IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK E. MCCLINTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50930

FILED

MAY 02 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 in part a post-conviction petition for a writ of habeas corpus and denying a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

On July 19, 1995, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve a total of two consecutive terms of twenty years in the Nevada State Prison. Appellant was provided with 184 days of credit for time served.

On July 14, 2006, appellant filed a proper person petition for a writ of mandamus in the district court challenging the computation of time served. On August 23, 2006, appellant filed a post-conviction petition for a writ of habeas corpus in the district court in which he incorporated the previously filed petition for a writ of mandamus. The State filed a response. Appellant retained counsel, and post-conviction counsel filed a reply. An evidentiary hearing was conducted, and the district court appeared to grant the petition in part by directing that appellant be made immediately eligible for parole consideration; an order to this effect was

entered on March 23, 2007. However, it appears from the documents before this court that the district court continued the matter to determine whether the Nevada Department Corrections (the Department) was incorrectly computing his credits. It appears that appellant's post-conviction counsel then withdrew from the matter.

On October 18, 2007, appellant filed a proper person petition for a writ of mandamus in the district court. The State filed a motion to dismiss the petition. The State further filed a brief in opposition to the petition for a writ of habeas corpus. Appellant filed a motion to strike the State's motion to dismiss. At a hearing on the matter, the district court denied appellant's motion to strike and denied the further relief sought in the petition for a writ of habeas corpus. The district court further denied the petition for a writ of mandamus. A written order was entered on February 13, 2008.[1] This appeal followed.[2]

In his petition for a writ of habeas corpus, appellant challenged the computation of time served. Appellant claimed that the Department was not properly applying his statutory good time, work time, and meritorious/educational credits. Appellant further appeared to claim that the failure to apply his credits correctly deprived him of timely parole hearings. Appellant complained that the projected expiration date did not seem to move more than a couple of days every couple of months despite

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[1]We construe the February 13, 2008 order as finally resolving the petition for a writ of habeas corpus, which incorporated the first petition for a writ of mandamus, and the second petition for a writ of mandamus.

[2]We conclude that the district court did not abuse its discretion in denying appellant's motion to strike. See generally NRS 34.750(5).

the fact that he continued to earn 10 days of statutory good time credits and 10 days of work time credits, as well as other meritorious credits. In post-conviction counsel's reply, post-conviction counsel argued that appellant was only being credited with 6 days for every 10 credits earned and that a credit was something less than one day. Post-conviction counsel further argued that appellant had been employed for "practically the entire time he has been incarcerated." Post-conviction counsel further argued that appellant would have been paroled earlier on the first 20-year sentence if the credits had been correctly computed. In the latter petition for a writ of mandamus, petitioner again complained of the computation of time served, alleged that the issue of computation of time served had already been decided in his favor and requested immediate release. Appellant claimed that the State was precluded from challenging the prior favorable ruling made at the evidentiary hearing that the Department was not correctly computing the time served. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petitions.

First, a challenge to the computation of time served may only be raised in a post-conviction petition for a writ of habeas corpus; thus, appellant improperly raised his challenge to the computation of time served in the petitions for writs of mandamus.[3]

Second, appellant failed to demonstrate that the Department was improperly computing the time he had served. The State provided appellant's time audit logs indicating that the Department was not

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[3]See NRS 34.724(2)(c).

treating 10 credits as only 6 days, but that each credit was being treated as one day off of the maximum sentence.[4] Post-conviction counsel's argument that 10 credits equals only 6 days was 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.[5] There is simply 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. A review of the time audit log further demonstrates that for certain periods appellant did not earn the potential maximum amount of credits because he had no work time credits or did not earn the maximum amount of work time credits for approximately 72 months of his incarceration. This failure to consistently earn work time credits impacted his projected expiration date. The State correctly

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[4]The maximum sentence is the amount of time that must be served to discharge the sentence imposed by the district court. The maximum sentence may reduced by statutory good time, work time and other credits. See NRS 209.446. For a 20-year sentence, the maximum sentence is 7,300 days (20 years x 365 days = 7,300 days).

[5]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 potential maximum daily credit earning rate of 1.667.

observed in its brief below that the confusion in this matter appears to relate to the projected expiration date and the mistaken notion that credits earned are deducted from the projected expiration date rather than from the maximum sentence. A projected expiration date is calculated upon the assumption that an inmate will earn the potential maximum statutory credits at a rate of 1.667 days for every day served. However, the statutory credits earned are not deducted from the projected expiration date but from the maximum sentence and may apply to the parole eligibility date under certain circumstances.[6] The failure to earn the potential maximum statutory credits or the forfeiture of credits will cause a projected expiration date to move farther out while the earning of meritorious credits will cause the projected expiration date to move closer.[7] Therefore, we conclude that the district court did not err in concluding that appellant failed to demonstrate that he was entitled to any additional credit in the instant case.[8]

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[6]See NRS 209.446(6).

[7]A projected expiration date is only estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate.

[8]To the extent that appellant claimed he was entitled to be paroled from the second 20-year sentence immediately, appellants' claim is without merit as parole is an act of grace of the State and appellant has no right to be paroled from his lawfully imposed sentence. See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989). To the extent that there was an issue regarding the application of the credits for purposes of parole eligibility, that issue has been rendered moot as appellant has already paroled from his first 20-year sentence and discharged that sentence and had a parole hearing on the second 20-year sentence. Any claim that appellant would have received parole earlier is

continued on next page . . .

Finally, appellant's claim in his latter petition for a writ of mandamus that the State was precluded from providing further argument on the computation of time served issue is without merit. A review of the record on appeal indicates that the district court granted partial relief on the habeas corpus petition—a parole hearing—but that the computation of time served issue had not been finally resolved by the March 23, 2007 order.[9] Thus, the State was not precluded from filing a brief regarding the computation of time served. Therefore, we conclude that the district court correctly denied the petition for a writ of mandamus.

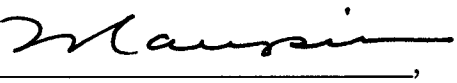
. . . continued

purely speculative and does not warrant any relief. See Niergarth, 105 Nev. at 29; 768 P.2d at 884.

[9]Although the March 23, 2007 order prepared by post-conviction counsel was signed and filed by the district court and determined that the Department was incorrectly computing the sentence, the only specific relief granted in the order was an early parole hearing. Notably, no specific determination was made how many credits were improperly applied and how the Department erred in computing appellant's time served. Later hearings and orders of the district court indicate that the computation of time served issue had not been finally resolved by the March 23, 2007 order, which did not contain any mention that the order was granting the petition for a writ of habeas corpus. Further, it appears that post-conviction counsel in preparing the March 23, 2007 order did not comply with the district court's oral pronouncement that the proposed order should be submitted to the State and if there were any objections the order should be placed back on calendar. The State indicated below that they were not provided with the order in advance of its filing. Even assuming that the March 23, 2007 order was a final order, it appears that the district court reconsidered its decision by conducting further proceedings on the computation of time served issue.

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[11]



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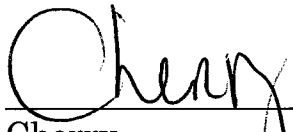

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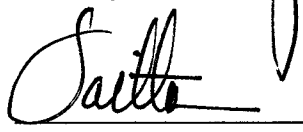

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cc: Hon. Michael Villani, District Judge
Jack E. McClinton
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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

[11]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.