

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON SAMARI CHANEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47563

FILED

OCT 18 2006

ORDER OF AFFIRMANCE

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

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; Michelle Leavitt, Judge.

On March 14, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery and one count of possession of a stolen vehicle. The district court sentenced appellant to serve in the Nevada State Prison a term of forty-eight to one hundred and twenty months for robbery and a concurrent term of sixteen to forty months for possession of a stolen vehicle. The district court imposed the term for the robbery count to run consecutively to the sentence in district court case number C120016. The district court provided appellant with seventy-seven days of credit for time served. No direct appeal was taken.

On November 19, 2003, appellant filed a motion for an amended judgment of conviction to include credits. Appellant sought forty-six days of credit. The State opposed the motion. The district court denied the motion. No appeal was taken.

On February 16, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 June 7, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he should receive forty-six days of additional credit for time spent incarcerated from October 4, 1995 through November 15, 1995.

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.


The district court denied appellant's claim for credit as it had already been rejected by the district court in the proceedings on the 2003 motion for an amended judgment of conviction. The district court noted that appellant was in custody on the prior case, district court case number C120016, when he committed the offense in the instant case. We conclude that the district court did not err in denying the claim for additional credit. NRS 176.055(2) provides that a defendant who is convicted of a


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


subsequent offense committed while in custody on a prior charge is not entitled to any credit on the subsequent sentence. The record reflects that appellant was in custody on a prior charge when he committed the offenses in the instant case. Therefore, appellant failed to demonstrate that he was entitled to additional credit in the instant case.

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.


_____, C.J.
Rose


_____, J.
Gibbons


_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Damon Samari Chaney
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).