

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES HOFFMAN A/K/A CHARLES
JOSEPH HOFFMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46571

FILED

JUL 28 2006

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On January 29, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of battery causing substantial bodily harm. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison. The district court provided appellant with 77 days of credit for time served. No direct appeal was taken.

On September 27, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 13, 2005, the district court summarily denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he should have received 189 days of credit for time served. Appellant claimed that he should receive credit for the time he spent incarcerated from July 9, 2003 (the day

he was booked into the Clark County Detention Center) to January 14, 2004 (the day of sentencing).

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. This court recently held that a claim for presentence credit was a challenge to the validity of the judgment of conviction and sentence, and this challenge must be raised in a post-conviction petition for a writ of habeas corpus in compliance with the requirements of NRS chapter 34 that pertain to a petition that challenges the validity of the judgment of conviction.¹ Although appellant's petition was not in compliance with all of the requirements of NRS chapter 34, we conclude that appellant's claim was properly considered on the merits because this court's holding in Griffin has prospective effect only.

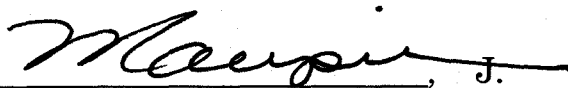
Appellant did not demonstrate that he was entitled to relief because the record does not support his claim for credits. NRS 176.055(1) provides that a defendant will be given credit for the amount of time actually spent in confinement before the conviction, unless the confinement was pursuant to the judgment of conviction for another offense. The record indicates that at the time he was charged with this offense appellant was incarcerated pursuant to a judgment of conviction for another offense. The presentence investigation report states that appellant was not released on parole in the other district court case until October 29, 2003. Thus, the district court properly awarded appellant with 77 days of credit in the instant case for the time spent in confinement from October 29, 2003, through January 14, 2004. Appellant was not

¹Griffin v. State, 122 Nev. ___, ___ P.3d ___ (Adv. Op. No. 63, July 13, 2006).

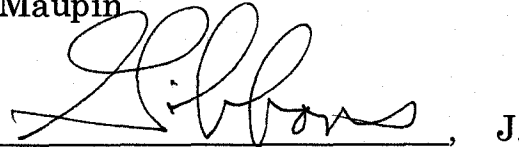
entitled to credit from July 9, 2003, through October 28, 2003, in the instant case as he was incarcerated pursuant to judgment of conviction in a different case. Therefore, we affirm the order of the district court.

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.² Accordingly, we

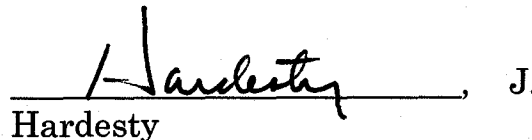
ORDER the judgment of the district court AFFIRMED.³

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Lee A. Gates, District Judge
Charles Hoffman
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.