

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNG HONG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45524

FILED

DEC 06 2005

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion for credit for time served. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On December 4, 2003, the district court convicted appellant, pursuant to a jury verdict, of battery with the use of a deadly weapon resulting in substantial bodily harm and attempted second-degree kidnapping. The district court sentenced appellant to serve two concurrent terms of twenty-four to eighty-four months in the Nevada State Prison. Appellant was also given 187 days' credit for time served. Appellant did not file a direct appeal.

On March 30, 2004, appellant filed a motion requesting 110 days' credit for time served in custody in Colorado and Los Angeles while awaiting extradition to Nevada for the instant offenses. On September 24, 2004, the district court granted appellant's motion for credit and entered an amended judgment of conviction that granted appellant an additional 110 days' credit for time served.

On May 19, 2005, appellant filed a second motion for credit. In this motion, appellant requested an additional 46 days of credit for the time he served in the Clark County Detention Center after he was

sentenced until the time he was transferred to the Nevada Department of Corrections. The State opposed the motion. On June 8, 2005, the district court denied the motion for credit.¹

Our preliminary review of this appeal indicated that appellant's claim was not belied by the record, and may, if true, entitle him to relief. We concluded that under these circumstances, the district court may have erred by denying appellant's motion without first conducting an evidentiary hearing.²

On September 14, 2005, we ordered the State to show cause why this appeal should not be remanded to the district court for an evidentiary hearing. The State filed a timely response in which it argued that the Eighth Judicial District Court did not have jurisdiction to award the post-sentencing credit sought because appellant is currently incarcerated in Carson City.³ The State further submitted that this court

¹NRS 34.724(2)(c) provides that a post-conviction petition for a writ of habeas corpus "[i]s the only remedy available to an incarcerated person to challenge the computation of time that [s]he has served pursuant to a judgment of conviction." Appellant's request for additional credits is a challenge to the computation of time served. Consequently, appellant should have filed a post-conviction petition for a writ of habeas corpus, not a motion for credits. See Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996). We conclude that the procedural label is not critical in resolving the claim for credits in the instant case. See id. at 1535-36, 930 P.2d at 102.

²See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) (a petitioner is entitled to an evidentiary hearing if he raises a claim that, if true, would entitle him to relief).

³See NRS 34.738(1) (providing that any petition, other than a petition challenging the validity of a conviction, must be filed with the
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should remand this appeal to the Eighth Judicial District Court with instructions to transfer appellant's motion to the First Judicial District Court.⁴ We agree.

NRS 176.335 provides that the term of imprisonment designated in a judgment of conviction begins on the date the court sentences the prisoner. Because appellant requested an additional 46 days of credit for the time he served in the Clark County Detention Center after he was sentenced until the time he was transferred to the Nevada Department of Corrections, this was a request for the award of post-conviction credit. Appellant is incarcerated in Carson City and therefore, appellant's motion was improperly filed in the Eighth Judicial District Court.⁵ The district court erred by denying appellant's motion rather than directing the clerk of the Eighth Judicial District Court to transfer the petition to the clerk of the First Judicial District Court.⁶ Therefore, we reverse the denial of appellant's motion and remand this matter to the clerk of the district court for transfer of appellant's motion to the First Judicial District Court.

... continued

clerk of the district court for the county in which the prisoner is incarcerated).

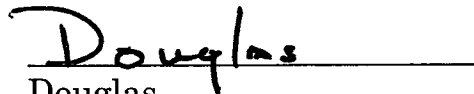
⁴See NRS 34.738(2).

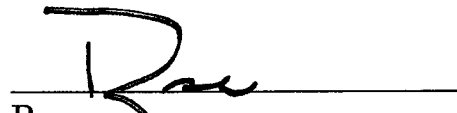
⁵NRS 34.738(1).

⁶NRS 34.738(2).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁸

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Sung Hong
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.