

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER MATTHEWS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46842

**FILED**

JUL 28 2006

JANETTE M. BLOOM  
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 credit for presentence incarceration. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 15, 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 twenty-four to sixty months in the Nevada State Prison and ordered the sentence to run concurrently with his sentence in district court case number C189739. No credit for time served was provided. No direct appeal was taken.

On January 6, 2006, appellant filed a motion for credit for presentence incarceration. The State opposed the motion. On February 7, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that he should receive ninety days credit for the time spent in confinement from his arrest on June 8, 2004, through the sentencing hearing on September 7, 2004. Although appellant received forty-five days of credit in district court case number C189739 for the time spent in confinement from June 8, 2004, through July 22, 2004, the date of the probation revocation hearing in district court

case number C189739, appellant claimed that because the sentences for the two cases were imposed to run concurrently that he should receive credit for those same days in the instant case pursuant to Johnson v. State.<sup>1</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in denying relief. Preliminarily, we note that appellant sought credit in the wrong vehicle; appellant should have filed a post-conviction petition for a writ of habeas corpus.<sup>2</sup> Although appellant sought presentence credit in the wrong vehicle, we conclude that the district court reached the correct result in denying the motion because appellant failed to demonstrate that he was entitled to the credit he sought. Appellant was on probation in district court case number C189739 when he committed the instant offense. NRS 176.055(2)(b) provides that a defendant who commits a subsequent offense while he is on probation from a Nevada conviction "is not eligible for any credit on the sentence for the subsequent offense for the time spent in confinement which is within the period of the prior sentence." The credit appellant sought was for time within the period of the sentence in district court case number C189739, and thus, appellant was not entitled to credit. Appellant's reliance upon Johnson is misplaced as Johnson relates to

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<sup>1</sup>120 Nev. 296, 89 P.3d 669 (2004).

<sup>2</sup>See Griffin v. State, 122 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 63, July 13, 2006); Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 (1996) overruled in part by Griffin, 122 Nev. \_\_\_, \_\_\_ P.3d \_\_\_.

concurrent sentences within a single judgment of conviction and not concurrent sentences between separate judgments of conviction.<sup>3</sup>

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.<sup>5</sup>

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

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<sup>3</sup>120 Nev. at 298, 89 P.3d at 670; see also NRS 176.055(1) (recognizing that a defendant is not entitled to credit for confinement which is pursuant to a judgment of conviction for another offense).

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

<sup>5</sup>We 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.

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