IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD BURL BOSWELL A/K/A JOHN SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48956

FILED

AUG 30 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion for an amended judgment of conviction to include jail time credits. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On April 28, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a stolen vehicle. The district court sentenced appellant to serve a term of 12 to 48 months in the Nevada State Prison. Appellant's sentence was imposed to run concurrent with the sentences imposed in district court case numbers C205462 and C213521. Appellant was granted two days of credit for time served. No direct appeal was taken.

On December 14, 2006, appellant filed a proper person motion for an amended judgment of conviction to include jail time credits in the district court. The State opposed the motion. Appellant filed a reply. On January 17, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he was entitled to an additional 291 days of credit for time he served in jail and prison prior to being sentenced in this case. Although appellant was credited with the

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time being sought in district court cases C205462 and C213521, appellant argued that he was entitled to receive the credit in this case as well because he was being held on a no bail bench warrant in this case during the same time period. Specifically, appellant argued that the State had an obligation under NRS 176A.500(3) to present him before the court on this case immediately after he was arrested in district court case number C213521, and the failure to comply with NRS 176A.500(3) delayed his sentencing. Appellant asserted that the delay in sentencing him in this matter violated his due process rights, and resulted in depriving him of 291 days of credit for time he served pursuant to the hold for the no bail bench warrant.

Preliminarily, we note that appellant incorrectly sought relief in a motion for credit for time served. This court has held that a claim for presentence credit is 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 was properly considered on the merits because this court's holding in Griffin has prospective effect only.

Based upon our review of the record on appeal, we conclude that the district court did not err by denying appellant's motion.[2]

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

[2]Although the district court denied appellant's motion solely on the basis that appellant received the credit sought in district court case

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Contrary to appellant's assertion, NRS 176A.500(3) did not apply in this case because appellant was not on parole or probation in this case when he was arrested in district court case number C213521. Therefore, appellant cannot demonstrate a due process violation based on the State's failure to comply with NRS 176A.500(3). Further, appellant failed to demonstrate that the delay in sentencing violated his due process rights. The initial delay in sentencing appellant was due to appellant's failure to appear at his sentencing hearing. Any additional delay that occurred after appellant was arrested in district court case number C213521 was not unreasonable.[3] Finally, appellant received the credit he sought in district court case numbers C205462 and C213521, and therefore, appellant cannot demonstrate that he did not receive credit for the time he spent in confinement.[4]

. . . continued

numbers C205462 and C213521, we conclude that the district court reached the correct result. See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong decision).

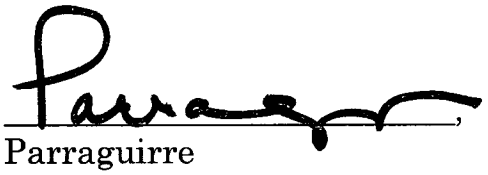
[3]See NRS 176.015(1)(providing that a sentence must be imposed without unreasonable delay); Prince v. State, 118 Nev. 634, 641, 55 P.3d 947, 951 (2002) (applying the four-part test set forth in Barker v. Wingo, 407 U.S. 514 (1972) to determine whether a delay in sentencing was unreasonable).

[4]See NRS 176.055(1) (providing 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).

Because appellant failed to demonstrate that his due process rights were violated, we conclude that appellant failed to demonstrate that he was entitled to the credit he sought. Accordingly, we affirm the district court's denial of appellant's motion.

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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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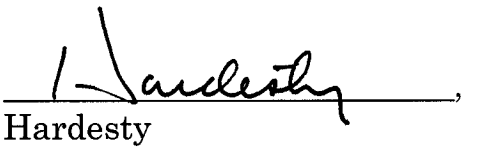
Parraguirre



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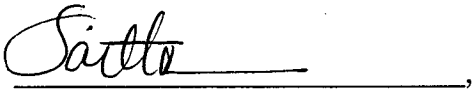

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cc: Hon. Jackie Glass, District Judge
Richard Burl Boswell
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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