

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY NEAT,
Appellant,
vs.
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER, BRIAN
WILLIAMS,
Respondent.

No. 53150

FILED

JUN 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On November 20, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 December 30, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections (Department) had denied him the proper amount of statutory, work time and meritorious credits by reducing his credits by a factor of 1.667. Appellant supported his petition with a document purportedly used by the Department. The document contained a statement that one credit was not equal to one 24-hour day. Thus, despite the fact that the version of NRS 209.4465 primarily relied upon by appellant provided for 10 days of credit per month for statutory good time,

10 days of credit per month for work time and NRS chapter 209 provided further meritorious credits, the Department used a mathematical formula to reduce 10 credits to "6 days off." Appellant claimed that this alleged reduction of credits deprived him of a number of state and federal constitutional rights. Appellant claimed that pursuant to the 2007 amendments to NRS 209.4465 he was entitled to retroactive application of an additional 80 days of statutory credits. Finally, appellant complained that earning credits did not reduce his projected expiration date by the same amount of credits earned.

The district court denied the petition on the ground that appellant had failed to demonstrate that the Department had erroneously computed his credits for time served. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. The documents attached to the petition by appellant did not support his claim for additional credits. Specifically, the partial credit history report provided by appellant demonstrated that no mathematical formula had been applied to reduce his credits. Appellant's claim that he should receive 80 days of additional credits pursuant to the 2007 amendments to NRS 209.4465 was without merit. The legislature specifically provided that the increased amount of credits provided for by the 2007 amendments would not apply retroactively to an offender in appellant's position—an offender who has committed a Category B felony (robbery) and a crime involving the use or threat of force or violence against the victim. See 2007 Nev. Stat., ch. 525, § 5, 21, at 3177, 3196; see also NRS 200.380.

Further, the document relied upon by appellant is facially inaccurate as it contains misleading statements and assumptions relating

to statutory good time, work and meritorious credits.¹ The document states:

1. By Nevada law, merit credits can only be applied against an inmate's maximum sentence, not the minimum. In other words, merit credits reduce a Mandatory Parole Release (MPR) date, but not a Parole Eligibility Date (PED).

2. One "merit credit" does not equal one 24-hour day. To figure exact value of merit credits in reducing a maximum sentence, divide # of merits credits by 1.667 then round it up to the next number.

10 credits = 6 days off

There are obvious problems with these statements as they relate to statutory credits earned pursuant to NRS chapter 209. First, pursuant to the version of NRS 209.4465(7) relied upon by appellant in his petition, statutory good time and work time credits were to be deducted from the maximum sentence and applied to eligibility for parole unless the offender was sentenced pursuant to a statute which specified a minimum sentence that must be served before a person becomes eligible for parole.² See 2003

¹Appellant acknowledged that the document was withdrawn by the Department because it contained inaccurate information. Nevertheless, appellant appeared to argue that it still had some effect on the computation of his credits.

²We note that in addition to amending NRS 209.4465 to increase the amount of statutory good time credits, the legislature also provided that the credits earned pursuant to NRS 209.4465 could be applied to eligibility for parole and to be deducted from the minimum and maximum terms. See 2007 Nev. Stat., ch. 525, § 5, at 3176-77. However, this provision regarding the deduction of credits from the minimum sentence does not apply to an offender who has been convicted of a category A or B felony.

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Nev. Stat., ch. 426, § 8, at 2577-78. Second, the conclusion that “10 credits = 6 days off” is an incorrect mathematical expression of the data. Rather, based upon an inmate earning a potential maximum of 1.667 credits for each day served in the Department’s custody, an inmate will have accrued 10 credits, or 10 days to be deducted, after serving only 6 days in the Department’s custody.³ There is simply no support for the statement that one credit is anything less than a 24-hour day. The credit history report attached to the petition amply demonstrated this point. Therefore, appellant failed to demonstrate that he was entitled to any additional credit or that any constitutional rights had been violated.

It appears that appellant is confused about the projected expiration date and mistakenly believes that credits earned are deducted from the projected expiration date rather than from the maximum

... continued

Id. As noted earlier, appellant was convicted of robbery, a category B felony and not entitled to retroactive application of the credits. The documents before this court indicate that beginning July 1, 2007, appellant received 20 days of statutory good time credits each month.

³Mathematically, this calculation is expressed as:

6 (days) x 1.667 (the amount of credits earned each day) = 10 credits or 10 days.

The amount of credits earned each day, 1.667, was reached by taking the potential maximum of flat, statutory good time and work time credits earned by an inmate in a one month period (30 + 10 + 10 =50) and dividing that sum by the number of days in the month (30) for a daily credit earning rate of 1.667. With the amendments to NRS 209.4465, the potential maximum daily credit earning rate as of July 1, 2007, was increased to 2.334.

sentence. A projected expiration date is calculated upon the assumption that an inmate will earn the potential maximum statutory credits at a rate of 1.667 days (pre-July 2007) or 2.334 days (post-July 2007) for every day served. However, the statutory credits earned are not deducted from the projected expiration date but from the maximum sentence. Because credits are deducted from the maximum sentence, earning additional meritorious credits not contemplated by the original calculations for the projected expiration date causes a recalculation of the projected expiration date.⁴ The failure to earn the potential maximum statutory credits or the forfeiture of credits will cause a projected expiration date to move farther

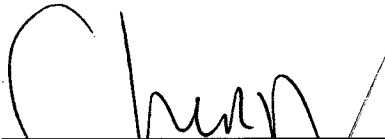
⁴A projected expiration date is only an estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate. It is not that an inmate is serving additional time by the failure to earn the potential maximum statutory credits, but rather the inmate simply serves the lawfully imposed sentence without benefit of the potential maximum statutory credits reducing the maximum sentence to be served.

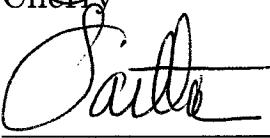
When statutorily-earned meritorious credits are applied to the maximum sentence, those credits may actually reduce the number of months to be served; thus, the assumption in calculating the projected expiration date about the number of statutory and work time credits to be earned in the future will no longer be correct because an inmate cannot earn statutory and work time 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 projected expiration date already had the prisoner earning statutory good time and work time credits for those 3 months, the projected expiration date will have to be recalculated to exclude credits for those months that will no longer be served. 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 credits.


out while the earning of meritorious credits will cause the projected expiration date to move closer. Therefore, we conclude that the district court correctly determined that appellant was not entitled to any additional credits and failed to demonstrate a violation of any constitutional rights.

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 Luckett 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. Kathy A. Hardcastle, District Judge
Casey Neat
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk