IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD G. BURT A/K/A RICHARD GLEN BURT,
Appellant,
vs.
WARDEN, LOVELOCK CORRECTIONAL CENTER, JACK PALMER,
Respondent.

No. 51497

FILED

AUG 29 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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; Richard Wagner, Judge.

On October 24, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in the Nevada State Prison. The district court provided appellant with 822 days of presentence credit for time served.

On December 18, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging the computation of time served, raising claims for additional credits, and raising a number of claims alleging the violation of various constitutional rights. 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 14, 2008, the district court denied the petition. This appeal followed.

Computation of Time Served Claim

In his petition, appellant claimed that the Nevada Department of Corrections (the Department) had denied him the proper amount of statutory good time, work time and meritorious credits. Appellant supported his petition with a document purportedly used by the Department labeled, "NDOC's Merit Credit System." The document contained a statement indicating that one credit was not equal to one 24-hour day. Thus, despite the fact that NRS 209.4465, prior to July 1, 2007, provided for 10 days of credit per month for statutory good time, 10 days of credit per month for work time, and various other credits for educational and meritorious endeavors, the Department used a mathematical formula of 1.667 to reduce 10 credits to "6 days off."[1] Appellant claimed that this alleged reduction of credits deprived him of a number of state and federal constitutional rights.[2]

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. First, the Attorney General stated below that the document relied upon by appellant was not authenticated and was not used by the Department. The Attorney General submitted appellant's time audit logs verifying that

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[1]Appellant primarily relied upon the version of NRS 209.4465 in effect prior to July 1, 2007. See 2003 Nev. Stat., ch. 426, § 8, at 2577-78.

[2]To the extent that appellant sought relief on behalf of other inmates, we conclude that the district court did not err in limiting its consideration of the petition to the claims as they impacted appellant only.

appellant's credits have not been reduced by any mathematical formula. A review of the time audit logs further demonstrates that the Department treats a "credit" the same as a "day." Therefore, appellant failed to demonstrate that he was entitled to additional credits based on his computation claim.

The document relied upon by appellant, which was not shown to be used or endorsed by the Department, is facially inaccurate as it contains misleading statements and assumptions relating to statutory good time, work time and meritorious credits. The document states:

> 1. By Nevada law, merit credits can only be applied against an inmate's maximum sentence, not the minimum. In other words, merit credits reduce a Mandatory Parole Release (MPR) date, but not a Parole Eligibility Date (PED).
>
> 2. One "merit credit" does not equal one 24-hour day. To figure exact value of merit credits in reducing a maximum sentence, divide # of merits credits by 1.667 then round it up to the next number.
>
> 10 credits = 6 days off

There are obvious problems with these statements as they relate to statutory credits earned pursuant to NRS chapter 209. First, pursuant to the version of NRS 209.4465 primarily relied upon by appellant in his petition, statutory good time, work time and meritorious credits were to be deducted from the maximum sentence and applied to eligibility for parole unless the offender was sentenced pursuant to a statute which specified a minimum sentence that must be served before a person becomes eligible

for parole.[3] Second, the conclusion that "10 credits = 6 days off" is an incorrect mathematical expression of the data. Rather, based upon an inmate earning a potential maximum of 1.667 credits for each day served in the Department's custody, an inmate will have accrued 10 credits, or 10 days to be deducted, after serving only 6 days in the Department's custody.[4] There is simply no support for the statement that one credit is anything less than a 24-hour day. The time audit of appellant's credits amply demonstrated this point.

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[3]See 2003 Nev. Stat., ch. 426, § 8, at 2577-78. We note that the legislature has since amended NRS 209.4465 to increase the amount of statutory good time credits and to allow the credits earned pursuant to NRS 209.4465 to be deducted from the minimum and maximum terms for certain offenders. See 2007 Nev. Stat., ch. 525, § 5, at 3176-77. Appellant was ineligible to have statutory credits applied to reduce the minimum term below the statutory threshold because he was convicted of voluntary manslaughter, a crime punishable as a Category B felony and involving force or violence against the victim. See NRS 209.4465(8)(a), (d); see also NRS 200.080. The record on appeal indicates that beginning July 1, 2007, appellant began to receive 20 days of statutory good time credits per month.

[4]Mathematically, this calculation is expressed as:

6 (days) x 1.667 (the amount of credits earned each day) = 10 credits or 10 days.

The amount of credits earned each day, 1.667, was reached by taking the potential maximum of flat, statutory good time and work time credits earned by an inmate in a one month period (30 + 10 + 10 = 50) and dividing that sum by the number of days in the month (30) for a daily credit earning rate of 1.667. With the amendments to NRS 209.4465, the potential maximum daily credit earning rate as of July 1, 2007, was increased to 2.334.

