

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL WAGEN COURSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46851

FILED

SEP 25 2006

JANETTE 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 motion to vacate judgment and a post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Churchill County; David A. Huff, Judge.

On November 4, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of theft. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. This sentence was imposed to run consecutively to the sentence imposed in a judgment of conviction arising from the Second Judicial District Court. No credit for time served was given in the instant case. No direct appeal was taken.

On December 2, 2005, appellant filed a proper person motion to vacate the judgment in the district court. On December 13, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the motion and petition.

Appellant filed a response. On February 8, 2006, the district court denied the motion and petition. This appeal followed.

Motion to Vacate Judgment

In his motion, appellant sought more than four hundred days of credit for time served. Appellant claimed that he was promised the credit during the plea negotiations and that his counsel was ineffective for failing to ensure that he received the credit.

A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."¹ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.²

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the motion. Appellant's claim for presentence credit and his challenge to the validity of his guilty plea fell outside the scope of claims permissible in a motion to modify a sentence. Appellant failed to demonstrate that his sentence was based upon any mistaken assumption about his criminal record that worked to his extreme detriment. Therefore, we affirm the denial of appellant's motion.

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

²Id. at 708-09 n.2, 918 P.2d at 325 n.2.

Post-Conviction Petition for a Writ of Habeas Corpus

In his petition, appellant contended that his guilty plea was induced by a promise for credit for time served in the Churchill County Jail and that his counsel was ineffective for inducing his guilty plea with a promise of credit. Appellant claimed that he should receive more than 400 days of credit for time served in the Churchill County Jail.

Preliminarily, we note that appellant's claims challenging the validity of the guilty plea and the effective assistance of counsel are procedurally barred. Appellant's petition was untimely filed as it was filed more than one year after entry of the judgment of conviction.³ Appellant did not attempt to demonstrate good cause.⁴ Appellant's claims challenging the validity of the guilty plea and the effective assistance of counsel were reasonably available to appellant within the one-year period for filing a timely petition.⁵ Therefore, the denial of these claims was not in error.

To the extent that appellant sought presentence credit, we conclude that the district court did not err in denying appellant's claim for presentence credit. This court recently held that a claim for presentence credit was a challenge to the validity of the judgment of conviction and

³See NRS 34.726(1).

⁴See *id.*; Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁵See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

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.⁶ Although appellant's petition was not in compliance with all of the requirements of NRS chapter 34, we conclude that appellant's claim for credit may be reviewed 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(2) provides:

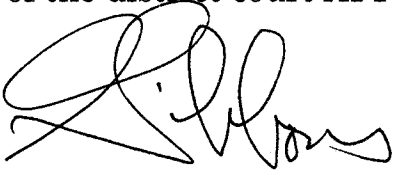
A defendant who is convicted of a subsequent offense which was committed while he was . . . on . . . parole from a Nevada conviction is not eligible for any credit on the sentence for the subsequent offense for the time he has spent in confinement which is within the period of the prior sentence, regardless of whether any . . . parole has been formally revoked.


The record reveals that appellant committed the offense in the instant case while he was on parole from two Nevada convictions and that appellant received credit for the time spent in county jail in the parole cases. Therefore, appellant was not entitled to any credit in the instant case, and we affirm the order of the district court denying the petition.

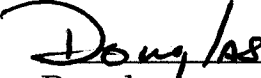
⁶Griffin v. State, 122 Nev. ___, 137 P.3d 1165 (2006).

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We 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. David A. Huff, District Judge
Darrell Wagen Coursey
Attorney General George Chanos/Carson City
Churchill County District Attorney
Churchill County Clerk