

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ALEXANDER,  
Appellant,  
vs.  
WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, JIM  
BENEDETTI; HOWARD SKOLNIK,  
DIRECTOR; AND NEVADA  
DEPARTMENT OF CORRECTIONS,  
Respondents.

No. 52763

**FILED**

**AUG 25 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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; William A. Maddox, Judge.

On July 23, 2008, appellant filed a proper person petition for a writ of mandamus in the district court. The State filed a motion to dismiss the petition, to which appellant filed a response. On September 24, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections (NDOC) failed to properly apply and calculate his work and meritorious credits earned pursuant to NRS 209.4465 in violation of various constitutional rights. Specifically, appellant claimed that he only received 15 credits each for completion of courses on anger management, emotions management and domestic violence when he should have received 30 credits for the completion of each course. Appellant claimed that he should receive 134 additional days of work

credits. Finally, appellant claimed that only half the credits he earned were actually applied to the projected expiration date; thus, he claimed that there was a calculation error relating to the expiration date.<sup>1</sup>

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.

In addition to denying relief on the merits of the claims, the district court noted that appellant's claims should have been filed in a post-conviction petition for a writ of habeas corpus. We conclude that the district court did not err in denying relief because appellant raised his claims in the wrong vehicle. 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. A challenge to the earning and calculation of statutory credits is a challenge to the computation of time served. Thus, the only remedy available to raise his claims for relief was a post-conviction petition for a writ of habeas corpus. The failure to file his claims in a post-conviction petition for a writ of habeas corpus is a

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<sup>1</sup>In his petition, appellant also appeared to claim that he was not provided with credits for completion of courses on addiction prevention, and new beginnings. The State provided proof that appellant received the full credit for these courses, and appellant did not dispute this proof in his response. Thus, we conclude that the district court did not err in denying relief on these claims.

sufficient basis for denial of the petition, and we affirm the denial of the petition on this basis.

Nevertheless, as a separate and independent ground to deny relief, we conclude that the district court did not err in determining that appellant's claims for relief lacked merit. Appellant failed to demonstrate that he was entitled to 30 credits each for completion of anger management, emotions management, and domestic violence. In an affidavit attached to the State's motion to dismiss, NDOC's Education Coordinator avers that at the time he completed these courses, appellant was only entitled to 15 credits for completion of each of the courses. Appellant's claim for additional work credits was a bare and naked allegation without any specific facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). The State provided a copy of appellant's credit history log demonstrating that credits are being correctly deducted from the maximum sentence. Thus, appellant failed to demonstrate he was entitled to any additional credits or a violation of any constitutional rights.

It appears that appellant mistakenly believed that credits earned or to be earned in the future were deducted from the projected expiration date rather than from the maximum sentence.<sup>2</sup> A projected expiration date is calculated upon an assumption that an inmate earns the potential maximum statutory good time and work credits every month

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<sup>2</sup>The maximum sentence is the amount of time that must be served in days to discharge the sentence imposed by the district court. The maximum sentence may be reduced by statutory good time, work and other credits. See NRS 209.4465. In the instant case, appellant's maximum term was determined to be 3,652 days for the second-degree kidnapping sentence.

served and it projects the earning of credits into the future. However, statutory credits earned are not deducted from the projected expiration date but from the maximum sentence and may apply to the parole eligibility date under certain circumstances. See NRS 209.4465(7). The failure to earn the potential maximum statutory good time and work credits or the forfeiture of credits will cause a projected expiration date to move farther out while the earning of meritorious credits will cause the projected expiration date to move closer.<sup>3</sup> As stated earlier, appellant

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<sup>3</sup>A projected expiration date is only an estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate. It is not that an inmate is serving additional time by the failure to earn the potential maximum statutory credits, but rather the inmate simply serves the lawfully imposed sentence without benefit of the potential maximum statutory credits reducing the maximum sentence to be served.

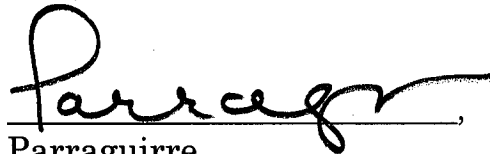
When statutorily-earned meritorious credits are applied to the maximum sentence, those credits may actually reduce the number of months to be served; thus, the assumption in calculating the projected expiration date about the number of statutory and work credits to be earned in the future will no longer be correct because an inmate cannot earn statutory and work credits for time he is not actually incarcerated. For example, if an inmate earns 90 days of meritorious credits, when those credits are subtracted from the maximum sentence, the inmate will have 3 fewer months of actual incarceration (3 months x 30 days = 90 days). Because the original/earlier projected expiration date already had the inmate earning statutory good time and work credits for those 3 months, the projected expiration date will have to be recalculated to exclude statutory good time and work credits for those months that the inmate will no longer serve. NRS 209.4465 makes it clear that statutory good time credits are deducted for each month served, not for the months that an inmate might have served if he had not earned meritorious credits. Thus, earning 90 days of meritorious credits will not cause the projected expiration date to decrease by 90 days. The projected expiration date will decrease by the difference between the 90 days of meritorious credits

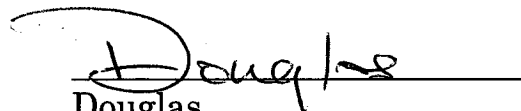
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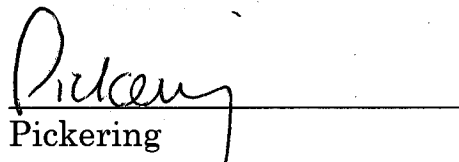
failed to demonstrate any error in the application of credits to the maximum sentence, and appellant's assertion that credits are deducted from the projected expiration date is without merit.

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

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*... continued*

earned (which are deducted from the maximum sentence) and the amount of statutory credits that had been projected to be earned in the future during this period. Appellant will receive the full benefit of the meritorious credits as they will be deducted from the maximum sentence. The balance sheet for the maximum sentence is ultimately what determines the release date for an inmate, not the projected expiration date.

cc: First Judicial District Court Dept. 2, District Judge  
David Alexander  
Attorney General Catherine Cortez Masto/Carson City  
Carson City Clerk