

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL HAYS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50187

**FILED**

APR 10 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On May 22, 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 October 1, 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 good time 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 NRS 209.446 provided for 10 days of credit per month for statutory good time, the Department used a mathematical formula to reduce 10 credits to 6 days off. Appellant claimed that his time kite incorrectly stated his

statutory good time and work time credit. Appellant claimed that 4 more days for every 6 days of good time and work time credit now provided should be added to his total of statutory time due.

The district court dismissed the petition because the document relied upon by appellant was not authenticated and because appellant failed to demonstrate that he has not received to proper amount of statutory good time credit and work credit. Our review of the record on appeal reveals that the district court did not err in so concluding. In its opposition to appellant's motion for the appointment of counsel filed below, the Attorney General indicated that document relied upon by appellant was 3 to 4 years old, was issued by Jackie Crawford, and "quickly withdrawn when it was realized the information in it was incorrect." The Attorney General stated in its motion to dismiss 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 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 NRS 209.446(6), statutory good time and work time credits are 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 if appellant has earned the potential maximum of flat, statutory good time and work time credits.<sup>2</sup> There is simply no support for the statement that one credit is anything less than a 24-hour day.

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<sup>1</sup>See 1999 Nev. Stat., ch. 552, § 7, at 2880-2881.

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

$6 \text{ (days)} \times 1.667 \text{ (the amount of credits earned each day)} = 10 \text{ credits or 10 days.}$


The amount of statutory 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. Thus, the maximum total number of statutory good time credits earned in one day and the maximum total

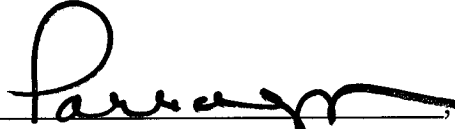
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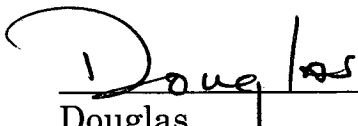
Here, appellant contended that he did not receive 10 days of statutory good time credit and 10 days of work credit for every 30 days he has spent in confinement. Appellant failed to present any evidence that he had not received the proper amount of statutory good time credit. Furthermore, appellant failed to demonstrate that he did not receive appropriate work time credit. Appellant failed to demonstrate that he had worked consistently throughout his sentence such that he was entitled to the potential maximum of 10 days for every 30 days spent in confinement. Therefore, the district court did not err in denying appellant's claims.

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>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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*... continued*

number of work credits earned in one day is one-third the amount of flat time served.

<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jackie Glass, District Judge  
Michael Hays  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk