

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNESTO BLOBERG,  
Appellant,  
vs.  
WARDEN, SOUTHERN DESERT  
CORRECTIONAL CENTER, BRIAN  
WILLIAMS,  
Respondent.

No. 53333

**FILED**

JUL 09 2009

TRACIE 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 post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On January 15, 2009, appellant filed a proper person post-conviction petition for a writ of habeas corpus challenging the computation of time served. On January 29, 2009, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that the Department of Corrections improperly calculated his statutory credits in determining his projected expiration date. Appellant performed his own calculations and

determined that he should expire his enhancement term earlier than 2010.<sup>1</sup>

Appellant failed to demonstrate that he was entitled to any relief in the instant case. The credit history report indicated appellant received statutory good time credits in compliance with NRS 209.4465. 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 time credits every month 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

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<sup>1</sup>In 2000, appellant was sentenced to serve two consecutive terms of 48 to 120 months for attempted murder with the use of a deadly weapon. Appellant indicated that it would only take 5 years and 8 months to serve a ten-year sentence for the enhancement, and subtracting the credits he had previously earned from the 5-year and 8-month figure, would result in an expiration date earlier than May 18, 2010.

<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 time and other credits. See NRS 209.4465. In the instant case, appellant's maximum term was determined to be 3,652 days for the sentence for the deadly weapon enhancement.

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> It does not appear from the documents before this court that appellant earned the potential maximum work credits available during his period of incarceration. Because appellant failed to demonstrate that he was entitled to additional credits, we affirm the order of the district court denying the petition.

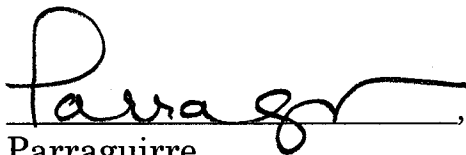
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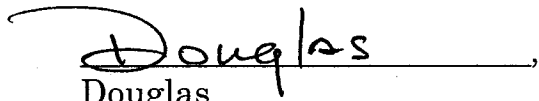
<sup>3</sup>A projected expiration date is only an estimation, and it therefore must be recalculated to reflect the actual credit earnings of the inmate. It is not that an inmate is serving additional time by the failure to earn the potential maximum statutory credits, but rather the inmate simply serves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

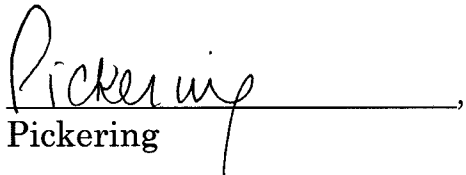
When statutorily-earned meritorious credits are applied to the maximum sentence, those credits may actually reduce the number of months to be served; thus, the assumption in calculating the projected expiration date about the number of statutory and work time credits to be earned in the future will no 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/earlier 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.

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.<sup>4</sup>

  
Parraguirre J.

  
Douglas J.

  
Pickering J.

cc: Hon. Kathy A. Hardcastle, District Judge  
Ernesto Bloberg  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>4</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.