

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE HALL A/K/A LEE EDWARD HALL,
III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51357

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 motion for amended judgment of conviction. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

On March 10, 2006, the district court convicted appellant, pursuant to a guilty plea, of two counts of pandering of a child. The district court sentenced appellant to serve two consecutive terms of 24 to 60 months in the Nevada State Prison. The district court provided no credit for time served. No direct appeal was taken.

On January 14, 2008, appellant filed a proper person motion for amended judgment of conviction in the district court. The State opposed the motion. On March 21, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that he should receive 327 days of credit for time served. Although appellant acknowledged that he stipulated to waiving that credit pursuant to plea negotiations, appellant claimed that this stipulation was impermissible.

A claim for additional presentence credits is a claim challenging the validity of the judgment of conviction and sentence that must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance NRS chapter 34.¹ Thus, appellant's motion should have been treated as a post-conviction petition for a writ of habeas corpus.

Appellant filed his motion almost two years after entry of the judgment of conviction. Thus, appellant's motion was untimely filed.² Appellant's motion was procedurally barred absent a demonstration of cause for the delay and prejudice.³ Appellant did not attempt to demonstrate good cause for his failure to file a timely petition, and thus, appellant's motion was procedurally barred and without good cause.

Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. Appellant was originally charged with 20 counts: four counts of child abuse, four counts of first degree kidnapping, four counts of pandering (furnishing transportation), four counts of pandering of a child, three counts of living with a prostitute, and one count of living from the earnings of a prostitute. In exchange for his guilty plea to two counts of pandering with a child, the parties stipulated to two consecutive terms of 24 to 60 months and the waiver of credit for time served. Thus, appellant was not entitled to 327 days of credit for time served pursuant to the plea negotiations. To the extent that

¹See Griffin v. State, 122 Nev. 737, ___, 137 P.3d 1165, 1166 (2006).

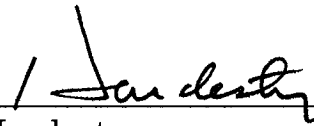
²See NRS 34.726(1).

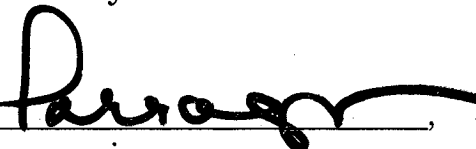
³See id.

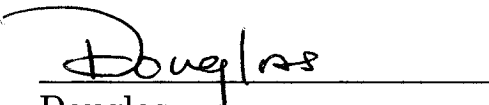
appellant attacked the plea negotiations, appellant's claim was procedurally barred and without good cause as noted above. This court has recognized that a defendant who knowingly and voluntarily agrees to an infirm sentence pursuant to the plea negotiations, waives such infirmity pursuant to the negotiations and may not later claim the sentence was infirm.⁴ Appellant made no argument that his guilty was plea was unknowingly or involuntarily entered. Therefore, we affirm the decision of the district court to deny the motion.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁴See Breault v. State, 116 Nev. 311, 314, 996 P.2d 888, 889 (2000).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michael Villani, District Judge
Lee Hall
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk