

IN THE SUPREME COURT OF THE STATE OF NEVADA

SYLVANIS JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51911

SYLVANIS JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52176

FILED

NOV 21 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 1, 1976, the district court convicted appellant, pursuant to a jury verdict, of one count of rape and one count of first degree kidnapping. The district court sentenced appellant to serve a term of 40 years for the rape count and a concurrent term of 40 years for the kidnapping count.

Docket No. 51911

On August 2, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a number of supplements in the district court. The State opposed the petition. On April 29, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections (the Department) improperly calculated his credit. Appellant provided his own set of calculations and asserted that based upon his calculations he had expired his sentence.

The district court denied the petition as appellant had failed to demonstrate that the Department improperly calculated his credit. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's claim for additional credit. The State provided a copy of appellant's time audit log indicating that appellant received the appropriate amount of credits during periods of incarceration and parole.¹ Appellant failed to demonstrate that he was entitled to any additional credits. Notably, appellant's calculations were flawed in that he created separate categories of credit for "stat" and "good" credits and "flat" and "day for day" credits and essentially double-counted his credits for statutory good time credits earned pursuant to NRS 209.443 and flat-time credits.² Contrary to his calculations, an inmate does not earn work credits simply by his incarceration, but rather, an inmate in appellant's position earns work credits as set forth in NRS 209.443. Appellant failed to demonstrate that he was entitled to any additional work credits. Finally, appellant failed to demonstrate that he was entitled to credit for a high school diploma as he failed to demonstrate that he

¹NRS 209.443; NRS 209.4475.

²Flat-time credit encompasses the days actually served by an offender.

qualified for this credit.³ Therefore, we affirm the order of the district court denying the petition.

Docket No. 52176

On May 30, 2008, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. On July 17, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant again raised the same claims challenging the calculation of his credits as were raised in the August 2007 petition.

Appellant's petition was successive as it was the second petition raising the same claims challenging calculation of credits.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁵

In an attempt to demonstrate good cause for his procedural defect, appellant argued that he was not present for the denial of his first petition and his presence was required to explain the error in calculation. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause for his successive petition. Appellant failed to demonstrate that an impediment external to the defense prevented him

³NRS 209.443(3)(b).

⁴NRS 34.810(2).

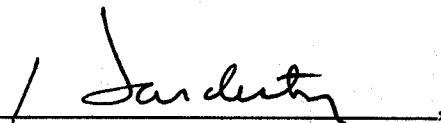
⁵NRS 34.810(3).

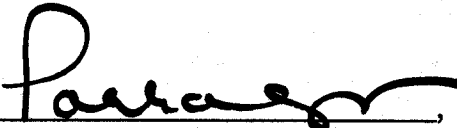
from fully litigating his calculation claims in the first petition in the written pleadings.⁶ Therefore, we affirm the order of the district court.

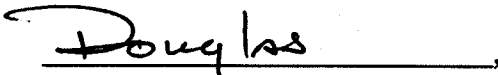
Conclusion

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.⁷ Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁸


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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. Lee A. Gates, District Judge
Sylvanis Jackson
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk