

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO R. JIMENEZ,  
Appellant,  
vs.  
DIRECTOR, NEVADA DEPARTMENT  
OF CORRECTIONS, GLEN WHORTON,  
Respondent.

No. 49626

**FILED**

DEC 27 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 dismissing a post-conviction petition for a writ of habeas corpus challenging the computation of time served. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

On October 5, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging the computation of time served. The State filed a motion to dismiss the petition, and appellant filed a reply. On May 29, 2007, the district court dismissed the petition. This appeal followed.

In his petition, appellant first claimed that he was entitled to 90 days of meritorious credits pursuant to NRS 209.449 for his completion of Blackstone's Paralegal Studies through a correspondence course and 30 days of meritorious credits for his completion of an Alcoholics Anonymous (AA) program sponsored by the P.E. and Recreation Department of the Ely State Prison. Appellant claimed that Administrative Regulations 562 and 563 mandated the awarding of the credits in the instant case. Appellant further claimed that his equal protection and due process rights were violated when he did not receive such credits, largely basing his argument on his belief that the Department of Corrections could not distinguish

between which vocational education courses or treatment programs would be eligible for credit. Appellant also claimed that any failure to provide him credits would be an ex post facto violation.

The district court dismissed the petition pursuant to NRS 34.810(2) because appellant had previously unsuccessfully litigated a post-conviction petition for a writ of habeas corpus in 2005. In his 2005 petition, appellant had sought work time credits for his participation in the Blackstone Paralegal Studies course. The district court reasoned that because the Blackstone Paralegal Studies course and the AA program were completed in 2002, his claims for meritorious credits in the 2007 petition were reasonably available to appellant to litigate in the 2005 petition.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition pursuant to NRS 34.810(2). Appellant's claims for meritorious credits in the 2007 petition were an abuse of the writ. Both the Blackstone Paralegal Studies course and the AA program were completed in 2002; thus, appellant could have litigated his claims for meritorious credits in the 2005 petition. Appellant's argument that he could only litigate his claims for meritorious credits in his 2007 petition when he completed the grievance process in the prison is without any legal support in Nevada law.<sup>1</sup> Appellant's failure to pursue the grievance process for meritorious credits prior to 2005 can only be imputed to appellant; therefore, appellant's pursuit of

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<sup>1</sup>Notably, there is not a requirement in NRS chapter 34 that an inmate pursue the grievance process in prison prior to litigating a post-conviction petition for a writ of habeas corpus.

the grievance process did not constitute good cause to excuse the procedural defects in the instant case.<sup>2</sup>

Further, appellant failed to demonstrate that he would be actually prejudiced by the failure to consider his petition on the merits because his claims for relief lacked merit. NRS 209.448 allows for a deduction of not more than 30 days for the successful completion of a program of treatment for the abuse of alcohol or drugs which is conducted jointly by the Department of Corrections and a person who is licensed or certified as an alcohol or drug abuse counselor or certified as a counselor intern, while NRS 209.449 allows for a deduction of 30 days for the completion of a program of vocational education and training and an additional deduction not to exceed 60 days for completion of a program

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<sup>2</sup>See NRS 34.810(3); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

The grievance process may be the more prudent, first course of action to seek meritorious credits because the Department of Corrections may be able to correct any errors more quickly than any litigation in the courts. However, utilizing the grievance process would not ordinarily prevent a prisoner from successfully litigating a post-conviction petition for a writ of habeas corpus. Regulations promulgated by the Department of Corrections indicate that there are time limits within which to begin the grievance process (6 months for issues involving personal property damage, personal injury, medical or other tort claims, and 10 days for issues within the authority of the Department) and that the grievance process will generally not exceed 75 days. NDOC A.R. 740.02 (1.3.1), (1.4.1.1). In the instant case, appellant's petition ran afoul of NRS 34.810(2) because appellant failed to submit all of his grievance issues to the prison at one time and failed to raise all claims in one habeas corpus petition.

with meritorious or exceptional achievement.<sup>3</sup> NRS chapter 209, which governs education and vocational training relating to inmates, gives the Board of State Prison Commissioners (Board) the power to establish programs of general and vocational education and training.<sup>4</sup> NRS 209.391 gives the Director of the Department of Corrections (Director) the authority to manage the programs the Board establishes. Pursuant to that authority, the Director has promulgated Administrative Regulations (NDOC A.R.s). NDOC A.R. 105 gives each institution's warden the authority to promulgate Operational Procedures (O.P.s) for that institution.

