

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN ROGER GAINES, JR. A/K/A
GLENN GAINES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48876

FILED

AUG 24 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Alvarado*
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 presentence credits. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On March 16, 2000, appellant entered a guilty plea to one count of trafficking in a controlled substance. Appellant absconded and was arrested in California on June 28, 2005, and returned to Nevada on July 27, 2005. The district court sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison and provided appellant with 83 days of credit for time served. The district court entered the judgment of conviction on October 13, 2005. This court affirmed appellant's conviction on appeal.¹

On August 23, 2006, appellant filed a proper person motion in the district court seeking an amended judgment of conviction to include

¹Gaines v. State, Docket No. 46233 (Order of Affirmance, March 16, 2006).

presentence credits. The State opposed the motion. On January 19, 2007, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that he was entitled to 867 days of presentence credit. Appellant claimed that because he requested a disposition on a Nevada detainer, he was entitled to credit from May 26, 2003, the date he was paroled from a California sentence, and October 13, 2005, the date that he was sentenced in the instant case.

Preliminarily, we note that appellant incorrectly sought additional presentence credits in a motion for an amended judgment of conviction to include presentence credits. In Griffin v. State, this court held that a claim for presentence credit 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 a writ of habeas corpus.² Such a petition must comply with the requirements of NRS chapter 34 that pertain to a petition that challenges the validity of the judgment of conviction.³ Here, although appellant's petition was not in compliance with all of the requirements of 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.

The district court summarily denied the motion. However, it appeared from this court's review of the record on appeal that the district court may have erred in denying the motion in its entirety. NRS

²Griffin v. State, 122 Nev. ___, 137 P.3d 1165 (2006).

³Id.

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. While it appeared from the record that appellant was not entitled to the vast majority of credit he sought because he was not actually confined pursuant to the Nevada case from May 26, 2003 through June 28, 2005,⁴ it did appear that appellant may be entitled to credits after his arrest in California on June 28, 2005. The presentence investigation report indicates that the 83 days of presentence credit appellant received in the judgment of conviction included the time spent in confinement in Nevada after his extradition—July 27, 2005 through October 13, 2005. However, it did not appear that appellant received any presentence credit for his time spent in confinement in California awaiting extradition from June 28, 2005, the date of arrest, through July 27, 2005, his return to Nevada.

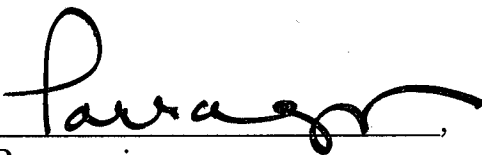
This court has recognized that a defendant is entitled to credit for time spent in confinement in another jurisdiction if that confinement was solely pursuant to the charges for which the defendant was ultimately convicted.⁵ Thus, this court directed the State to show cause why this

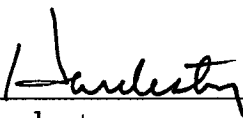
⁴See NRS 176.055(1) (requiring actual confinement for eligibility for presentence credit); Prince v. State, 118 Nev. 634, 55 P.3d 947 (2002) (holding that the Interstate Agreement on Detainers does not apply to sentencing hearings). Appellant's own statement in his motion indicated that he was on parole from a California conviction during a large part of the time period in question. It further appeared that appellant may have been incarcerated during this period on a second California conviction.


⁵See Nieto v. State, 119 Nev. 229, 232 70 P.3d 747, 748 (2003).

matter should not be remanded for further proceedings. The State filed a timely response and indicated that there was no opposition to an order of remand. Therefore, we reverse the order of the district court denying appellant's motion, and we remand this matter to the district court to conduct further proceedings on the motion to determine the proper amount of credit for time served. 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


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Glenn Roger Gaines Jr.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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