IN THE SUPREME COURT OF THE STATE OF NEVADA

RALPH E. SHIELDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50909

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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On March 31, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of 60 to 180 months in the Nevada State Prison.

On October 16, 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. The State opposed the petition, and appellant filed supplemental documents in support of his petition. On February 13, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections (Department) had denied him the proper

amount of 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. The document contained a statement that one credit was not equal to one 24-hour day. Thus, despite the fact that the version of NRS 209.4465 relied upon by appellant provided for 10 days of credit per month for statutory good time, 10 days of credit per month for work time and 60 days for a high school diploma, and NRS 209.448 and NRS 209.449 provided for additional meritorious credits for substance abuse and vocational programs, 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. Appellant further claimed that the Department failed to credit him with 119 days of credit for time served.

The district court denied the petition on the ground that appellant had failed to demonstrate that the Department had reduced his credits by a factor of 1.667 and that appellant had failed to demonstrate that he was entitled to any additional credits. 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 submitted appellant's time audit logs verifying that appellant's credits have not been reduced by any mathematical formula. The documents further indicate that appellant was provided with 161 days of credit for time served. 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, work and meritorious 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.[1] Second,

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[1]See 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. However, the latter provision regarding the deduction of credits from the minimum sentence does not apply to an offender who has been convicted

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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.[2] There is simply no support for the statement that one credit is anything less than a 24-

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. . . continued

of a category A or B felony. Id. Appellant was convicted of a category B felony (habitual criminal adjudication); thus, retroactive application of the provisions as amended does not apply to him. See 2007 Nev. Stat., ch. 525, § 21, at 3196. The documents before this court indicate that beginning July 1, 2007, appellant began to receive 20 days of statutory good time credits. Finally, we note that other types of meritorious credits earned pursuant NRS 209.448 and NRS 209.449 apply only to the maximum term of the sentence, that credits earned pursuant to NRS 209.448 and NRS 209.449 were increased, but that those amendments applied only to credits earned on or after July 1, 2007. See 2007 Nev. Stat., ch. 525, §§ 6.2, 6.4, 21, at 3178, 3196.

[2]Mathematically, this calculation is expressed as:

6 (days) x 1.667 (the amount of credits earned each day) = 10 credits or 10 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 potential maximum daily credit earning rate as of July 1, 2007, was increased to 2.334.

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 has no authentication 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
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> (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.[3]

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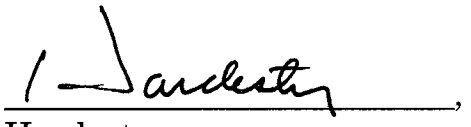
[3]See NRS 209.451(1)(d).

A post-conviction petition for a writ of habeas corpus is a civil action for the purposes of NRS 209.451.[4] 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.[5]

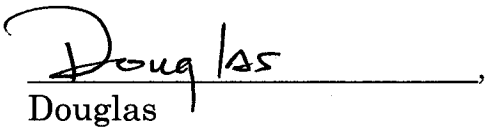
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Hardesty

_____, J.
Parraguirre



_____, J.
Douglas

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[4]See NRS 209.451(5).

[5]See NRS 209.451(1), (3).

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

cc: Hon. Sally L. Loehrer, District Judge
Ralph E. Shields
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk