

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE RAY CAPRA A/K/A JASON
CAPRA A/K/A JESSE R. CAPRA A/K/A
JASON ALAN WHITMIRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45655

FILED

SEP 23 2005

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

ORDER OF AFFIRMANCE

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. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On March 19, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery. The district court sentenced appellant to serve a term of fourteen to forty-eight months in the Nevada State Prison. The district court imposed this term to run concurrently with the term imposed in district court case number C185318. The district court awarded appellant with ten days of jail time credit. No direct appeal was taken.

On March 21, 2005, appellant filed a proper person motion for an amended judgment of conviction to include jail time credits. Appellant sought one hundred and sixty-eight days of jail time credit. The State opposed the motion. On April 13, 2005, the district court denied the motion. No appeal was taken.

On June 2, 2005, appellant filed a motion for an amended judgment of conviction to include jail time credits.¹ The State opposed the motion. On July 6, 2005, the district court denied the motion. This appeal followed.

In his motion, appellant contended that he is entitled to one hundred and thirteen additional days of jail time credit for time spent incarcerated from October 19, 2002 through March 17, 2003. Specifically, appellant argued that because the district court ordered his sentence in this case to run concurrently with a sentence imposed in district court case number C185318, he is entitled to jail time credit for the time he spent in presentence confinement in both cases.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion because appellant failed to demonstrate that he is entitled to the credit he seeks in the instant case.²

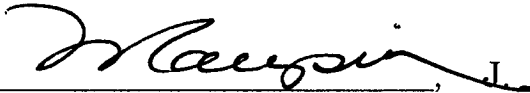
¹NRS 34.724(2)(c) provides that a post-conviction petition for a writ of habeas corpus "[i]s the only remedy available to an incarcerated person to challenge the computation of time that [s]he has served pursuant to a judgment of conviction." Appellant's request for additional credits is a challenge 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.

²NRS 176.055(2) (providing that defendant who is convicted of a subsequent offense committed while in custody on a prior charge is not entitled to any credit on the subsequent sentence). We further note that at least a portion of the time sought by appellant was actual confinement pursuant to another judgment of conviction; appellant is not entitled to any credit when the confinement was pursuant to a judgment of conviction for another offense. See NRS 176.055(1).

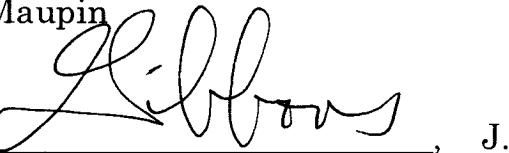
The record indicates that appellant received one hundred and thirteen days of additional credit in district court case number C185318. Accordingly, we affirm the order of the district court.

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

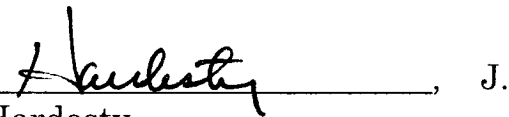
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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

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