

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE DUNCKHURST,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50307

**FILED**

MAY 01 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On February 3, 1984, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve in the Nevada State Prison two consecutive terms of life with the possibility of

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<sup>11</sup>On December 12, 2007, the Attorney General filed a motion to consolidate this case with appeals in Wesley v. State, Docket No. 50273; Player v. Warden, Docket No. 50402; and Hoang v. State, Docket No. 50177. On March 7, 2008, the Attorney General filed a motion to consolidate this case with Douglas v. State, Docket No. 50520. This court denies the State's motions to consolidate these appeals.

parole for the primary offense and the deadly weapon enhancement. This court dismissed appellant's direct appeal from his judgment of conviction.<sup>2</sup> The remittitur issued on February 4, 1986.

On July 18, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 October 2, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the Nevada Department of Corrections improperly calculated his good time credits for the primary offense and the deadly weapon enhancement based on separate sentences rather than one sentence, thereby applying this court's holding in Nevada Dep't. of Prisons v. Bowen<sup>3</sup> retroactively and to his detriment. Appellant appeared to contend that prison officials should consider his sentence for the primary offense and his sentence for the deadly weapon enhancement as a single sentence for the purpose of computing good time credits.

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<sup>2</sup>Dunckhurst v. State, Docket No. 16104 (Order Dismissing Appeal, January 13, 1986).

<sup>3</sup>103 Nev. 477, 745 P.2d 697 (1987).

In Biffath v. Warden<sup>4</sup> and Director, Prisons v. Biffath,<sup>5</sup> this court held that a sentence for a primary offense and an enhancement sentence must be treated as one continuous sentence for the purposes of computing good time credits and parole eligibility. In 1987, those decisions were overruled in Bowen.<sup>6</sup> In Bowen, we concluded that the primary and enhancement sentences must be treated as separate sentences for all purposes.<sup>7</sup> Because our decision in Bowen was not foreseeable, we directed that the opinion “be applied retroactively to the extent possible, but in no case shall this opinion be applied to the detriment of any prisoner sentenced before the date hereof.”<sup>8</sup> In Stevens v. Warden, this court reaffirmed the principle that Bowen should not be applied retroactively to the detriment of a prisoner who committed his or her offense prior to this court’s decision in Bowen.<sup>9</sup>

Our review of the record on appeal reveals that the district court properly denied appellant’s claim for relief. Preliminarily, we note

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<sup>4</sup>95 Nev. 260, 593 P.2d 51 (1979).

<sup>5</sup>97 Nev. 18, 621 P.2d 1113 (1981).

<sup>6</sup>103 Nev. 477, 745 P.2d 697.

<sup>7</sup>Id. at 481, 745 P.2d at 699-700.

<sup>8</sup>Id. at 481 n.4, 745 P.2d at 700 n.4.

<sup>9</sup>Stevens v. Warden, 114 Nev. 1217, 1221-23, 969 P.2d 945, 948-49 (1998).

that appellant failed to provide any explanation for his approximately 20 year delay in filing the instant petition and appears to have acquiesced to the Department's treatment of his sentences. More importantly, appellant failed to establish that he was prejudiced by the application of Bowen to his case. Appellant simply failed to provide any facts in his petition to demonstrate precisely how the application of Bowen to his sentences worked to his detriment. Thus, appellant failed to support his claim with sufficient factual allegations, which if true, would have entitled him to relief.<sup>10</sup> Therefore the district court did not err in denying appellant's claim.

Finally, we note that appellant's claim is moot. Appellant is now serving time on the life sentence on the deadly weapon enhancement term and is required to serve a mandatory minimum sentence for parole eligibility on that sentence; thus, the application of good time credits will not affect his sentence.<sup>11</sup> Furthermore, because appellant was sentenced to terms of life in prison there is no maximum sentence to which good time credits could be applied.<sup>12</sup> In addition, appellant is now eligible for parole on the sentence he is presently serving. Therefore, we conclude that the district court did not err in denying the petition.

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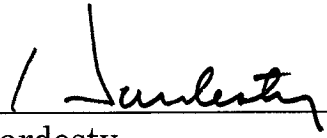
<sup>10</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).


<sup>11</sup>See NRS 209.443.

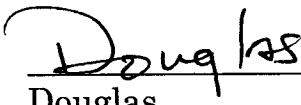
<sup>12</sup>Hunt v. State, 111 Nev. 1284, 903 P.2d 826 (1995).

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>13</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Donald M. Mosley, District Judge  
George Dunckhurst  
Attorney General Catherine Cortez Masto/Las Vegas  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>13</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).