IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRES MEDINA,
Appellant,
vs.
WARDEN, LOVELOCK CORRECTIONAL CENTER, JACK PALMER,
Respondent.

No. 51277

FILED

AUG 12 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 appellant's post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

On October 4, 1983, the district court convicted appellant, pursuant to an Alford plea,[1] of one count of first-degree kidnapping and one count of sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve a term of ten years for kidnapping, to run consecutively to two consecutive sentences of life in the Nevada State Prison with the possibility of parole for sexual assault with the use of a deadly weapon. No direct appeal was taken.

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

On September 7, 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 district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 21, 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

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

[3]95 Nev. 260, 593 P.2d 51 (1979), overruled by Nevada Dep't of Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987).

[4]97 Nev. 18, 621 P.2d 1113 (1981) overruled by Bowen, 103 Nev. 477, 745 P.2d 697.

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 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 lacked merit. Preliminarily, we note that appellant failed to provide any explanation for his approximately 20 year delay in filing the instant petition and appears to have acquiesced to the Department's treatment of his sentences. More importantly, appellant failed to establish that he was prejudiced by the application of Bowen to his case or that Bowen had even been applied. Appellant simply failed to provide any facts in his petition

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[5]103 Nev. 477, 745 P.2d 697.

[6]Id. at 481, 745 P.2d at 699-700.

[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).

to indicate whether or not the application of Bowen would be to his detriment. Thus, appellant failed to support his claim with sufficient factual allegations, which if true, would have entitled him to relief.[9] Therefore, the district court did not err in denying appellant's claim.

Moreover, we note that appellant's claim is moot. Appellant is now serving time on the life sentence on the deadly weapon enhancement term and is required to serve a mandatory minimum sentence for parole eligibility on that sentence; thus, the application of good time credits will not affect his sentence.[10] Furthermore, because appellant was sentenced to terms of life in prison there is no maximum sentence to which good time credits could be applied.[11] To the extent appellant contended that the application of Bowen to his case was to his detriment because he would have been eligible for parole sooner, we note that this claim is speculative, especially in the instant case, where appellant was previously denied parole.[12] Therefore, we conclude that the district court did not err in denying the petition.

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[9]Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

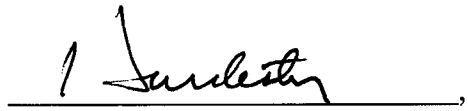
[10]See NRS 209.443.

[11]See Hunt v. Warden, 111 Nev. 1284, 903 P.2d 826 (1995).

[12]See Johnson v. Director, Dep't Prisons, 105 Nev. 314, 316 n.3, 774 P.2d 1047, 1049 n.3 (1989).

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.[13] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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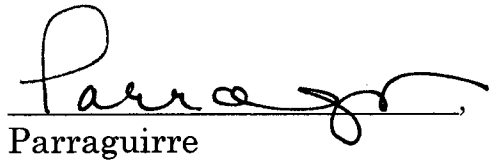

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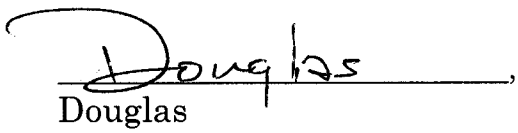

_____, J.
Douglas

cc: Hon. Richard Wagner, District Judge
Andres Medina
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk

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