

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT HANZY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51221

FILED

SEP 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; Donald M. Mosley, Judge.

On May 7, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a term of 48 to 120 months in the Nevada State Prison. The district court ordered this sentence to be served consecutively to the sentence imposed in C168666. The district court further provided appellant with 280 days of credit for time served. This court affirmed the judgment of conviction on appeal.¹

On November 27, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition, and appellant filed a response. 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

¹Hanzy v. State, Docket No. 37917 (Order of Affirmance, October 12, 2001).

February 15, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Department of Corrections (the Department) was improperly calculating his statutory credits. Appellant claimed that his expiration date was improperly computed. Appellant further claimed he was not provided 330 days of credit for work or study. Appellant claimed that the Department was not treating the credits earned pursuant to NRS 209.4465 as “days.”

Appellant failed to demonstrate that he was entitled to any additional credits in the instant case. Appellant’s claims for additional relief are bare and naked claim lacking specific facts.² Further, the credit history log provided by the State amply demonstrated that the Department treats the credits earned pursuant to NRS 209.4465 as “days.” The credit history log indicated appellant received statutory good time credits in compliance with NRS 209.4465. The credit history log further indicated that appellant received work time credits during his incarceration in the instant case, and appellant failed to demonstrate that he was entitled to any additional work credits.

It appears that appellant mistakenly believed that credits earned or to be earned in the future were deducted from the projected expiration date rather than from the maximum sentence.³ A projected

²See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

³The maximum sentence is the amount of time that must be served in days 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. In the instant case, appellant’s maximum term was 3653 days.

expiration date is calculated upon an assumption that an inmate earns the potential maximum statutory good time and work time credits every month served and it attempts to project the earning of credits in the future. 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.⁴ The failure to earn the potential maximum statutory good time and work 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.⁵ Because appellant failed to demonstrate

⁴See NRS 209.4465(7).

⁵A projected expiration date is only an estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate. It is not that an inmate is serving additional time by the failure to earn the potential maximum statutory credits, but rather the inmate simply serves the lawfully imposed sentence without benefit of the potential maximum statutory credits reducing the maximum sentence to be served.


When statutorily-earned credits are applied to the maximum sentence, those credits may actually reduce the number of months to be served; thus, the assumption in calculating the projected expiration date about the number of statutory and work time credits to be earned in the future will no longer be correct because an inmate cannot earn statutory and work time credits for time he is not actually incarcerated. For example, if an inmate earns 90 days of meritorious credits, when those credits are subtracted from the maximum sentence, the inmate will have 3 fewer months of actual incarceration (3 months x 30 days = 90 days). Because the original/earlier projected expiration date already had the prisoner earning statutory good time and work time credits for those 3 months, the projected expiration date will have to be recalculated to exclude credits for those months that will no longer be served. NRS 209.4465 makes it clear that statutory good time credits are deducted for

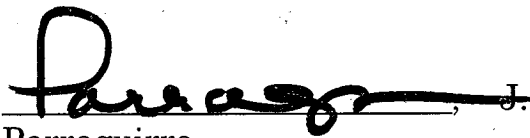
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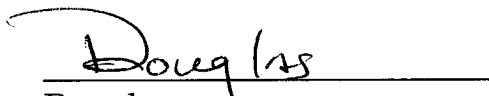
that he was entitled to additional credits, we affirm the order of the district court denying the petition.

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

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

... continued

each month served, not for the months that an inmate might have served if he had not earned credits.

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

⁷We 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.

cc: Hon. Donald M. Mosley, District Judge
Dwight Hanzy
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk