

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKEY EUGENE TOLTON,
Appellant,
vs.
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS, HOWARD
SKOLNIK,
Respondent.

No. 50398

FILED

APR 25 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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David Wall, Judge.

On June 29, 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.¹ The State opposed the petition. On October 19, 2007, the district court dismissed the petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections (the Department) had denied him the proper amount of statutory good time, work time and meritorious credits by reducing his credits by a factor of 1.667. Appellant supported his petition with a document purportedly used by the Department labeled, "NDOC's Merit Credit System." The document contained a statement indicating

¹Appellant filed an amended petition on September 6, 2007.

that one credit was not equal to one 24-hour day. Thus, despite the fact that the version NRS 209.4465 in effect at the time the petition was filed provided for 10 days of credit per month for statutory good time, 10 days of credit per month for work time, 30 days of credit for a G.E.D., and 60 days of credit for a high school diploma, 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.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. The Attorney General indicated that the form used by appellant was not authenticated and was not used by the Department. The Attorney General submitted appellant's time audit logs verifying that appellant's credits have not been reduced by any mathematical formula. The Attorney General further stated in its opposition that the Department used a computer program that treats a "credit" the same as a "day." Therefore, appellant failed to demonstrate that he was entitled to additional credits.

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 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 credits earned pursuant to NRS chapter 209. First, pursuant to the version of NRS 209.4465(7) relied upon by appellant in 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.² 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.³ There is simply

²See 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 credits and meritorious credits earned for educational achievement 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. The documents before this court indicate that beginning July 1, 2007, appellant began to receive 20 days of statutory good time credits per month.

³Mathematically, this calculation is expressed as:

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

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

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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 document submitted by appellant in support of his petition was not authenticated and has apparently spread throughout the prison population with a consequence of causing the filing of numerous frivolous petitions challenging the alleged mathematical formula. 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 not available or is not likely to be discovered after further investigation.⁴

... continued

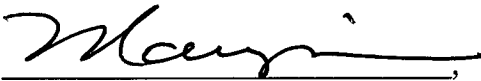
potential maximum daily credit earning rate as of July 1, 2007, was increased to 2.334.

⁴See NRS 209.451(1)(d).

A post-conviction petition for a writ of habeas corpus is a civil action for the purposes of NRS 209.451.⁵ 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.⁶

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.⁷ Accordingly, we


ORDER the judgment of the district court AFFIRMED.⁸

 J.

Maupin

 J.

Cherry

 J.

Saitta

⁵See NRS 209.451(5).

⁶See NRS 209.451(1), (3).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We 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. David Wall, District Judge
Rickey E. Tolton
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk