

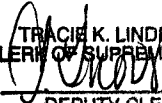
IN THE SUPREME COURT OF THE STATE OF NEVADA

NELVIN L. WARE A/K/A MELVIN  
WARE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50123

**FILED**

JAN 09 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On June 5, 2007, 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 Attorney General filed a motion to dismiss the petition. 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 August 20, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections (Department) had denied him the proper amount of statutory and work time credits. Appellant claimed that the Department used a document labeled, "NDOC's Merit Credit System." In this document, the Department allegedly concluded that one credit was not equal to one 24-hour day; thus, despite the fact that at the time of the petition NRS 209.4465 provided for 10 days of credit per month for statutory good time and 10 days of credit per month for work time, the

Department used a mathematical formula to reduce 10 credits to “6 days off.” Appellant claimed that this alleged reduction of credits deprived him of a number of state and federal constitutional rights.

The district court dismissed the petition because the document relied upon by appellant was not authenticated and because appellant had received all the credit that he was entitled to receive. Our review of the record on appeal reveals that the district court did not err in so concluding. The Attorney General stated in its motion that the document relied upon by appellant was not used or endorsed by the Department. The Attorney General further stated that the computer program used by the Department treats days and credits as the same—one day equals one credit. The Attorney General submitted appellant’s time audit logs verifying that appellant’s credits have not been reduced by any mathematical formula.

The document relied upon by appellant, which was not shown to be used or endorsed by the Department, is facially inaccurate as it contains misleading statements and assumptions relating to statutory good time and work time credits. The “NDOC’s Merit Credit System” document states:

1. By Nevada law, merit credits can only be applied against an inmate’s maximum sentence, not the minimum. In other words, merit credits reduce a Mandatory Parole Release (MPR) date, but not a Parole Eligibility Date (PED).
2. One “merit credit” does not equal one 24-hour day. To figure exact value of merit credits in reducing a maximum sentence, divide # of merits credits by 1.667 then round it up to the next number.

10 credits = 6 days off

There are obvious problems with these statements as they relate to statutory good time and work time credits. First, pursuant to the version of NRS 209.4465(7) in effect at the time that appellant filed his petition, statutory good time and work time credits were to be deducted from the maximum sentence and applied to eligibility for parole unless the offender was sentenced pursuant to a statute which specified a minimum sentence that must be served before a person becomes eligible for parole.<sup>1</sup> Second, the conclusion that “10 credits = 6 days off” is an incorrect mathematical expression of the data. Rather, based upon an inmate earning a potential maximum of 1.667 credits for each day served in the Department’s custody, an inmate will have accrued 10 credits, or 10 days to be deducted, after serving only 6 days in the Department’s custody.<sup>2</sup> There is simply

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<sup>1</sup>See 2003 Nev. Stat., ch. 426, § 8, at 2577-78. We note that the legislature has since amended NRS 209.4465 to increase the amount of statutory good time and work time credits and to allow the credits earned pursuant to NRS 209.4465 to be applied to eligibility for parole and to be deducted from the minimum and maximum terms. See 2007 Nev. Stat., ch. 525, § 5, at 3176-77. However, the latter provision regarding the deduction of credits from the minimum sentence does not apply to an offender who has been convicted of a crime that is punishable as a felony involving the use or threatened use of force or violence against the victim or an offender who has been convicted of a category A or B felony. *Id.* Appellant was convicted of robbery with the use of a deadly weapon; thus, the provisions as amended do not apply to him. See NRS 200.380. Finally, we note that other types of meritorious credits earned pursuant to such provisions as NRS 209.448 and 209.449 apply only to the maximum term of the sentence.

<sup>2</sup>Mathematically, this calculation is expressed as:

6 (days) x 1.667 (the amount of credits earned each day) = 10 credits or 10 days.

*continued on next page . . .*

no support for the statement that one credit is anything less than a 24-hour day. The time audit of appellant's credits amply demonstrated this point. Therefore, appellant failed to demonstrate that he was entitled to any additional credit or that any constitutional rights had been violated.

The Attorney General, in the opposition below, indicated that the creator of this document was unknown, although it appears that the document has had a negative, widespread effect in the prison. Appellant is cautioned that an inmate may have statutory good time and work time credit forfeited if the inmate, in a civil action, submits a pleading or other document to the court that:

(1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing his opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;

(2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law; or

(3) Contains allegations or information presented as fact for which evidentiary support is

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*... continued*

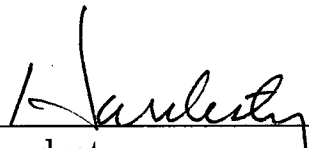
The amount of credits earned each day, 1.667, was reached by taking the potential maximum of flat, statutory good time and work time credits earned by an inmate in a one month period ( $30 + 10 + 10 = 50$ ) and dividing that sum by the number of days in the month (30) for a daily credit earning rate of 1.667. With the amendments to NRS 209.4465, the potential maximum daily credit earning rate as of July 1, 2007, was increased to 2.334.

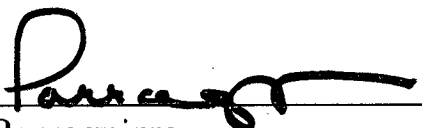
not available or is not likely to be discovered after further investigation.<sup>3</sup>

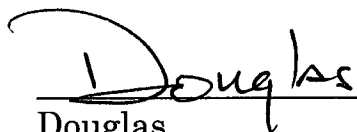
A post-conviction petition for a writ of habeas corpus is a civil action for the purposes of NRS 209.451.<sup>4</sup> Under these provisions, an inmate who submits a document to the court that the inmate knows to be false may be referred for the forfeiture of credits.<sup>5</sup>

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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>3</sup>See NRS 209.451(1)(d).

<sup>4</sup>See NRS 209.451(5).

<sup>5</sup>See NRS 209.451(1), (3).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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