NRS chapter 209 makes clear that its provisions, including the credits contemplated by NRS 209.449 are directed only at vocational education programs actually administered by the Department of Corrections through its Director. For example, NRS 209.391 states that the Director shall "administer" the education and vocational training programs established by the Board. Accordingly, the A.R.s and O.P.s

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<sup>3</sup>See 1999 Nev. Stat., ch. 574, § 51, at 3063 (NRS 209.448(1) (2001 correction to amendment omitted); 2003 Nev. Stat., ch. 259, § 14, at 1368) (NRS 209.449(1), (2)). We have set forth the credits as 30 days for NRS 209.448, and 30 and 60 days for NRS 209.449 because these were the values referenced by appellant in his petition. Subsequent to the filing of his petition in the district court, the Legislature increased the meritorious credits for NRS 209.448 to 60 days and the meritorious credits for NRS 209.449(1) to 60 days. See 2007 Nev. Stat., ch. 525, §§ 6.2, 6.4, at 3178. The legislative amendments have no effect in the instant case because appellant has not demonstrated that he is entitled to any such credit, regardless of the specific values.

<sup>4</sup>See NRS 209.389.

implementing the provisions of NRS chapter 209 at issue here also only relate to programs being administered by the Director. Therefore, when determining if an inmate is eligible for meritorious credit allowed under NRS 209.449, distinguishing vocational education courses that are administered by the Director from vocational education courses that are not is proper and does not constitute discrimination in violation of Equal Protection.<sup>5</sup> Thus, appellant's coursework through Blackstone Paralegal Studies was not a program being "administered by the Director," and appellant was not entitled to credit under NRS 209.449 for this work.<sup>6</sup> NDOC A.R. 801.05 specifically provides that support groups are not treatment or approved correctional programs for purposes of meritorious credits.<sup>7</sup> Thus, appellant was likewise not entitled to meritorious credits for his participation in an AA program. Because appellant was not entitled to meritorious credits for taking vocational education courses that were not administered by the Director and for participating in support programs, appellant cannot demonstrate a liberty interest sufficient to invoke the protections of the Due Process Clause.<sup>8</sup> Appellant's ex post

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<sup>5</sup>See generally Lane v. State, 110 Nev. 1156, 881 P.2d 1358 (1994) (holding that a defendant who alleges an equal protection violation has the burden of demonstrating purposeful discrimination or discriminatory effect), vacated on other grounds on rehearing 114 Nev. 299, 956 P.2d 88 (1998); see also McCleskey v. Kemp, 481 U.S. 279, 292 (1987).

<sup>6</sup>The fact that appellant received "approval" to participate in the program did not mean that the program was administered by the Director.

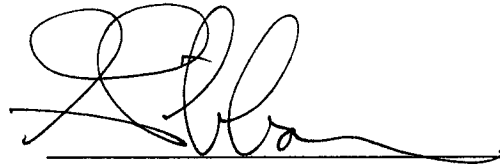
<sup>7</sup>See NDOC. A.R. 801.05 (1), (4).

<sup>8</sup>See Sandin v. Conner, 515 U.S. 472 (1995).

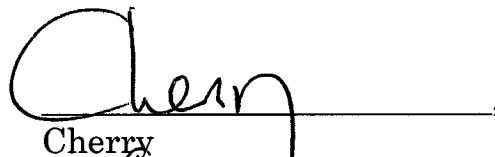
facto claim was not supported by any intelligible argument. Accordingly, we conclude the district court did not err in dismissing appellant's petition as procedurally barred.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

 J.

Gibbons

 J.

Cherry

 J.

Saitta

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Dan L. Papez, District Judge  
Fernando R. Jimenez  
Attorney General Catherine Cortez Masto/Carson City  
White Pine County Clerk