

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52642

FILED

JUN 25 2009

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF 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. First Judicial District Court, Carson City; James Todd Russell, Judge.

On June 5, 2008, appellant filed a proper person petition for a writ of mandamus in the district court challenging the computation of time served. The State filed a motion to dismiss the petition, and appellant filed a response. The State filed a supplement to the motion to dismiss. On July 30, 2008, the district court denied the petition. This appeal followed.

Appellant, incarcerated pursuant to a 1998 judgment of conviction, challenged the computation of time served. Specifically, appellant argued that pursuant to NRS 209.4465 he should have received 20 days of statutory good time credit each month instead of the 10 days each month he received.

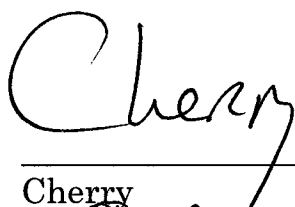
Preliminarily, we determine that appellant improperly sought relief by way of a petition for a writ of mandamus. A writ of mandamus will not lie where the petitioner has an adequate legal remedy. NRS 34.170. NRS 34.724(2)(c) provides that a post-conviction petition for a writ of habeas corpus “[i]s the only remedy available to an incarcerated


person to challenge the computation of time that he has served pursuant to a judgment of conviction.” Because appellant challenged the computation of time served, appellant’s petition must be treated solely as a post-conviction petition for a writ of habeas corpus.

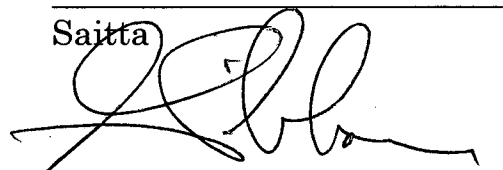
Appellant’s claim for relief was patently without merit. The documents before this court indicate that the offense that was the subject of the 1998 judgment of conviction was committed in February 1996. The provisions of NRS 209.4465, however, only apply to prisoners whose offenses occurred after July 17, 1997. The documents before this court indicate that appellant received the proper amount of credit pursuant to NRS 209.446, the applicable statute for a prisoner whose crime was committed after July 1, 1985, but before July 17, 1997. Therefore, we affirm the order of the district court 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: Hon. James Todd Russell, District Judge
Victor Diaz
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk