

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAMARA HOPKINS A/K/A TAMARA
CLOTIEL HOPKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48975

FILED

JUL 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Valorie Vega, Judge.

On October 21, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of obtaining and using personal identification information of another. The district court sentenced appellant to serve a term of 28 to 72 months in the Nevada State Prison. The district court further provided appellant with 90 days of credit for time served. No direct appeal was taken.

On March 24, 2006, appellant filed a motion for credits in the district court. Appellant sought an additional 128 days of credit. The State opposed the motion. On April 10, 2006, the district court denied the motion. No appeal was taken.

On August 25, 2006, appellant filed a proper person motion for an amended judgment of conviction to include jail time credits. Appellant again sought an additional 128 days of credit. On October 4, 2006, the district court denied the motion. No appeal was taken.

On December 12, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the

petition, and appellant filed a response. 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 February 6, 2007, the district court denied appellant's petition. This appeal followed.

In the proceedings below, appellant claimed that she was entitled to an additional 270 days of credit for time served and work and good time credits. Appellant claimed that she should have been granted credit for time served as follows: (1) 27 days for time spent in custody from December 16, 2002 through January 14, 2003; (2) 55 days for time spent in house arrest from January 14, 2003 through March 11, 2003; (3) 30 days for time spent in custody upon a grand jury indictment from April 12, 2005 through May 11, 2005; (4) 27 days of credit for time spent in house arrest from May 11, 2005 through June 7, 2005; and (5) 77 days of credit for time spent in custody from June 7, 2005 through August 23, 2005.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. 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. The presentence investigation report indicates that the 90 days of credit set forth in the judgment of conviction included time spent in custody from December 16, 2002 through January 14, 2003.¹ Further, this

¹The presentence investigation report set forth the credit for time served calculations as follows: (1) 1 day for time served on May 8, 2002; (2) 22 days for time served December 16, 2002 through January 7, 2003; (3)

continued on next page . . .

court has held that house arrest is not confinement within the meaning of NRS 176.055, and thus, a defendant is not entitled to credit for time spent on house arrest.² Appellant failed to demonstrate that she was confined pursuant to this conviction for any of the other dates set forth in her petition and response, and thus, she was not entitled to those credits in the instant case.³ Finally, appellant failed to demonstrate that the district court erred in setting forth any good time or work time credits in the judgment of conviction.⁴ Therefore, we affirm the order of the district court denying the petition.

... continued

18 days for time served December 27, 2002 through January 14, 2003; and (4) 49 days for time served August 23, 2005 through October 11, 2005—for a total of 90 days of credit. We note that appellant may have actually received too many credits under these calculations because appellant received credit twice for time served from December 27, 2002 through January 7, 2003. However, because the State did not raise this issue below, this court declines to address the issue sua sponte. Finally, we note that the State used different calculations of dates in its opposition to account for the 90 days of credit for time served. This court has relied upon the calculations of credit as set forth in the presentence investigation report and not the State's opposition as the State provided no proof in support of its calculations and its calculations contain an obvious flaw in setting forth the ending date of presentence confinement as November 1, 2005, several weeks after sentencing in the instant case.

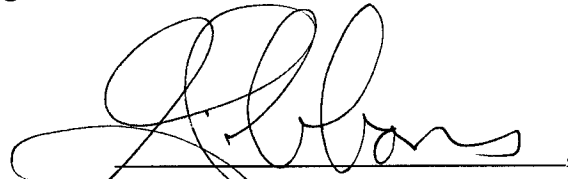
²State v. Dist. Ct., 121 Nev. 413, ___, 116 P.3d 834 (2005).

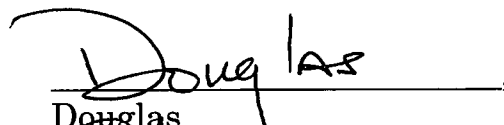
³See NRS 176.055(1).

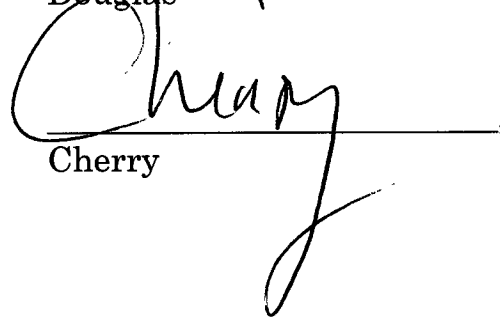
⁴See NRS 176.105(1)(d).

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.

 J.
Gibbons

 J.
Douglas

 J.
Cherry

cc: Hon. Valorie Vega, District Judge
Tamara Clotiel Hopkins
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).