

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DAMON CLARK,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, LENARD
VARE,
Respondent.

No. 49320

FILED

SEP 25 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On April 28, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary in district court case number CR03-2608. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in the Nevada State Prison. The district court ordered that these terms be served concurrently with a sentence imposed in a Douglas County judgment of conviction. The district court further ordered that appellant would not receive any credit for time served in the instant case. No direct appeal was taken.

On February 3, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed an opposition to the response, and the State filed a reply. 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 March 27, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant contended that he should be provided with credit for time served prior to his conviction in the instant case. Specifically, appellant claimed that he should receive 179 days of credit for time served from the date of his arrest on April 25, 2003, on two Washoe County warrants and one Lyon County warrant to the date of sentencing in the Douglas County case on October 21, 2003. Appellant further claimed that he should receive an additional 180 days of credit for time served from the date of his sentencing in the Douglas County case to the date of sentencing in the instant case. Finally, appellant, in reliance upon Johnson v. State,¹ argued that even though these credits had already been applied to the Douglas County judgment of conviction he should receive the credits in the instant case because the instant judgment of conviction states that this sentence is to run concurrently with the Douglas County judgment of conviction.

Our review of the record on appeal reveals that the district court did not err in determining that appellant was not entitled to additional credit for time served in the instant case. 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

¹Johnson v. State, 120 Nev. 296, 89 P.3d 669 (2004).

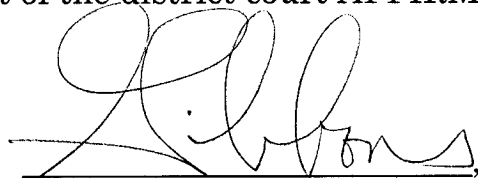
confinement was pursuant to the judgment of conviction for another offense. The record on appeal indicates that appellant received 179 days of credit for time served in the Douglas County judgment of conviction. Thus, appellant was not entitled to the application of that credit in the instant case as the 179 days of credit for time served was pursuant to another judgment of conviction.² Appellant was further not entitled to 180 days of credit for time served after sentencing in the Douglas County case to his sentencing in the instant case as appellant's confinement during this period of time was confinement pursuant to the Douglas County judgment of conviction. Finally, 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 dismissing the petition.

²Appellant asserts that he was arrested in Douglas County on April 25, 2003, on multiple warrants from Washoe County and Lyon County. Further, it appears that appellant was arrested on that same date for offenses occurring in Douglas County. Appellant remained in custody in Douglas County after his arrest on April 25, 2003, and his prosecution in the Douglas County case preceded the prosecution in the instant case. The presentence investigation report in the instant case indicates that appellant was arrested on offenses in the instant case on January 14, 2004, after entry of the Douglas County judgment of conviction. The presentence investigation report further indicates that appellant was re-arrested on two other, separate Washoe County cases on January 14, 2004.

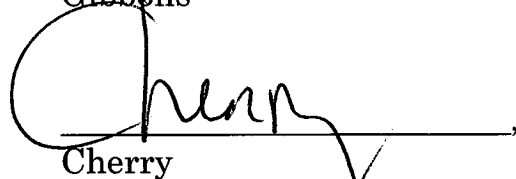
³Id. at 297-99, 89 P.3d at 670.

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.⁴ Accordingly, we

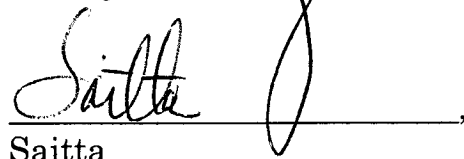
ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. Robert H. Perry, District Judge
Robert Damon Clark
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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