

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELWORTH SARGENT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49136

ELWORTH SARGENT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49137

FILED

JUL 24 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

These are proper person appeals from an order of the district court denying a motion for credit for time served filed in two district court cases. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On July 16, 2002, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery in district court case number C176738. The district court sentenced appellant to serve two concurrent terms of 35 to 156 months in the Nevada State Prison. The district court ordered that these sentences run concurrently with appellant's sentence in district court case number C181746. The district court further provided appellant with 472 days of credit for time served. No direct appeal was taken.

On July 16, 2002, the district court convicted appellant pursuant to a guilty plea, of second degree murder in district court case number C181746. The district court sentenced appellant to serve a term of 10 to 25 years in the Nevada State Prison. The district court did not

provide appellant with any credit for time served. No direct appeal was taken.

On December 27, 2004, appellant filed a motion for amended judgment of conviction to include jail time credits in both district court cases. Appellant sought 472 days of additional credit. The State opposed the motion. On January 25, 2005, the district court denied the motion in both district court cases. No appeal was taken.

On February 12, 2007, appellant filed a motion for credit for time served in both district court cases. On February 16, 2007, the State filed an opposition. On March 5, 2007, the district court denied the motion in both district court cases. These appeals followed.

In his motion, appellant claimed that he was entitled to an additional 472 days of credit for time served. Appellant appeared to suggest that he was entitled to have the credit for time served awarded in district court case number C176738 apply to district court case number C181746 because the sentences imposed in each of the judgments of conviction were imposed to run concurrently with one another.

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

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

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.

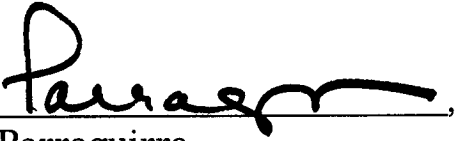
NRS 176.055(1) provides that a defendant will be given credit for the amount of time actually spent in confinement before the conviction, unless the confinement was pursuant to the judgment of conviction for another offense. Based upon our review of the records on appeal, we conclude that the district court did not err in denying appellant's motion. First, appellant was credited with 472 days of credit for time served in district court case number C176738, and appellant did not demonstrate that he was entitled to any additional credits in that case. Second, appellant was not entitled to have 472 days of credit for time served applied in district court case number C181746 because during his presentence incarceration he was in custody pursuant to district court case number C176738.² Appellant's reliance upon Johnson is misplaced as Johnson relates to concurrent sentences within a single judgment of conviction and not concurrent sentences between separate judgments of conviction.³ Therefore, we affirm the order of the district court.

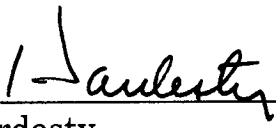
²The records indicate that appellant was arrested on April 3, 2001 and remained in custody until sentencing in district court case number C176738. The fact that appellant was rebooked for the new charges filed in district court case number C181746 during this period does not alter the fact that he remained in custody in district court case number C176738 during the entire period of presentence incarceration.


³Johnson v. State, 120 Nev. 296, 298, 89 P.3d 669, 670 (2004).

Having reviewed the records 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.⁴ Accordingly, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Jennifer Togliatti, District Judge
Elworth Sargent
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).