IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHENS DOUGLAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50520

FILED

MAY 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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; Jackie Glass, Judge.

On October 13, 1987 the district court convicted appellant, pursuant to a guilty plea, of one count of burglary (count 1) and one count of sexual assault with the use of a deadly weapon (count 2). The district court sentenced appellant to serve the following terms in the Nevada State Prison: (1) one term of 10 years on count 1, and (2) two consecutive terms

[1]On March 7, 2007, the Attorney General filed a motion to consolidate this appeal with appeals in Dunckhurst v. Warden, Docket No. 50307; Hoang v. State, Docket No. 50177; Wesley v. Warden, Docket No. 50273; and Player v. State, Docket No. 50402. This court denies the State's motion to consolidate these appeals.

of life with the possibility of parole after five years on count 2, for the primary offense and the deadly weapon enhancement, to run consecutively with count 1. Appellant did not file a direct appeal.

On July, 19 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 10, 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. Bowen[2] 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.

---

[2]103 Nev. 477, 745 P.2d 697 (1987).

In Biffath v. Warden[3] 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 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

---

[3]95 Nev. 260, 593 P.2d 51 (1979).

[4]97 Nev. 18, 621 P.2d 1113 (1981).

[5]103 Nev. 477, 745 P.2d 697.

[6]Id. at 481, 745 P.2d at 699-700.

[7]Id. at 481 n.4, 745 P.2d at 700 n.4.

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

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 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.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief in this

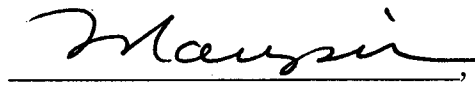
---

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

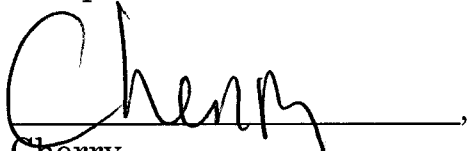
[10]Hunt v. State, 111 Nev. 1284, 903 P.2d 826 (1995).

matter and that briefing and oral argument are unwarranted.[11] Accordingly, we

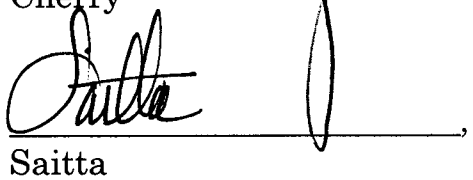
ORDER the judgment of the district court AFFIRMED.[12]



_____, J.
Maupin



_____, J.
Cherry



_____, J.
Saitta

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

---

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

[12]We 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.