

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD GRINER, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51407

FILED

NOV 05 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for an amended judgment of conviction to include jail time credits. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On February 22, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery. The district court sentenced appellant to serve a term of 52 to 144 months in the Nevada State Prison. The district court ordered this sentence to run consecutively to sentences imposed in district court case numbers CR04-0861 and CR04-0862. The district court provided no credit for time served. On February 23, 2007, the district court entered an amended judgment of conviction removing the language imposing the sentence to run consecutively to district court case numbers CR04-0861 and CR04-0862. No direct appeal was taken.

On May 7, 2007, appellant filed a motion for amended judgment of conviction to include jail time credits in the district court. The State opposed the motion. On March 10, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that he should have received 427 days of credit for time served from his arrest on December 16, 2005, to his sentencing date on February 17, 2007.

Preliminarily, we note that appellant filed his claim for additional presentence credits in the wrong vehicle; a claim for additional presentence credits should be raised in a post-conviction petition for a writ of habeas corpus.¹ Nevertheless, because appellant's motion was timely filed, we conclude that the district court properly considered the petition on the merits.

The district court denied the motion because appellant was not entitled to the credits in the instant case. Based upon our review of the record on appeal, we conclude that the district court did not err. NRS 176.055(2) states that a defendant who is convicted of a subsequent offense committed while in custody on a prior charge is not entitled to any credit on the subsequent sentence. In the instant case, appellant was in custody as he had not yet been sentenced in district court case numbers CR04-0861 and CR04-0862 when he committed the instant offense.² Thus, pursuant to NRS 176.055(2) he was not entitled to any presentence credit in the instant case. Therefore, we affirm the order of the district court denying the motion.

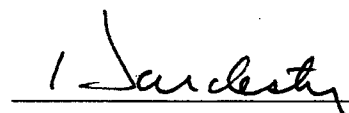
¹See NRS 34.724(2)(b); Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006).


²Appellant had entered a guilty plea and had sentencing deferred for completion of a regimental discipline program in district court case numbers CR04-0861 and CR04-0862. Four days after completing regimental discipline, appellant committed the offense in the instant case.

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.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C. J.
Gibbons


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Jerome Polaha, District Judge
Richard Griner III
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).