IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC CRAIG CHILDRESS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 51395
ERIC CRAIG CHILDRESS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 51869

FILED

SEP 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 51395 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Docket No. 51869 is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Stewart L. Bell, Judges. We elect to consolidate these appeals for disposition.[1]

[1]See NRAP 3(b).

On April 12, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and one count of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of 60 to 180 months in the Nevada State Prison. No direct appeal was taken.

On December 27, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On March 14, 2007, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.[2]

Docket No. 51395

On November 27, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed a response. 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 March 7, 2008, the district court denied the petition. This appeal followed.

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[2]Childress v. State, Docket No. 49199 (Order of Affirmance, September 25, 2007).

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.

First, appellant claimed that the Department improperly reduced the amount of credit earned pursuant to NRS 209.4465. Appellant supported this claim 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."[3] Appellant claimed that this alleged reduction of credits deprived him of a number of state and federal constitutional rights.

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. Appellant

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[3]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.

submitted a time audit log verifying that 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.[4] 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.[5] There is simply no support for the statement that one credit is

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[4]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 adjudicated and sentenced as a small habitual criminal—a Category B felony. See NRS 209.4465(8)(d); see also NRS 207.010(1)(a). The record on appeal indicates that beginning July 1, 2007, appellant began to receive 20 days of statutory good time credits per month.

[5]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

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anything less than a 24-hour day. The time audit of appellant's credits amply demonstrated this point.

Next, appellant appeared to claim that he should receive 20 days of credit per month retroactive to the effective date of the amendments of NRS 209.4465. Appellant's claim was 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.[6]

Finally, appellant appeared to claim that he should receive 20 days of credit per month for the length of the sentence imposed by the district court and not just the actual time served. Appellant's claim was without merit. NRS 209.4465(1)(a) only provides for the earning of statutory good time credit "for the period of time [a prisoner] is actually incarcerated pursuant to his sentence." Statutory credits earned pursuant to NRS 209.4465, good time and work and other credits, are deducted from the maximum sentence. The maximum sentence is the amount of time in days that must be served to discharge the sentence imposed by the district

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potential maximum daily credit earning rate as of July 1, 2007, was increased to 2.334.

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

court. The Department projects an expiration date when an inmate begins serving a particular sentence, and the 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.[7] 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.[8] 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.[9] Appellant failed to demonstrate any error on the part of the Department in this regard.

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[7]The projected expiration date also includes "the retro date" or the date that the sentence is said to have begun based upon the award of credit for time served.

[8]See NRS 209.4465(7).

[9]A projected expiration date is only an estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate. It is not that an inmate is serving additional time by the failure to earn the potential maximum statutory credits, but rather the inmate simply serves the lawfully imposed sentence without benefit of the potential maximum statutory credits reducing the maximum sentence to be served.

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Thus, we conclude that the district court did not err in denying appellant's computation of time served claims and his claim that his constitutional rights were violated by the Department's manner of computation of time served, and we affirm the order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

Docket No. 51869

On May 27, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 25, 2008, the district court denied appellant's motion. This appeal followed.

. . . continued

When statutorily-earned credits are applied to the maximum sentence, those credits may actually reduce the number of months to be served; thus, the assumption in calculating the projected expiration date about the number of statutory and work time credits to be earned in the future will no longer be correct because an inmate cannot earn statutory and work time credits for time he is not actually incarcerated. For example, if an inmate earns 90 days of meritorious credits, when those credits are subtracted from the maximum sentence, the inmate will have 3 fewer months of actual incarceration (3 months x 30 days = 90 days). Because the original/earlier projected expiration date already had the prisoner earning statutory good time and work time credits for those 3 months, the projected expiration date will have to be recalculated to exclude credits for those months that will no longer be served.

In his motion, appellant contended that the district court lacked jurisdiction to adjudicate him as a habitual criminal because the State failed to file an amended information charging him as a habitual criminal.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.[10] "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"[11]

Our review of the record on appeal reveals that the district court did not err in denying the motion. The State filed an information on December 15, 2005, which, among other things, provided notice that the State was seeking habitual criminal treatment. This document satisfied the requirements of NRS 207.010 in the instant case.[12] Thus, appellant's sentence was facially legal, and appellant failed to demonstrate that the

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[10]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

[11]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

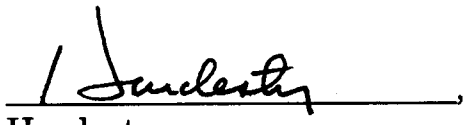
[12]NRS 207.010(2); NRS 207.016(2).

district court was without jurisdiction in this matter.[13] Therefore, we affirm the order of the district court denying the motion.

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.[14] Accordingly, we

ORDER the judgments of the district court AFFIRMED.

 , J.
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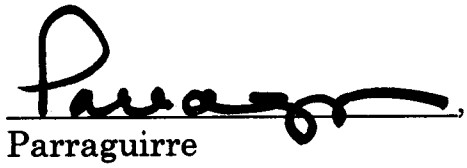
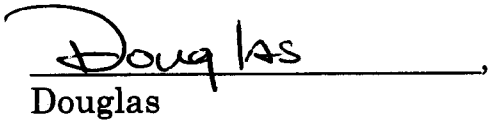
 , J.
Parraguirre

 , J.
Douglas

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[13]NRS 207.010(1)(a).

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

cc: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Hon. Stewart L. Bell, District Judge
Eric Craig Childress
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Clark County District Attorney David J. Roger
Eighth District Court Clerk