IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY LOGAN JONES,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON, BILL DONAT, AND THE STATE OF NEVADA,
Respondents.

No. 51565

FILED

NOV 21 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 petition for a writ of habeas corpus. First Judicial District Court, Carson City; William A. Maddox, Judge.

On January 29, 1988, the district court convicted appellant, pursuant to a guilty plea, of sexual assault with the use of a deadly weapon and robbery with the use of a deadly weapon. The district court sentenced appellant to serve two equal and consecutive terms of life in the Nevada State Prison with the possibility of parole for the sexual assault count and two equal and consecutive terms of fifteen years for the robbery count, to be served consecutively to the sentences imposed for the sexual assault count. Appellant did not file a direct appeal, but made several unsuccessful attempts at post-conviction relief.[1]

[1]See Jones v. State, Docket No. 36003 (Order of Affirmance, December 5, 2001); Jones v. State, Docket Nos. 30596, 32520 (Order Dismissing Appeals, September 24, 1999); Jones v. State, Docket No. 20681 (Order Dismissing Appeal, February 20, 1990).

08-29872

On January 15, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 10, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the Nevada Department of Corrections improperly calculated his good time credits for the primary offenses and the deadly weapon enhancements based on separate sentences rather than one sentence, thereby applying this court's holding in Nevada Dep't Prisons v. Bowen[2] retroactively and to his detriment. Appellant appeared to contend that prison officials should consider his sentence for the primary offense and his sentence for the deadly weapon enhancement as a single sentence for the purpose of computing good time credits.

In Biffath v. Warden[3] and Director, Prisons v. Biffath,[4] this court held that a sentence for a primary offense and an enhancement sentence must be treated as one continuous sentence for the purposes of computing good time credits and parole eligibility. In 1987, those decisions were overruled in Bowen.[5] In Bowen, we concluded that the

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[2]103 Nev. 477, 745 P.2d 697 (1987).

[3]95 Nev. 260, 593 P.2d 51 (1979), overruled by Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987).

[4]97 Nev. 18, 621 P.2d 1113 (1981), overruled by Bowen, 103 Nev. 477, 745 P.2d 697.

[5]103 Nev. at 481, 745 P.2d at 699-700.

primary and enhancement sentences must be treated as separate sentences for all purposes.[6] Because our decision in Bowen was not foreseeable, we directed that the opinion "be applied retroactively to the extent possible, but in no case shall this opinion be applied to the detriment of any prisoner sentenced before the date hereof."[7] In Stevens v. Warden, this court reaffirmed the principle that Bowen should not be applied retroactively to the detriment of a prisoner who committed his or her offense prior to this court's decision in Bowen.[8]

Our review of the record on appeal reveals that appellant's claim lacked merit. Preliminarily, we note that appellant failed to provide any explanation for his 20 year delay in filing the instant petition and appears to have acquiesced to the Department's treatment of his sentences. More importantly, appellant failed to establish that he was prejudiced by the application of Bowen to his case or that Bowen had even been applied. Appellant simply failed to provide any facts in his petition to indicate whether or not the application of Bowen would be to his detriment. Thus, appellant failed to support his claim with sufficient factual allegations which, if true, would have entitled him to relief.[9] Therefore, the district court did not err in denying appellant's claim.

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[6]Id.

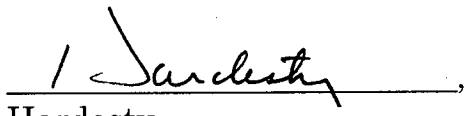
[7]Id. at 481 n.4, 745 P.2d at 700 n.4.

[8]Stevens v. Warden, 114 Nev. 1217, 1221-23, 969 P.2d 945, 948-49 (1998).

[9]Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[11]



_____, J.
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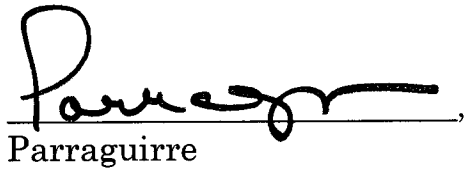
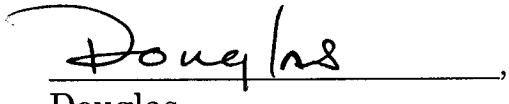


_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. William A. Maddox, District Judge
Jeffrey Logan Jones
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk

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

[11]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.