

IN THE SUPREME COURT OF THE STATE OF NEVADA

DON M. SAVAGE,
Appellant,
vs.
NEVADA BOARD OF
COMMISSIONERS,
Respondent.

No. 52757

FILED

MAR 03 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 post-conviction petition for a writ of habeas corpus, or alternatively, a writ of mandamus challenging the computation of time served. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

On June 20, 2007, the district court convicted appellant of one count of possession of a stolen vehicle in district court case number C225638 and sentenced appellant to serve a term of 12 to 36 months. The district court provided appellant with 193 days of credit for time served.

On June 25, 2007, the district court convicted appellant of one count of burglary in district court case number C227849 and sentenced appellant to serve a term of 48 to 120 months. The district court provided appellant with 189 days of credit for time served.

On July 6, 2007, the district court convicted appellant of one count of possession of stolen property in district court case number C228987 and sentenced appellant to serve a term of 48 to 120 months. The district court ordered this sentence to run consecutively to the

sentence imposed in district court case number C225638 and concurrently with the sentence imposed in district court case number C227849. No credit for time served was provided.

On July 19, 2007, the district court convicted appellant of one count of grand larceny in district court case number C230528 and sentenced appellant to serve a term of 12 to 48 months. The district court provided appellant with 90 days of credit for time served and ordered this term to run concurrently with all other terms.

On August 9, 2007, the district court convicted appellant of one count of grand larceny in district court case number C235423 and sentenced appellant to serve a term of 48 to 120 months. The district court provided appellant with 57 days of credit for time served.

On May 2, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus, or alternatively, a writ of mandamus in the district court. The State opposed the petition, and appellant filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On October 23, 2008, the district court denied the petition. This appeal filed.

In his petition, appellant claimed that he was eligible for parole on the sentence imposed in district court case number C225638, but the Parole Board had not provided him with a hearing and he was not provided with a parole application. Appellant claimed that his ineligibility was based upon the improper structuring of his sentences.

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.

The district court concluded that the parole dates and time periods had been calculated correctly. Based upon our review of the record on appeal, we conclude that the district court did not err. NRS 176.035 provides that where a district court is silent regarding the imposition of concurrent or consecutive terms, all subsequent sentences run concurrently with the prior sentences. NRS 213.1213, governing the sentence structure when concurrent sentences are imposed, provides:

If a prisoner is sentenced . . . to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics, eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.

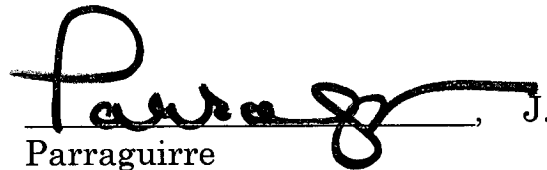
Applying NRS 176.035 and NRS 213.1213 to appellant’s five judgments of conviction, the first level of the sentence structure is as follows: 12 to 36 months (C225638), 48 to 120 months (C227849), 12 to 48 months (C230528), 48 to 120 months (C235423).¹ Because the term of 48 to 120

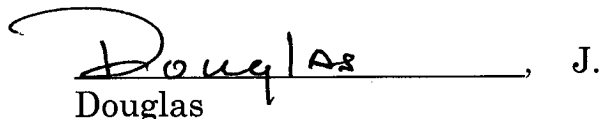
¹A level within a sentence structure refers to those terms a prisoner must either discharge from or parole from in order to begin serving the next sentence. The terms for the four judgments of conviction set forth above run concurrently to one another.

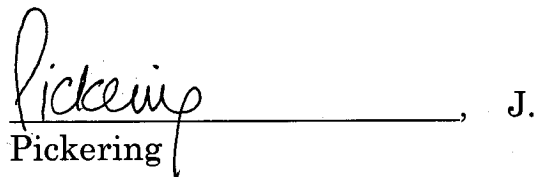
months requires the longest period before appellant is eligible for parole, a 48 to 120 month term is the controlling term for the first level of the sentence structure. The second level of the sentence structure is a consecutive term of 48 to 120 months pursuant to the judgment of conviction in district court case number C228987. Appellant has not been denied timely parole consideration, and thus, we conclude that the district court did not err 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.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Richard Wagner, District Judge
Don M. Savage
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk