

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH F. DAVIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50999

**FILED**

MAY 01 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; Michael Villani, Judge.

On March 23, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of 14. The district court sentenced appellant to serve a term of 96 to 240 months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed five years. Subsequently, appellant's probation was revoked, and the district court modified the sentence and imposed a term of imprisonment of 77 to 193 months. The district court further provided appellant with 475 days of credit for time served.

On October 4, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed two supplemental pleadings.

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 March 3, 2008, the district court denied 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. Appellant supported his petition with a document purportedly used by the Department labeled, "NDOC's Merit Credit System." The document contained a statement indicating that one credit was not equal to one 24-hour day. Thus, despite the fact that the version of NRS 209.4465 that appellant relied upon provided for 10 days of credit per month for statutory good time, 10 days of credit per month for work time, and various other credits for educational and meritorious endeavors, the Department used a mathematical formula to reduce 10 credits to "6 days off." Appellant further claimed that the document indicated that the credits would not be applied to parole eligibility. 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. First, the document relied upon by appellant was not authenticated and nothing in the record on appeal indicates that the document was 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. A review of the time audit logs further

demonstrates that the Department 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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup>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 to allow the credits earned pursuant to NRS 209.4465 to be deducted from the minimum and maximum terms for certain offenders. See 2007 Nev. Stat., ch. 525, § 5, at 3176-77. Appellant was ineligible to have statutory credits applied to reduce the minimum term below the statutory threshold because he was convicted of a sexual offense punishable as a felony. See NRS 209.4465(8)(b). The record on appeal indicates that beginning July 1, 2007, appellant began to receive 20 days of statutory good time credits per month.

<sup>2</sup>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.

point. Finally, it appears that appellant mistakenly believed that credits earned were deducted from the projected expiration date rather than from the maximum sentence.<sup>3</sup> A projected expiration date is calculated upon the assumption that an inmate earns the potential maximum statutory good time and work time credits every month 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.<sup>4</sup> 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.<sup>5</sup> In the instant case, appellant has not consistently worked; therefore, his projected expiration date would have been recalculated farther out.<sup>6</sup> Therefore, appellant failed to demonstrate that he was

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<sup>3</sup>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 be reduced by statutory good time, work time and other credits. See NRS 209.4465. The Department has calculated the maximum sentence in the instant case to be 5,875 days.

<sup>4</sup>See NRS 209.4465(7).

<sup>5</sup>A projected expiration date is only an estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate.

<sup>6</sup>Conversely, for the educational and/or meritorious credits appellant earned, those credits applied to the maximum sentence to move the projected expiration date closer.

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 shown to be 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.<sup>7</sup>

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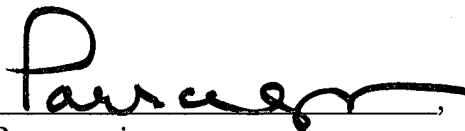
<sup>7</sup>See NRS 209.451(1)(d).

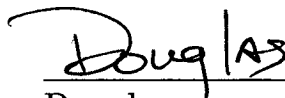
A post-conviction petition for a writ of habeas corpus is a civil action for the purposes of NRS 209.451.<sup>8</sup> Under these provisions, an inmate who submits a document to the court that the inmate knows to be false may be referred for the forfeiture of credits.<sup>9</sup>

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.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>8</sup>See NRS 209.451(5).

<sup>9</sup>See NRS 209.451(1), (3).

<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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