

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAREEM BROCK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50242

FILED

APR 09 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 habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On February 24, 1998, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted murder with the use of a deadly weapon in district court case number C136356. The district court sentenced appellant to serve in the Nevada State Prison the following terms: (1) for count 1, two equal and consecutive terms of 42 to 240 months; (2) for count 2, two equal and consecutive terms of 42 to 240 months to run concurrent to the sentence imposed in count 1 and concurrent to the sentences imposed in district court case number C136906 (attempted murder with the use of a deadly weapon) and district court case number C145952 (battery by prisoner). The judgment of conviction in district court case number C136356 did not set forth any credit for time served. The judgments of conviction in district court case

number C136906 and district court case number C145952 indicated 622 days of credit for time served in “all” cases. No direct appeal was taken.

On August 31, 1998, appellant filed identical proper person post-conviction petitions for writs of habeas corpus in district court case numbers C13636 and C136906. The district court denied these petitions, and this court dismissed the subsequent appeals.¹

While these initial petitions did not raise the issue of the 622 days of credit, appellant filed several motions seeking 622 days of credit in district court case no. C136356, including two motions for “county jail time” and a motion to amend the judgment of conviction. The district court denied these motions. Appellant did not appeal the denial of these motions.

On May 25, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court, wherein he again sought 622 days of credit in district court case number C136356. The State opposed 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 22, 2007, the district court denied appellant’s petition. This appeal followed.

Although the district court denied appellant’s petition as untimely filed pursuant to NRS 34.726(1), our review of the record on

¹Brock v. State, Docket No. 33518 and 33575 (Order Dismissing Appeals, July 14, 2000).

appeal reveals that the petition was not procedurally time-barred. In Griffin v. State, this court held that a claim for presentence credits was a challenge to the validity of the judgment of conviction and sentence and must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance with the procedural rules set forth in NRS chapter 34.² However, prior to this court's holding in Griffin, a claim for presentence credit could be raised in a post-conviction petition for a writ of habeas corpus as a challenge to the computation of time served.³ A claim challenging the computation of time served is not subject to the procedural time bar set forth in NRS 34.726. Because appellant filed his petition less than one year after this court's decision in Griffin, and Griffin indicates that the holding was unforeseeable, we conclude that his petition was not untimely.⁴ Nevertheless, we affirm the decision of the district court to deny the petition because we conclude that the district court reached the correct result.⁵

²122 Nev. 737, 137 P.3d 1165 (2006).

³See Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 (1996) overruled by Griffin, 122 Nev. 737, 137 P.3d 1165.

⁴122 Nev. at 744, 127 P.3d at 1169.

⁵See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

Brock contended that he should be awarded 622 days credit for time served in district court case number C136356. However, this claim is belied by the record.⁶ The judgment of conviction in district court case number C136356 does not indicate credit for any time served. While Brock may contend that the judgment of conviction conflicts with the minute order, a judgment of conviction is not final until signed by the district court and entered by the clerk.⁷

Moreover, 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. The record on appeal indicates that appellant received 622 days of credit for time served in district court case numbers C136906 and C145952. Thus, appellant was not entitled to the application of that credit in the instant case as the 622 days of credit for time served was pursuant to another judgment of conviction.⁸

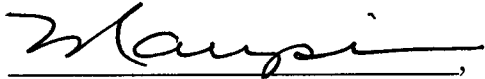
⁶See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

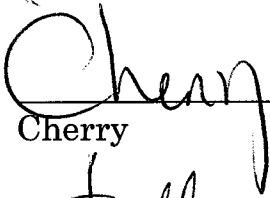
⁷See Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979).


⁸Appellant's reliance on Johnson v. State, 120 Nev. 296, 89 P.3d 669 (2004), is misplaced as Johnson relates to concurrent sentences within a single judgment of conviction and not concurrent sentences between separate judgments of conviction. Id.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

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

¹⁰We 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. Jackie Glass, District Judge
Kareem Brock
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk