stated in the attached order. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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

ORIGINAL

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1 **FFCL**
2 **BRIAN SANDOVAL**
3 **Attorney General**
4 **By: HEIDI E. NAGEL (Bar No. 7839)**
5 **Deputy Attorney General**
6 **Special Prosecutions Unit**
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11 **Attorneys for Respondent**

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Heidi E. Nagel
CLERK

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 SAMUEL D. DAVIS,
12 Petitioner,
13
14 vs.
15 JAMES SCHOMIG et al.,
16 Respondents.

CASE NO. C 139123
DEPT. NO. VI

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND ORDER**

17
18 DATE: May 11, 2005
19 TIME: 8:30 a.m.

20 The above-captioned court conducted a hearing on a motion filed by inmate SAMUEL
21 D. DAVIS (DAVIS). This court, construing the motion as a post-conviction petition for a writ of
22 habeas corpus hereby issues this order disposing of the petition pursuant to NRS 34.830.

23 In his motion, DAVIS contended that he was entitled to seven (7) years, nine (9)
24 months credit for time served against Count II (i.e., Robbery) of his current sentence.
Additionally, DAVIS sought clarification of the Judgment of Conviction rendered against him
on December 23, 1996.

DAVIS, in Properia Persona, was not present at the hearing. Respondents were
represented by Deputy Attorney General Heidi E. Nagel. Upon review of DAVIS' motion,

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1 Respondents' Answer and Motion to Dismiss and the pleadings and papers on file herein, the
2 Court makes the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT**

4 1. On December 23, 1996, Petitioner Samuel D. Davis (DAVIS) was sentenced to a
5 term of fifteen (15) years imprisonment with the possibility of parole for Robbery (i.e., Count I).
6 DAVIS received a consecutive sentence of fifteen (15) years imprisonment with the possibility
7 of parole for a second count of Robbery (Count II).

8 2. The district court further ordered that Counts I and II would run concurrent to DAVIS'
9 term of imprisonment in the state of California.

10 3. The effective date of Counts I and II running concurrent to DAVIS' California term of
11 imprisonment is the date of DAVIS' sentencing in the district court (i.e., December 23, 1996).

12 4. Correspondence attached to DAVIS' motion indicated that the Nevada Department
13 of Corrections (NDOC) stated DAVIS had a projected discharge date of February 28, 2006, on
14 his first sentence based on the assumption that he would earn full statutory good time and
15 work credits. Additionally, NDOC indicated that DAVIS would discharge on his second
16 sentence in approximately nine (9) years based on the 1/3 Parole Law. Again, this projection,
17 as NDOC noted, was based on the assumption that DAVIS would earn full statutory good time
18 and work time credits.

19 5. DAVIS contends that his California sentence began on October 17, 1995, and
20 expired on December 3, 2003.

21 6. DAVIS asserted constitutional error (i.e., a denial of due process of law and of equal
22 protection under the law) where NDOC has failed to recognize the Judgment of Conviction
23 issued on December 23, 1996, in its entirety. DAVIS argued that whatever time he
24 concurrently served in California as to Count I must also be applied to Count II. Accordingly,
25 DAVIS contended that he failed to receive credit against Count II. Further, DAVIS appeared
26 to argue that he is entitled to credit for flat time served as to both Counts I and II after the
27
28

1 California term of imprisonment expired on December 3, 2003. DAVIS asserted that he is
2 entitled to seven (7) years, nine (9) months credit against Count II.

3 **CONCLUSIONS OF LAW**

4 1. A post-conviction petition for habeas corpus is the proper vehicle for a party
5 challenging the computation of time that has been served pursuant to a judgment of
6 conviction.¹

7
8 2. A petitioner bears the burden of proof regarding the claim set forth and, where a
9 petitioner has failed, "NRS 34.810(3) requires the petitioner to plead and prove specific facts
10 demonstrating good cause and for a failure 'to present the claim or for presenting the claim
11 again' and actual prejudice."²

12 3. Naked allegations, unsupported by fact, do not support a claim for relief.³

13 4. DAVIS has filed a "motion" seeking credit for flat time served. The motion is
14 improper.⁴ DAVIS would be required to file a post-conviction petition for a writ of habeas
15 corpus based on the relief he is seeking.

16
17 5. Even assuming DAVIS' "motion" as a petition for post-conviction habeas relief,
18 DAVIS is not entitled to the relief sought. In the present case, documents from NDOC indicate
19 that DAVIS must first expire Count I of the Judgment of Conviction before anytime – statutory
20 good time and/or work time – will be applied to Count II.

21
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23 ¹NRS 34.720(1); NRS 34.724(2)(c) (stating, in relevant part, that a post-conviction petition for
24 habeas relief "is the only remedy available to an incarcerated person to challenge the
computation of time that he has served pursuant to a judgment of conviction.")

25 ²Nika v. State, 120 Nev. ___, ___, 97 P.3d 1140, 1145 (2004) (quoting Hargrove v. State, 100
26 Nev. 498, 502, 686 P.2d 222, 225 (1984)). Accord State v. Eighth Judicial District Court et al.,
120 Nev. ___, ___, 97 P.3d 594, 602 (2004).

27 ³Hargrove, 100 Nev. at 502, 686 P.2d at 225.

28 ⁴NRS 34.720(1); NRS 34.724(2)(c).

1 6. NDOC documents further indicate DAVIS has been earning both statutory good time
2 and work time credits since 1996.

3 7. Based on the sentence structure correctly enunciated in the Judgment of
4 Conviction, Count I would first run concurrent to the California sentence. Only if the California
5 sentence exceeded Count I's expiration, would Count II have begun to run concurrent to the
6 California term of imprisonment. Therefore, because the California sentence expired on
7 December 3, 2003, and Count I has yet to expire (i.e., most current projected discharge date
8 of January 24, 2006), DAVIS is not entitled to receive accrued credit as to Count II.
9

10 **ORDER**

11 1. DAVIS' has filed a motion with the Court challenging the computation of his credit
12 for time served. A post-conviction petition for a writ of habeas corpus is the proper vehicle for
13 making such a challenge. Although DAVIS' motion is not properly before this Court, the Court
14 construes the motion as a post-conviction petition for habeas relief.

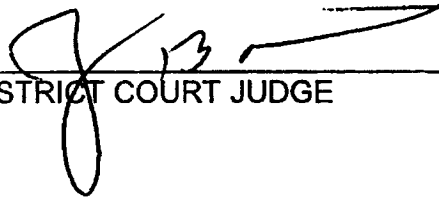
15 2. The Judgment of Conviction indicates DAVIS' sentences as to Counts I and II run
16 consecutively. All time earned must run, first, against Count I and, following the expiration of
17 Count I, against Count II. Therefore, no error in the computation of DAVIS' terms of
18 imprisonment has occurred.
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20 3. DAVIS is not entitled to credit for flat time served.

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4. Accordingly, the petition is dismissed.

DATED this 10th day of May, 2005.


DISTRICT COURT JUDGE

4

SUBMITTED BY:

BRIAN SANDOVAL
Attorney General

By:


HEIDI NAGEL
Deputy Attorney General

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