

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND D. ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46853

FILED

SEP 20 2006

ORDER OF AFFIRMANCE

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

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

On November 8, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted forgery. The district court sentenced appellant to serve a term of 12 to 48 months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a term not to exceed 3 years. On March 3, 2005, the district court revoked appellant's probation, executed the original sentence and provided him with 72 days of credit.

On January 23, 2006, appellant filed a proper person motion for an amended judgment of conviction to include additional credits. The State opposed the motion, and appellant filed a response. On February 17, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant requested an additional 365 days of credit for time served after entry of the original judgment of conviction, but prior to the order revoking probation and amending the judgment of

conviction. Appellant claimed that the sentence in the instant case was imposed concurrently with his sentence in a California case and that while he was on probation his parole in the California case was revoked. He claimed that he spent 365 days of time in prison pursuant to the California parole revocation. Appellant reasoned that this credit should be applied to his Nevada sentence because the sentence in the instant case was imposed to run concurrently with his California case.

Preliminarily, we note that appellant raised his claim for additional credit in the wrong vehicle. This court recently held that a claim for credit for time served 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 motion 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 credit. NRS 176.055(1) provides that a defendant may receive credit for the amount of time "actually spent in confinement before conviction, unless his confinement was pursuant to a judgment of conviction for another offense." Here,

¹Griffin v. State, 122 Nev. ___, 137 P.3d 1165 (2006).

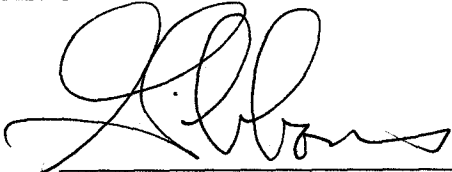
appellant's confinement was pursuant to a California judgment of conviction, and thus, he is not entitled to additional credit in the instant case.

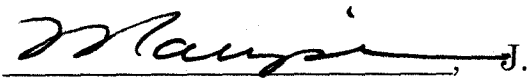
Further, the record does not indicate that appellant's Nevada sentence was imposed to run concurrently with the California sentence. The judgment of conviction is silent as to whether the Nevada sentence runs concurrently with the California sentence. Pursuant to NRS 176.045(1), when a person convicted of an offense in this state is under a sentence of imprisonment pronounced by another jurisdiction, the district court may exercise its discretion to impose the Nevada sentence to run either concurrently or consecutively to the sentence from the other jurisdiction. NRS 176.045(4) further provides that if no order is made, "the sentence imposed in this State shall not begin until the expiration of all prior sentences imposed by other jurisdictions." Because the judgment of conviction is silent, the record indicates that appellant's Nevada sentence should have been served consecutively to his California sentence.² Therefore, the district court did not err in determining that appellant was not entitled to additional credit.

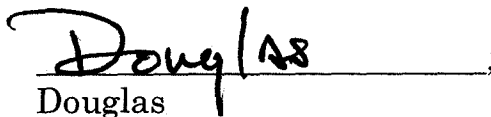
²See generally Miller v. Hayes, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979) ("[A] district judge's pronouncement of judgment and sentence from the bench is not a final judgment Only after a judgment of conviction is 'signed by the judge and entered by the clerk,' as provided by NRS 176.105, does it become final and does the defendant begin to serve a sentence of imprisonment.")

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.⁴


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Raymond D. Robinson
Attorney General George Chanos/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).

⁴We 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.