IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RAY MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51242

FILED

OCT 15 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 and dismissing in part a post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

On June 16, 1998, appellant was convicted of six counts of burglary in the Second Judicial District Court in district court case number CR98-1096. The district court imposed six concurrent terms of 38 to 96 months in the Nevada State Prison and provided appellant with 82 days of credit for time served. On that same date, appellant was convicted of two counts of burglary in the Second Judicial District Court in district court case number CR98-1081. The district court imposed two consecutive terms of 38 to 96 months and ordered these sentences to run consecutive to the sentences imposed in CR98-1096. On that same date, appellant was convicted of two counts of burglary in the Second Judicial District Court in district court case number CR98-1034. The district court imposed two

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concurrent terms of 38 to 96 months and ordered the terms to run concurrently with the sentences imposed in the other cases.

On February 12, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the First Judicial District Court. On February 27, 2008, the district court denied the petition in part and dismissed the petition in part. This appeal followed.

In his petition, appellant appeared to challenge the validity of the judgments of conviction. Because a petition that challenges the validity of the judgment of conviction must be filed in the district court for the county in which the person was convicted, we conclude that the district court properly dismissed the petition to the extent that it could be read as a challenge to the validity of the judgments of conviction.[1]

Next, appellant challenged the computation of time served. Appellant requested the district court to conduct an independent audit of his credits for time served. Appellant claimed that he should receive the following credits: (1) a deduction of 20 days from the sentence for each month served; (2) a deduction of 10 days from the sentence for each month for labor and study; (3) a deduction of 90 days for a high school diploma; (4) a deduction of 120 days for an Associate's Degree; (5) a deduction of 90 days for a second Associate's Degree; (6) a deduction of 90 days for each of his seven years of incarceration for exception meritorious service; (7) a

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[1]See NRS 34.738(1).

deduction of 60 days for completion of a drug and alcohol course; and (8) statutory good time credits for the time served in the county detention facility prior to sentencing. Appellant further claimed that his credits were being improperly reduced by the Department of Corrections (the Department). 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 NRS 209.4465, prior to July 1, 2007, 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 of 1.667 to reduce 10 credits to "6 days off."[2]

The district court denied claims one through eight because appellant failed to make a specific complaint and include documentation and evidence as to how the time served was miscalculated. Based upon our review of the record on appeal, we conclude that the district court did not err in denying claims one through eight for failure to set forth claims supported by specific factual allegations.[3] The district court properly

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[2]Appellant primarily relied upon the version of NRS 209.4465 in effect prior to July 1, 2007. See 2003 Nev. Stat., ch. 426, § 8, at 2577-78.

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

rejected appellant's request for an independent audit of his credit for time served and directed appellant that he must set forth claims supported by specific facts demonstrating that the Department has improperly calculated his credit for time served.

Further, the document relied upon by appellant, NDOC's "Merit Credit System," was not authenticated or shown to be used or endorsed by the Department. The document was facially inaccurate as it contained misleading statements and assumptions relating to statutory good time, work time and meritorious credits. The document stated:

> 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 primarily relied upon by appellant in his petition, statutory good time, work time and meritorious 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.[4] 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.[5] There is simply no support for the statement that one credit is anything less than a 24-hour day. The partial credit history log provided by appellant demonstrated that the Department was not reducing his

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[4]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 burglary, a crime punishable as a Category B felony. See NRS 209.4465(8)(a), (d); see also NRS 205.030(1).

[5]Mathematically, this calculation is expressed as:

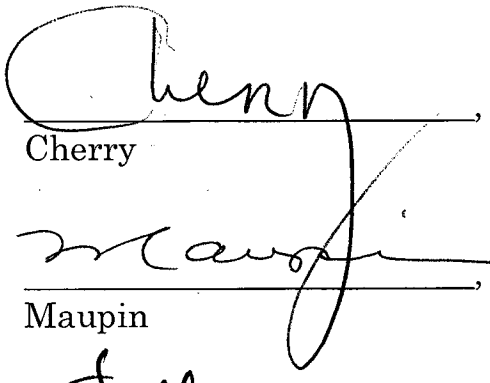
6 (days) x 1.667 (the amount of credits earned each day) = 10 credits or 10 days.

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 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.

statutory good time credits by any mathematical formula. Therefore, we affirm the order of the district court denying the petition in part.

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.
Cherry

_____, J.
Maupin

_____, J.
Saitta

cc: Hon. James Todd Russell, District Judge
John Ray Miller
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk

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