IN THE SUPREME COURT OF THE STATE OF NEVADA

ROCHLON KAREEM HAMILTON A/K/A ROCSHAWN HAMILTON,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K. MCDANIEL,
Respondent.

No. 51120

FILED

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. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On October 8, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms in the Nevada State Prison of 33 to 156 months for the primary offense and the deadly weapon enhancement. This court dismissed appellant's appeal.[1] The remittitur issued on November 16, 1999.

On October 1, 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

[1]Hamilton v. State, Docket No. 34800 (Order Dismissing Appeal, October 21, 1999).

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district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 8, 2008, 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.

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

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

[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.

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 was patently frivolous and lacked merit. Appellant committed his crime on May 23, 1998; nearly 11 years after this court issued its decision in Bowen.[9] Thus, Bowen is not being applied retroactively in appellant's case because it was the law in effect at the time appellant committed his crime.[10] Therefore the district court did not err in denying appellant's claim.

Moreover, we note that the district court ordered that appellant should be referred to the Director of the Department of Corrections for a forfeiture of credits. The district court did not abuse its discretion as appellant's claim was frivolous and not warranted by existing law or a change in the interpretation of existing law.[11]

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

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[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).

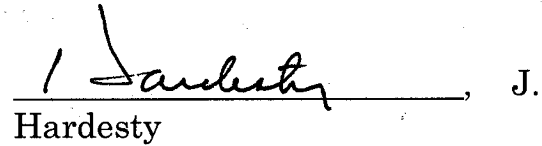
[9]103 Nev. 477, 745 P.2d 697.

[10]Stevens v. Warden, 114 Nev. at 1221-23, 969 P.2d at 948-49.

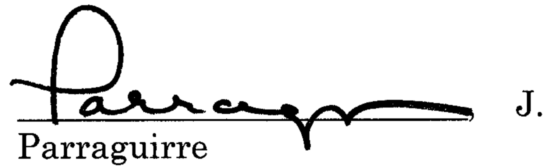
[11]NRS 209.451(d)(2) and(5).

matter and that briefing and oral argument are unwarranted.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, J.
Hardesty



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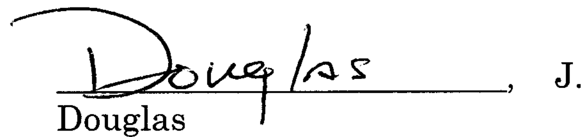

_______________, J.
Douglas

cc: Hon. Steve L. Dobrescu, District Judge
Rochlon Kareem Hamilton
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Ely
White Pine County Clerk

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