

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. MILLER A/K/A GLENN
LEROY CASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51347

FILED

SEP 29 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; Jackie Glass, Judge.

On September 16, 2003, the district court convicted appellant, pursuant to a guilty plea, of two counts of coercion (sexually motivated) (category B felony). The district court sentenced appellant to serve two consecutive terms of 24 to 72 months in the Nevada State Prison. The district court further imposed the special sentence of lifetime supervision. The district court later amended the judgment of conviction to remove the special sentence of lifetime supervision.

On December 26, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed a response. On March 17, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant challenged the computation of time served. Appellant claimed that statutory good time credits earned pursuant to NRS 209.4465 should be deducted from the maximum term imposed by the district court, in this case 72 months, and not the actual time spent incarcerated.

Appellant failed to demonstrate that the Department of Corrections (the Department) incorrectly calculated his credit for time served. NRS 209.4465(1)(a) only provides for the earning of statutory good time credit "for the period of time [a prisoner] is actually incarcerated pursuant to the sentence." Statutory credits earned pursuant to NRS 209.4465, good time and work and other credits, are deducted from the maximum sentence. The maximum sentence is the amount of time in days that must be served to discharge the sentence imposed by the district court. The Department projects an expiration date when an inmate begins serving a particular sentence, and the projected expiration date is calculated upon an assumption that an inmate earns the potential maximum statutory good time and work time credits every month served.¹ 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.² The failure to earn

¹The projected expiration date also includes "the retro date" or the date that the sentence is said to have begun based upon the award of credit for time served.

²See NRS 209.4465(7).

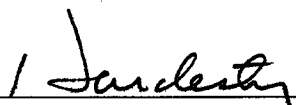
the potential maximum statutory good time and work credits or the forfeiture of credits will cause a projected expiration date to move farther out while the earning of meritorious credits will cause the projected expiration date to move closer.³ Appellant attached a copy of his time audit logs to his petition, and those logs demonstrate no error on the part of the Department in calculating his statutory credits. Therefore, appellant failed to demonstrate that he was entitled to any additional credit.

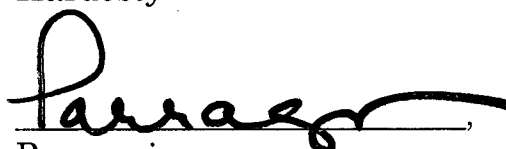
³A projected expiration date is only an estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate. It is not that an inmate is serving additional time by the failure to earn the potential maximum statutory credits, but rather the inmate simply serves the lawfully imposed sentence without benefit of the potential maximum statutory credits reducing the maximum sentence to be served.

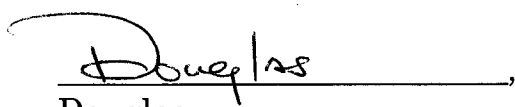
When statutorily-earned credits are applied to the maximum sentence, those credits may actually reduce the number of months to be served; thus, the assumption in calculating the projected expiration date about the number of statutory and work time credits to be earned in the future will no longer be 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.

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Michael A. Miller
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).