

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN A. HENRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52490

**FILED**

FEB 04 2009

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

ORDER OF AFFIRMANCE AND DISMISSING APPEAL IN PART

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus and a purported decision denying a motion for amended judgment of conviction for additional presentence credits. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On September 25, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault on a minor under the age of fourteen. The district court sentenced appellant to serve a term of 24 to 120 months in the Nevada State Prison. The district court provided appellant with 236 days of credit for time served. No direct appeal was taken.

On June 19, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging statutory credits and the computation of time served. The State filed a motion to dismiss the petition. On August 7, 2008, appellant filed a motion for amended judgment of conviction for additional presentence credits. On August 11, 2008, appellant filed a motion for leave to file an amended petition to cure the defects in the original

petition, namely the form of the petition and the service of the petition on the proper parties. On August 22, 2008, the State filed a response to the motion for an amended judgment of conviction indicating that appellant was entitled to additional presentence credits. On August 25, 2008, the district court conducted a hearing and determined that appellant was entitled to 448 days of additional credit for time served and that an amended judgment of conviction should be prepared. On October 7, 2008, the district court entered an order dismissing the habeas corpus petition. Appellant filed a notice of appeal from the order dismissing the habeas corpus petition and a second notice of appeal from a purported order denying the motion to amend the judgment of conviction. Both notices of appeal were docketed in this matter.

Post-Conviction Petition for a Writ of Habeas Corpus

In his petition, appellant claimed that the Nevada Department of Corrections (the Department) incorrectly calculated his statutory good time, work time, and meritorious credits. Appellant claimed that he should have received 20 days of statutory good time credit per month pursuant to NRS 209.4465 for a total of 850 days of statutory good time credits. Appellant further claimed that he should receive 10 days of work credit per month for a total of 600 days of credits. Appellant appeared to claim that the failure of the prison to provide enough jobs deprived him of earning work credits and that the Department applied a mathematical formula to reduce days to credits. Finally, appellant appeared to claim that he was entitled to additional meritorious credits.

The district court dismissed the petition because the petition had been filed in the original criminal case. The district court further noted the petition was not in the proper form and appellant failed to serve

a copy on the Attorney General and the Warden. Finally, the district court noted the petition was without merit.

We conclude that the district court erred in determining the petition was procedurally defective. First, the errors identified by the district court were curable defects and did not necessitate the dismissal of the petition with prejudice. See Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004). The filing of the petition in the original criminal case appears to be a filing issue for the district court clerk's office.<sup>1</sup> Appellant did in fact cure several of the defects in the original filing with his amended petition, which was filed in the district court prior to the district court's resolution of the petition. Regardless of this error, we affirm the order of the district court because the district court correctly determined that the petition was without merit.

Appellant failed to demonstrate that he was entitled to any additional statutory credits in the instant case. Appellant's claims for additional relief were bare and naked claims lacking specific facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Further, the credit history log provided by appellant amply demonstrated that the Department treats the credits earned pursuant to NRS 209.4465 as "days" and did not reduce the credits by any mathematical formula. The credit history log indicated appellant received statutory good time credits in compliance with NRS 209.4465. The credit history log further indicated that appellant received statutory work credits during his incarceration in

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<sup>1</sup>Even if a petitioner designated a criminal case number on the face of his petition, nothing would prevent the clerk of the district court from filing the petition as a separate action.

the instant case, and appellant failed to demonstrate that he was entitled to any additional work credits. To the extent that appellant complained that the prison did not provide an adequate number of jobs, that complaint is a challenge to the conditions of confinement, which is not cognizable in a petition for a writ of habeas corpus. Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).

Motion for Amended Judgment of Conviction for Additional Presentence Credits

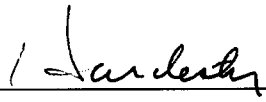
In his motion, appellant claimed that he was entitled to 236 days of presentence credits for time spent in custody from January 9, 2004 through August 25, 2004. In responding to the motion, the State noted that appellant already received the credits he identified, but that he was entitled to additional presentence credits for the time spent in custody from October 9, 2002 through December 31, 2003. The district court determined that appellant was entitled to additional presentence credits in the amount of 448 days. Because the district court granted the motion, appellant was not an aggrieved party, and thus, this court lacks jurisdiction over this portion of the appeal.<sup>2</sup>


Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

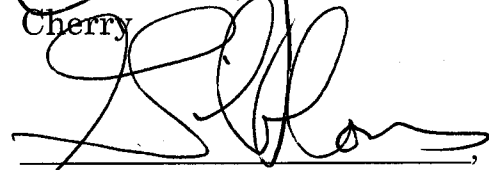
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<sup>2</sup>We note that subsequent to the filing of the record on appeal in this court, the district court entered an amended judgment of conviction on November 3, 2008 in the district court.

ORDER the judgment of the district court AFFIRMED and,  
DISMISSED IN PART.

  
\_\_\_\_\_, C.J.  
Hardesty

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. David B. Barker, District Judge  
Kevin A. Henry  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk