

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ENRIQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53027

FILED

AUG 24 2009

TRACEY K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for an amended judgment of conviction to include presentence credits. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 29, 2008, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to violate the controlled substances act. The district court sentenced appellant to serve a term of 12 to 36 months in the Nevada State Prison. The district court provided appellant with 2 days of credit for time served. No direct appeal was taken.

On November 19, 2008, appellant filed a proper person motion for an amended judgment of conviction to include presentence credits in the district court. The State opposed the motion. On December 18, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he should receive credit for time served from August 5, 2007 through July 16, 2008.

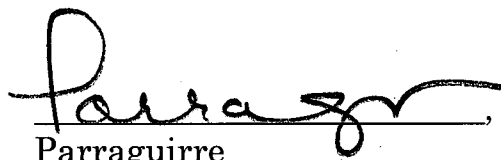
Preliminarily, we note that appellant filed his claim for additional presentence credits in the wrong vehicle; a claim for additional presentence credits should be raised in a post-conviction petition for a writ

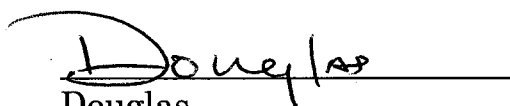
of habeas corpus. See NRS 34.724(2)(b); Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006). Nevertheless, because appellant's motion was timely filed, we conclude that the district court properly considered the motion on the merits.

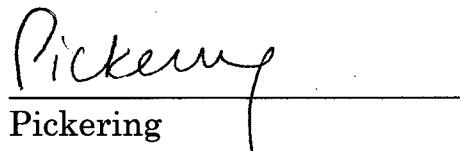
The district court denied the motion because appellant was not entitled to the credits in the instant case. Based upon our review of the record on appeal, we conclude that the district court did not err. NRS 176.055(1) provides that a defendant is entitled to credit for time served "for the amount of time which the defendant has actually spent in confinement before conviction." (Emphasis added.); see also Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996) (holding that purpose of NRS 176.055(1) is to ensure that a criminal defendant receives credit for all time served). The record indicates that appellant was on bond and was not incarcerated during the time period claimed. Therefore, we affirm the order of the district court denying the motion.

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.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Donald M. Mosley, District Judge
David Enriquez
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk