

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOACHIN GASTON,
Appellant,
vs.
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER, BRIAN
WILLIAMS,
Respondent.

No. 53244

FILED

AUG 07 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. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On November 10, 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 January 15, 2009, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Department of Corrections failed to correctly calculate and apply his statutory good time credits to reduce his minimum term and that this prevented him from receiving a timely parole hearing. Appellant further claimed that he was

not provided sufficient flat time or statutory good time credits for January 2008.

Because the documentation in the record on appeal did not indicate whether appellant had received a parole hearing, this court directed the Attorney General to inform this court whether a parole hearing had been conducted and to provide documentation regarding the parole hearing and the credit history log. The Attorney General filed a timely response.

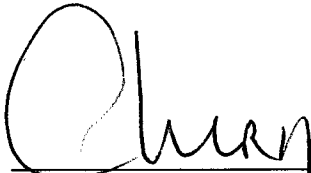
Based upon our review of the record on appeal, we conclude that the district court did not err in denying relief. Appellant received a parole hearing on May 11, 2009, and was granted parole with a release date of August 17, 2009. Thus, appellant's claim that the proper amount of credits were not applied to the minimum sentence and that he was denied a parole hearing have been rendered moot by the May 11, 2009 parole hearing.¹ Appellant failed to demonstrate that he was entitled to any additional credits applicable to his maximum sentence in the instant case. Therefore, we affirm the order of the district court 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

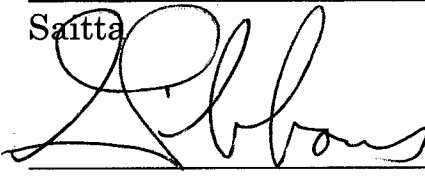
¹We note that there is no statutory authority or case law that would permit the Parole Board to grant a retroactive parole. Niergarth v. Warden, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989).

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.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Jochin Gaston
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger
Eighth District Court Clerk