

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34767

FILED

JUL 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *Richard*
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 habeas corpus.

We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court properly denied appellant's petition. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

Young

Young J.

Leavitt

Leavitt J.

Becker

Becker J.

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
Joel Burkett
Clark County Clerk

¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

ORIGINAL

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2 FRANKIE SUE DEL PAPA
3 Attorney General
4 By: RENE L. HULSE
5 Deputy Attorney General
6 Nevada Bar No. 3778
7 Criminal Justice Division
8 555 E. Washington Ave., #3900
9 Las Vegas, Nevada 89101
10 (702) 486-3420
11 Attorneys for Respondent

FILED

AUG 18 10 45 AM '99

Shirley M. Hargrave
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

10 JOEL BURKETT,)
11 Petitioner,)
12 vs.)
13 THE STATE OF NEVADA)
14 Respondents.)

Case No. 81-C-052190-C
Dept. No. III

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE: August 12, 1999
TIME: 8:30 a.m.

20 JOEL BURKETT's (BURKETT) Petition for a Writ of Habeas Corpus came on for hearing on the
21 12th day of August, 1999. BURKETT, in proper person, was not present being in the custody of the
22 Nevada Department of Prisons and incarcerated in the New Mexico Prison System. Respondents were
23 represented by and through its legal counsel, Attorney General FRANKIE SUE DEL PAPA, by Deputy
24 Attorney General Rene L. Hulse. Upon reviewing the Petition, the pleadings and papers on file herein,
and considering argument of counsel, the Court finds and concludes as follows:

25 1. On May 4, 1981, a jury found BURKETT guilty of the crimes of ROBBERY WITH
26 THE USE OF A DEADLY WEAPON, Count I; FIRST DEGREE KIDNAPPING WITH USE OF A
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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

COUNTY CLERK

AUG 18 1999

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1 DEADLY WEAPON, Count II; SEXUAL ASSAULT, Count III; and SEXUAL ASSAULT, Count IV.
2 2. The original Judgment of Conviction was filed on July 29, 1981. That original
3 Judgment of Conviction incorrectly ordered that the sentences in Counts III and IV were to be served
4 concurrently to the sentences imposed in Counts I and II. By operation of law (NRS 176.035), the
5 sentences in Counts III and IV would have incorrectly computed as concurrent to each other by the
6 prison system.
7 3. On February 28, 1994, an Amended Judgment of Conviction was filed. The Amended
8 Judgment of Conviction correctly states the sentences as orally stated by the district court — that
9 Counts III and IV are to be served consecutive to each other, but are also to be served concurrently with
10 the sentences imposed in Count II.
11 4. BURKETT claims that NDOP's separate treatment of his consecutive life sentences
12 under Count II, one of which is a deadly weapon enhancement, pursuant to Nevada Department of
13 Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1997), violates the ex post facto clause.
14 5. When BURKETT was convicted on July 29, 1981, weapon-enhanced sentences were
15 treated as one combined sentence pursuant to Director, Nevada Department of Prisons v. Biffath, 97 Nev.
16 18 (1981).
17 6. In 1987, NDOP began treating weapon-enhanced sentences as separate sentences pursuant
18 to Nevada Department of Prisons v. Bowen, 103 Nev. 477, 481, 745 P.2d 697 (1987). Bowen was applied
19 retroactively unless it would be detrimental to a prisoner. Id. 103 Nev. at 481, n.4.
20 7. BURKETT's separate sentence of life with the possibility of parole for First Degree
21 Kidnapping (Count II) has a minimum parole eligibility of five (5) years. BURKETT, who committed
22 his crime before July 1, 1985, and who was sentenced after June 30, 1969, accumulates good time
23 credits as set forth in NRS 209.443. Under Demosthenes v. Williams, et al., 97 Nev. 611, 614-15, 637
24 P.2d 1203 (1981), and prior to the amendment of NRS 209.443, good time credits apply to "the parole
25 eligibility of all inmates entitled to eventual parole, regardless of the minimum sentence specified in the
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1 relevant statute.” BURKETT’s accumulated good time credits are deducted from his five (5) year
2 minimum sentences to determine his parole eligibility.

