

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS P. NICOSIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46066

**FILED**

FEB 10 2006

BARNEY A. ALLEN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for amended judgment of conviction to include jail time credits. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 17, 2004, the district court convicted appellant, pursuant to a guilty plea, of aiming a firearm at a human being (a gross misdemeanor). The district court sentenced appellant to serve a term of one year at the Clark County Detention Center. The sentence was imposed to run concurrent with a sentence in another case. Appellant did not file a direct appeal.

On August 9, 2005, appellant filed a proper person motion for an amended judgment of conviction to include jail time credit.<sup>1</sup> Appellant

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<sup>1</sup>NRS 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

*continued on next page . . .*

claimed that he was entitled to 78 days' credit for the time he was incarcerated prior to sentencing. The State opposed the motion, arguing that appellant was not eligible for credit in this case because the time spent in custody was credited to him in his other case.<sup>2</sup> The State further argued that the motion was moot because appellant had already served his full term for this conviction. On September 8, 2005, the district court summarily denied the motion.

The record on appeal reveals that appellant filed his motion after his term for this conviction had expired. When an appellant has expired his sentence, "any question as to the method of computing those sentences [is] rendered moot."<sup>3</sup> Accordingly, we conclude the district court did not err in denying the motion

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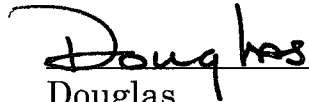
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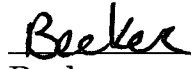
challenge to the computation of time served. Consequently, appellant should have filed a post-conviction petition for a writ of habeas corpus, not a motion for credits. See Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996). We conclude that the procedural label is not critical in resolving the claim for credits in this instance. See id. at 1535-36, 930 P.2d at 102.

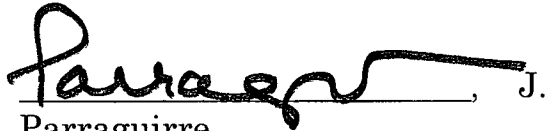
<sup>2</sup>See NRS 176.055(2).

<sup>3</sup>Johnson v. Director, Dep't Prisons, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989).

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>4</sup> Accordingly, we  
ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Thomas P. Nicosia  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).