

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD CHRISTOPHER ROMANE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48529

FILED

AUG 14 2007

BY *J. Bloom*
JUVETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

On February 10, 1998, appellant was convicted, pursuant to a guilty plea of one count of burglary, count 1, and one count of felony theft, count 2. The district court sentenced appellant to serve a prison term of 48 to 120 months on count 1, and a consecutive prison term of 24 to 60 months on count 2. The district court suspended both sentences and placed appellant on probation for an indeterminate period not to exceed 5 years.

On February 10, 1999, the district court conducted revocation proceedings due to several violations and new charges. The district court reinstated appellant and admonished him that he could be revoked at any time and required to serve his 15 year sentence. Subsequently, appellant absconded from his probation and a bench warrant issued for his arrest. Appellant was arrested in Mankato, Kansas, pursuant to the Nevada warrant. On July 21, 2003, the district court held a revocation hearing, revoked appellant's probation, imposed appellant's original sentence, and

stated that appellant should receive any applicable credit for time served. However, the amended judgment of conviction filed on August 28, 2003, did not contain any credit for time served.

On September 28, 2006, appellant filed a proper person motion in the district court seeking an amended judgment of conviction. Appellant claimed that he was entitled to 147 days of credit, which included credit for time served in Kansas prior to extradition to Nevada. The State opposed the motion to the extent that appellant sought credits for time served in Kansas. On October 31, 2006, the district court denied appellant's motion for credits. On that same day, however, the district court filed a second amended judgment of conviction giving appellant 92 days' credit for the time he served in custody in Nevada prior to his revocation hearing but no credit for time served in Kansas. This appeal followed.

Preliminarily, this court notes that appellant incorrectly sought additional credits in a motion for an amended judgment of conviction to include credit for time served. In Griffin v. State, this court held that a claim for credits is a challenge to the validity of the judgment of conviction and sentence, which must be raised in the district court in a post-conviction petition for writ of habeas corpus.¹ Such a petition must comply with the requirements of NRS chapter 34 that pertain to a petition that challenges the validity of a judgment of conviction.² Here, although appellant's petition was not in compliance with all of the requirements of

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

²Id.

NRS chapter 34, we conclude that appellant's claim for additional credits was properly considered by the district court because this court's holding in Griffin had prospective effect only.

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. Nevada law clearly dictates that a defendant is entitled to credit for time spent in confinement in another jurisdiction if that confinement was solely pursuant to the charges for which the defendant was ultimately convicted.³

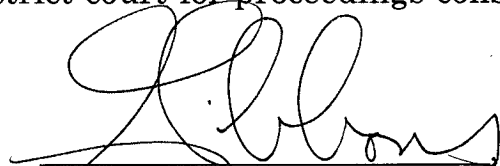
It appears from the record that appellant was arrested and confined in Kansas on March 6, 2003, but was not extradited and booked into the Clark County Detention Center until May 20, 2003. Under Nevada law, it appears that the district court erred in denying appellant's motion for credits for this time, as it was served pursuant to the Nevada warrant for crimes committed in Nevada. Because the issue of credits was not adequately addressed in the district court's order,⁴ we reverse and remand this matter to the district court for an evidentiary hearing to determine the exact amount of additional credit to which Romane is entitled.

³Nieto v. State, 119 Nev. 229, 230-232, 70 P.3d 747, 748-749 (2003).

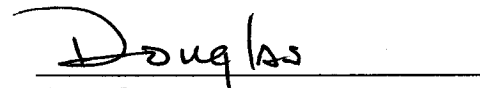
⁴Notably, this Court has already declined to follow the reasoning set forth in State v. Harnum, 142 N.H. 195, 697 A.2d 1380 (1997), which the State set forth in its opposition to appellant's motion. Nieto, 119 Nevada at 231-32, 70 P.3d at 748.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.⁵ Accordingly, we

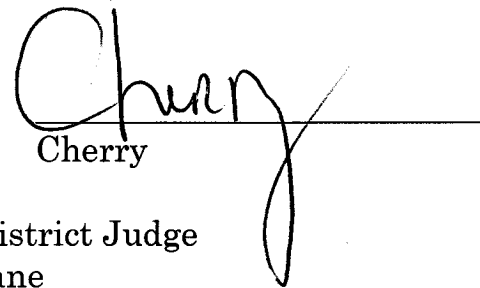
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁶



Gibbons J.



Douglas J.



Cherry J.

cc: Hon. Donald M. Mosley, District Judge
Richard Christopher Romane
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.