3 8. BURKETT argues that he would accumulate good time credits more rapidly if his
4 consecutive life sentences under Count II are combined to one ten (10) year minimum term, and
5 therefore the retroactive application of Bowen (requiring separate treatment) is detrimental.

6 9. As the Amended Judgment of Conviction states, however, the consecutive life sentences
7 imposed in Counts III and IV are to run concurrently with the consecutive life sentences imposed in
8 Count II. The consecutive life sentences imposed on Counts III and IV cannot be combined. The
9 consecutive life sentences of Counts III and IV must be served before ultimate parole could be obtained.
10 Treating the consecutive life sentences of Count II separately is not detrimental to BURKETT, because
11 the sentences under Count II are necessarily restricted by the consecutive separate sentences of Counts
12 III and IV that run concurrently with Count II. BURKETT is not entitled to relief on this claim.

13 10. BURKETT also argues that his due process rights were violated when the parole board
14 failed to consider him for parole in 1997.

15 11. BURKETT is being housed out of state in the New Mexico Prison System under the
16 Interstate Corrections Compact. During his absence, the Parole Board held a parole hearing on April
17 30, 1997, to consider BURKETT for parole. BURKETT was denied parole for one more year and was
18 notified of the Parole Board’s decision by letter dated May 15, 1997. BURKETT clearly received a
19 parole hearing in 1997, and there is no merit to this claim.

20 12. In addition, there is no constitutional or inherent right of a convicted person to be
21 conditionally released before the expiration of a valid sentence, and a reasonable entitlement to due
22 process is not created merely because a state provides for the possibility of parole. Greenholtz v.
23 Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 11 (1979). An inmate has no
24 protectible expectation of parole unless a statute is phrased to specifically created a real expectation of
25 parole as opposed to a unilateral hope for parole. Id. at 12; Severance v. Armstrong, 96 Nev. 836, 839,
26 620 P.2d 369, 370 (1980). The Nevada parole statutes do not create a liberty interest in being granted

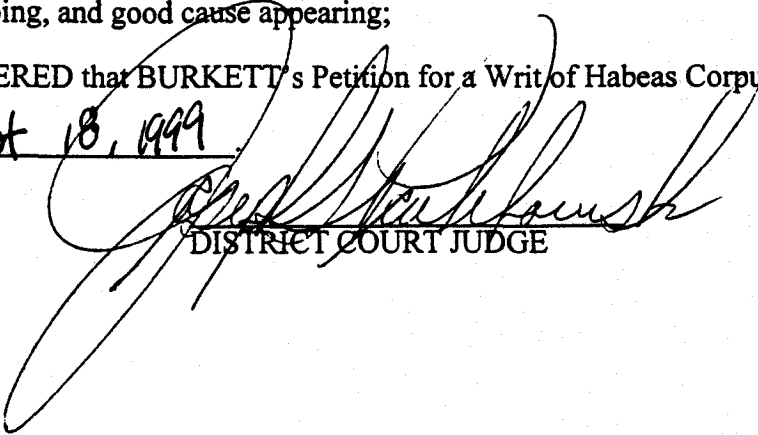
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1 parole. Severance, 96 Nev. at 839, 620 P.2d at 370; Weakland v. Board of Parole Comm'rs., 100 Nev.
2 218, 219-20, 678 P.2d 1158 (1984). BURKETT is not entitled to relief on due process grounds.

3 Based upon the foregoing, and good cause appearing;

4 IT IS HEREBY ORDERED that BURKETT's Petition for a Writ of Habeas Corpus is denied.

5 DATED: August 18, 1999



DISTRICT COURT JUDGE

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10 Submitted this 12th day of August, 1999, by:

11 FRANKIE SUE DEL PAPA
12 Attorney General

13
14 By: Rene L. Hulse
15 RENE L. HULSE
16 Nevada Bar No. 3778
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