

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK JOSEPH BOOTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45581

FILED

NOV 07 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion for an amended judgment of conviction to include jail time credits. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On November 20, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and one count of possession of stolen property. The district court sentenced appellant to 36 to 120 months on the burglary count and 24 to 60 months on the possession of stolen property count, with the sentences to run consecutively; appellant also received 137 days of jail time credit. Appellant's sentence was suspended, and he was placed on probation for a maximum term of 60 months.

On September 8, 2004, the district court revoked probation, executed the original sentence, and provided appellant with 158 days of credit.

On April 18, 2005, appellant filed a motion for an amended judgment of conviction to include time credits in the district court.¹ The State opposed the motion. On June 16, 2005, the district court denied the motion. This appeal followed.

In his motion, appellant contended he should be given 1059 days of jail time credit for the time he was on probation. Appellant cited NRS 176.035 as support for this proposition.

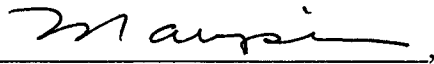
The district court concluded that appellant's reliance on NRS 176.035 to support his argument was misplaced. We agree. NRS 176.035 relates to the court's discretion to sentence a defendant convicted of multiple offenses to serve consecutive or concurrent sentences. NRS 176.035 does not speak to the computation of jail time credits. NRS 176.055 only allows credit for time spent in actual confinement. Time spent on probation is not equivalent to confinement.² Therefore, we affirm the order of the district 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 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.

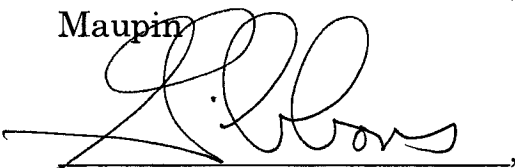
²See Webster v. State, 109 Nev. 1084, 864 P.2d 294 (1993); see generally State v. District Court, 121 Nev.____, 116 P.2d 834 (2005).

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.³ Accordingly, we

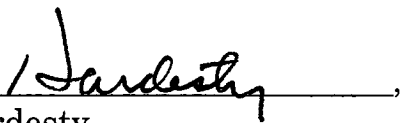
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Jerome Polaha, District Judge
Patrick Joseph Booth
Attorney General
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).