

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES PLAYER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50402

FILED

MAY 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
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.¹ Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On September 26, 1986 the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree kidnapping with the use of a deadly weapon resulting in substantial bodily harm (count 1), one count of extortion with the use of a deadly weapon (count 2), and one count

¹On December 12, 2007, the Attorney General filed a motion to consolidate this case with appeals in Dunckhurst v. Warden, Docket No. 50307; Hoang v. State, Docket No. 50177; and Wesley v. Warden, Docket No. 50273. On March 7, 2007, the Attorney General filed a motion to consolidate this appeal with an appeal in Douglas v. State, Docket No. 50520. This court denies the State's motions to consolidate these appeals.

of mayhem with the use of a deadly weapon (count 3). The district court sentenced appellant to serve the following terms in the Nevada State Prison: (1) two consecutive terms of life with the possibility of parole after five years on count 1, for the primary offense and the deadly weapon enhancement; (2) two consecutive terms of 10 years on count 2, to run concurrently with count 1, for the primary offense and the deadly weapon enhancement; and (3) two consecutive terms of 10 years on count 3, to run concurrently with counts 1 and 2, for the primary offense and the deadly weapon enhancement. Appellant did not file a direct appeal.

On July 23, 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 September 25, 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 offenses and the deadly weapon enhancements based on separate sentences rather than one sentence, thereby applying this court's holding in Nevada Dep't. of Prisons v. Bowen² retroactively and to his detriment. Appellant appeared to contend that prison officials should

²103 Nev. 477, 745 P.2d 697 (1987).

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.

In Biffath v. Warden³ and Director, Prisons v. Biffath,⁴ 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.⁵ In Bowen, we concluded that the primary and enhancement sentences must be treated as separate sentences for all purposes.⁶ 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.”⁷ In Stevens v. Warden, this court reaffirmed the principle that Bowen should not be

³95 Nev. 260, 593 P.2d 51 (1979).

⁴97 Nev. 18, 621 P.2d 1113 (1981).

⁵103 Nev. 477, 745 P.2d 697.

⁶Id. at 481, 745 P.2d at 699-700.

⁷Id. at 481 n.4, 745 P.2d at 700 n.4.

applied retroactively to the detriment of a prisoner who committed his or her offense prior to this court's decision in Bowen.⁸

Our review of the record on appeal reveals that appellant's claim lacked merit. Preliminarily, we note 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 or that Bowen had even been applied. Appellant simply failed to provide any facts in his petition to indicate whether or not the application of Bowen would be to his detriment. Thus, appellant failed to support his claim with sufficient factual allegations, which if true, would have entitled him to relief.⁹ Therefore the district court did not err in denying appellant's claim.

Moreover, we note that appellant's claim is moot. Appellant is now serving time on a life sentence on the deadly weapon enhancement, which will not expire under its terms; thus, the application of good time credits will not affect the life sentence as good time credits cannot be applied to that particular sentence.¹⁰ Furthermore, appellant has now

⁸Stevens v. Warden, 114 Nev. 1217, 1221-23, 969 P.2d 945, 948-49 (1998).

⁹See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

¹⁰Hunt v. State, 111 Nev. 1284, 903 P.2d 826 (1995).

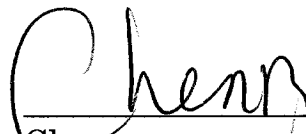
discharged those sentences to which good time credits could be applied. Finally, appellant is now eligible for parole on the sentence he is presently serving. Therefore, we conclude that the district court did not err in denying the petition. Therefore, we conclude that the district court did not err in denying the petition.

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.¹¹ Accordingly, we


ORDER the judgment of the district court AFFIRMED.


_____, J.

Maupin


_____, J.

Cherry


_____, J.

Saitta

cc: Hon. Lee A. Gates, District Judge
James Player
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).