

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN M. WELLINGTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51430

**FILED**

JUL 16 2008

TRACIE N. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF 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. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

On January 11, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging the computation of time served. 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 April 1, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Department of Corrections was not providing him with the proper amount of statutory good time credit. Appellant claimed that the Department was erroneously referring to statutory good time credit earned pursuant to NRS 209.4465 as "credits" rather than "days." Appellant further claimed that the Department failed to adjust his projected expiration date by 830 days pursuant to the 2007 amendments increasing the amount of statutory good time credit earned pursuant to NRS 209.4465.

The 2007 Nevada Legislature amended NRS 209.4465 to increase the amount of statutory good time credits earned by an offender, who had committed a crime on or after July 1, 1997, from a deduction of 10 days per month to a deduction of 20 days per months.<sup>1</sup> The Legislature further provided that for certain offenders these credits would be applied to eligibility for parole and must be deducted from the minimum term imposed until the offender becomes eligible for parole.<sup>2</sup> In determining the effect of the amendments, the Legislature provided that the amendment enacted in NRS 209.4465(8), the provision applying credits to the minimum term for certain offenders, applied retroactively to July 1, 2000, to reduce the minimum term of imprisonment of an offender described in NRS 209.4465(8), who was in the custody of the Nevada Department of Corrections on and before July 1, 2007.<sup>3</sup> Notably, the provision allowing for the application of statutory good time credits to a minimum term of imprisonment does not apply to offenders convicted of Category A or B felonies or those convicted of felony crimes involving the use or threatened use of force or violence against the victim.<sup>4</sup> Thus, an offender excluded from retroactive application of credits may earn 20 days of statutory good time credits beginning July 1, 2007, and those credits must be deducted from the maximum term to be served and would apply

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<sup>1</sup>2007 Nev. Stat., ch. 525, § 5, at 3176 (NRS 209.4465(1)).

<sup>2</sup>2007 Nev. Stat., ch. 525, § 5, at 3177 (NRS 209.4465(8)).

<sup>3</sup>2007 Nev. Stat., ch. 525, § 21, at 3196.

<sup>4</sup>NRS 209.4465(8) (a), (d).

to eligibility for parole unless the offender was sentenced pursuant to a statute specifying a minimum term.<sup>5</sup>

Based upon review of the record on appeal, we conclude that the district court did not err in denying the petition. Appellant failed to provide any specific facts or argument demonstrating that the Department incorrectly calculated his credit in the instant case.<sup>6</sup> Because appellant was convicted of robbery and attempted murder, appellant was not entitled to have the increased amount of statutory good time credits retroactively applied in the instant case, but was only entitled to have the increased amount of credit applied starting July 1, 2007.<sup>7</sup> The Attorney General submitted appellant's time audit logs verifying that appellant has received the proper amount of credit pursuant to NRS 209.4465. In their response below, the Attorney General noted that the Department treats a "credit" the same as a "day." A review of the time audit logs further demonstrates that the Department treats a "credit" the same as a "day."

Finally, it appears that appellant mistakenly believed that credits earned or to be earned in the future were deducted from the projected expiration date rather than from the maximum sentence.<sup>8</sup> A

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<sup>5</sup>NRS 209.4465(1), (7), (8); see also 2007 Nev. Stat., ch. 525, § 21, at 3196.

<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>7</sup>NRS 209.4465(1), (7), (8); see also 2007 Nev. Stat., ch. 525, § 21, at 3196. We note that the documents before this court indicate that appellant discharged a sentence for conspiracy to commit a violent crime in 2006.

<sup>8</sup>The maximum sentence is the amount of time that must be served to discharge the sentence imposed by the district court. The maximum  
*continued on next page . . .*

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. 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.<sup>9</sup> The failure to earn 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.<sup>10</sup> In the instant case, appellant has not consistently worked; therefore, his projected expiration date would have been recalculated farther out each month that he failed to earn the maximum potential work time credits. In the instant case, the increase of statutory good time credits available July 1, 2007, would have been deducted from the maximum sentence and not the projected expiration date and a new projected expiration date would have been calculated.<sup>11</sup> Because appellant failed to demonstrate that he

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*... continued*

sentence may reduced by statutory good time, work time and other credits. See NRS 209.4465.

<sup>9</sup>See NRS 209.4465(7).

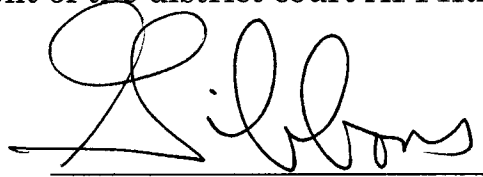
<sup>10</sup>A projected expiration date is only estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate.

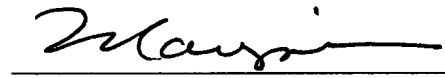
<sup>11</sup>However, as explained above, the new projected expiration date is not simply a deduction of 830 days from the old projected expiration date. The increased amount of credits will be deducted from the maximum sentence appellant must serve to discharge.

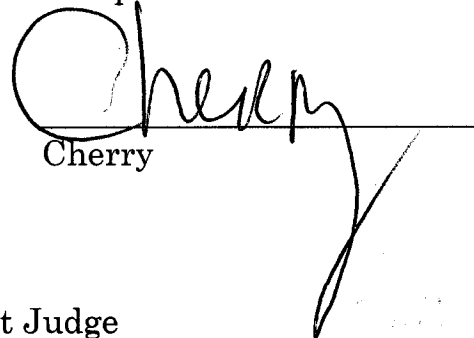
was entitled to additional credits, we affirm the order of the district court denying the petition.

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.<sup>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>13</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. John M. Iroz, District Judge  
Kevin Wellington  
Attorney General Catherine Cortez Masto/Carson City  
Pershing County Clerk

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<sup>12</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>13</sup>In light of this court's disposition, we deny appellant's motion and documents seeking the appointment of counsel in this appeal.