

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORMAN SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52570

**FILED**

FEB 04 2009

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 mandamus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 16, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of seven and one-half years in the Nevada State Prison. The district court provided appellant with 98 days of credit for time served.

On July 2, 2008, appellant filed a proper person petition for a writ of mandamus in the district court. The State opposed the petition. On August 18, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Department of Corrections failed to correctly structure his sentences and compute his credits. Appellant noted that the district court had previously determined

his sentences were to be considered as one sentence for purposes of determining credits and parole eligibility. See Director, Prisons v. Biffath, 97 Nev. 18, 621 P.2d 1113 (1981); Biffath v. Warden, 95 Nev. 260, 593 P.2d 51 (1979) overruled by Nevada Dep't. of Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987). Appellant appeared to claim that his sentences were still not computed correctly.

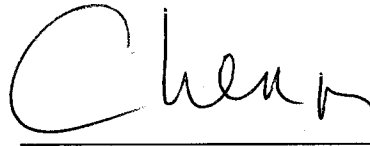
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170.

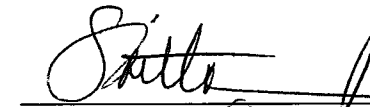
The district court determined that the claims raised lacked specific factual support. While we agree with the district court's assessment of the claims, we note that the claims for relief were improperly sought in a petition for a writ of mandamus. NRS 34.724(2)(c) provides that a post-conviction petition for a writ of habeas corpus is the only remedy available to challenge the computation of time served. Thus, appellant had a plain, speedy and adequate remedy in the ordinary course of law to challenge his claim regarding the computation of time served. Therefore, we affirm the order of the district court as the district court reached the correct result in denying the petition.

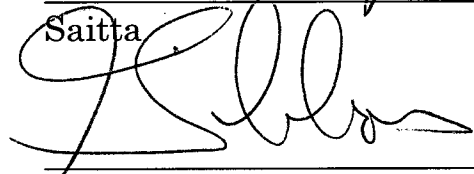
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Saitta

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

cc: Eighth Judicial District Court Dept. 8, District Judge  
Norman Smith  
Attorney General Catherine Cortez Masto/Carson City  
Eighth District Court Clerk