Finally, to the extent that appellant claimed that he should receive 20 days of credit retroactive to the effective date of the amendments of NRS 209.4465, appellant's claim was patently without merit. The legislature specifically provided that the increased amount of credits would not apply retroactively to an offender in appellant's position—an offender who has committed a Category B felony and a crime involving the use or threat of force or violence against the victim.[5] Appellant failed to demonstrate that different treatment based upon his status as a Category B felon and violent offender violated his equal protection rights.[6] Therefore, we conclude that the district court did not err in denying appellant's computation of time served claim and his claim that his constitutional rights were violated by the Department's manner of computation of time served.

Claim for Additional Credits

Next, appellant claimed that he was entitled to additional credits as follows: (1) statutory good time credits for presentence confinement in the Clark County Detention Center; (2) work time credit for periods when he was unemployed or not engaged in study when there were no opportunities available to him for work or study; (3) good time credit for the time he was on institutional parole from the sentence for the primary offense of voluntary manslaughter with the use of a deadly

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[5]See 2007 Nev. Stat., ch. 525, § 5, 21, at 3177, 3196.

[6]See Armijo v. State, 111 Nev. 1303, 904 P.2d 1028 (1995); see also Plyler v. Doe, 457 U.S. 202 (1982). To the extent that appellant claimed that these exclusions were required to be submitted to a jury, appellant's claim was patently without merit.

weapon; (4) statutory credits for completion of a program of treatment for the abuse of alcohol or drugs pursuant to NRS 209.448 for his participation in Inside Straight and Alcoholics and Narcotics Anonymous; (5) credit pursuant to NRS 209.449 for vocational, education and training for his completion of Life Skills Program, Inside Straights, Anger Management and Tolerance, Inside Straights (narcotics anonymous), Survival Skills, Microsoft Works 2000, Keyboarding, Word I, Word II, 006 Business Certificate #1, Domestic Violence, Parenting, Life Science; (6) credits for a high school diploma; and (7) credit for 4 additional programs that he did not get certificates after completion.

Appellant failed to demonstrate that he was entitled to any additional credits in the instant case. Appellant's claims were not supported by specific factual allegations demonstrating an entitlement to additional credits.[7] Notably, appellant failed to set forth the specific number of credits he should have received for each of the areas identified above. Appellant further failed to set forth dates regarding the duration of confinement at question or dates relating to periods of work or study during which he was "unemployed" and received no credit. Appellant further failed to identify the 4 additional programs for which he did not get certificates for completion. The Attorney General submitted appellant's time audit log below and the log indicated that appellant received credit for a high school diploma and a business certificate. The Attorney General also submitted an affidavit from the Education Coordinator that appellant was not entitled to separate credit for

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[7]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Microsoft Works 2000, Keyboarding, Word I, Word II and Life Science as these courses were part of the coursework for the business certificate and the high school diploma. The Attorney General also submitted documents indicating that the remaining coursework identified by appellant did not qualify for credits pursuant to NRS 209.448 and NRS 209.449. Therefore, we conclude that the district court did not err in denying appellant's claim for additional credits.

Additional Claims

Appellant raised a number of additional claims in his petition: (1) the Department has not properly classified his security level; (2) prison officials treat prisoners inhumanely and appellant sought prosecution of these officials and a writ of mandamus preventing officials from further harassment, oppression, threats or other inappropriate conduct directed against him for exercising his rights; (3) a writ of mandamus should issue to expunge his inmate file; (4) a writ of prohibition should issue to prevent prison officials from "door calls" during tier time which are used to harass prisoners and heighten tensions at the prison; (5) a writ of mandamus should issue to require respondents to supply appellant with copies of an administrative regulation and institutional policy relating to cell searches; (6) the Department should not be allowed to fly the American flag in Unit 5 based upon the violation of his rights and the conduct of the prison officials would be treason against the United States of America if any other persons engaged in such conduct; (7) subpoenas should be issued to the Director and the timekeeper; and (8) prisoners across the State were denied constitutional rights because of the conditions of confinement.

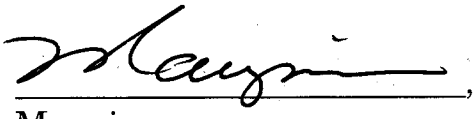
Because these claims challenge the conditions of confinement or allege violations of civil rights, they were inappropriately raised in the

petition for a writ of habeas corpus.[8] Therefore, the district court did not err in denying habeas corpus relief on these claims.

Conclusion

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.[9] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[10]



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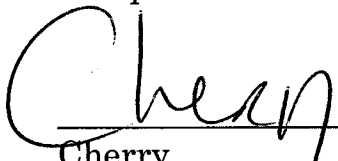
Maupin



_____, J.
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[8]Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).

[9]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[10]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Richard Wagner, District Judge
Richard G. Burt
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk