

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON SAMARI CHANEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51456

FILED

OCT 13 2008

TRACIE W. 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 motion for amended judgment of conviction to include jail time credit. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On March 14, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery and one count of possession of a stolen vehicle. The district court sentenced appellant to serve in the Nevada State Prison a term of 48 to 120 months for robbery and a concurrent term of 16 to 40 months for possession of a stolen vehicle. The district court imposed the term for the robbery count to run consecutively to the sentence in district court case number C120016. The district court provided appellant with 77 days of credit for time served. No direct appeal was taken.

On November 19, 2003, appellant filed a motion for an amended judgment of conviction to include credits. Appellant sought 46 days of credit. The State opposed the motion. The district court denied the motion. No appeal was taken.

On February 16, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 June 7, 2006, the district court denied appellant's petition. This court affirmed the order denying the petition.¹

On March 7, 2008, appellant filed a proper person motion for amended judgment of conviction to include jail time credit in the district court. The State opposed the motion. On May 22, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that he should receive 45 days of presentence confinement credit for time spent in custody from October 4, 2005 through November 15, 2005.

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 34.² Thus, appellant's motion should have been treated as a post-conviction petition for a writ of habeas corpus.

Appellant filed his motion almost twelve years after entry of the judgment of conviction. Thus, appellant's motion was untimely filed.³

¹Chaney v. State, Docket No. 47563 (Order of Affirmance, October 18, 2006).

²See Griffin v. State, 122 Nev. 737, 739, 137 P.3d 1165, 1166 (2006).

³See NRS 34.726(1).

Appellant's motion was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴ 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, we note that appellant's claim for presentence credit is nonsensical in the instant case. The period of time for which appellant sought presentence confinement, October 4, 2005 through November 15, 2005, occurred years after sentencing. To the extent that appellant claimed that the Department of Corrections was not properly computing his time served since he began serving his terms of imprisonment, that claim must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court for the county in which he is incarcerated.⁵

To the extent that appellant sought presentence confinement credit for the period of time he spent confined from October 4, 1995 through November 15, 1995, appellant's motion was successive as this claim was considered and rejected in his prior petition for a writ of habeas corpus.⁶ Appellant did not attempt to demonstrate good cause for relitigating this claim.⁷ Therefore, the motion was properly procedurally barred.

⁴See id.

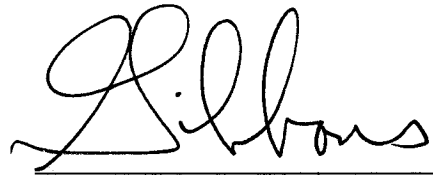
⁵See NRS 34.724(2)(c); NRS 34.738(1).

⁶See NRS 34.810(2).

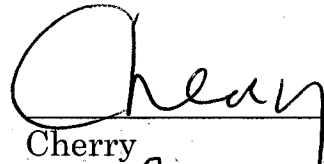
⁷See NRS 34.810(3).

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.⁸ Accordingly, we

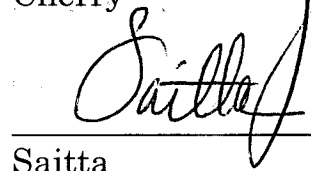
ORDER the judgment of the district court AFFIRMED.

 _____, C.J.

Gibbons

 _____, J.

Cherry

 _____, J.

Saitta

cc: Hon. Michelle Leavitt, District Judge
Damon Samari Chaney
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).