

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY S. JAMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53551

FILED

SEP 10 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Alvarado
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 August 31, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of sale of a controlled substance. The district court sentenced appellant to serve a term of 24 to 72 months in the Nevada State Prison. The district court provided appellant with 108 days of credit for time served. No direct appeal was taken.

On March 3, 2009, appellant filed a proper person motion for an amended judgment of conviction to include presentence credits. On April 22, 2009, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he should receive an additional 185 days of credit for a total of 293 days of credit for time served from October 31, 2006 through August 20, 2007.

A claim for additional presentence credits is a claim challenging the validity of the judgment of conviction and sentence that must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance with NRS chapter 34. See Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1166 (2006). Thus, appellant's motion should have been treated as a post-conviction petition for a writ of habeas corpus.

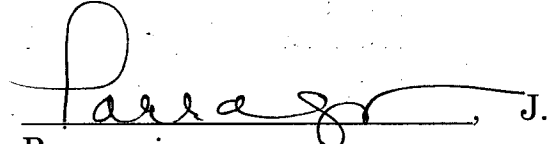
Appellant filed his motion more than one year after entry of the judgment of conviction and more than two years after this court's decision in Griffin. Thus, appellant's motion was untimely filed. NRS 34.726(1). Appellant's motion was procedurally barred absent a demonstration of cause for the delay and prejudice. Id. Appellant did not attempt to demonstrate good cause for his failure to file a timely petition, and thus, appellant's motion was procedurally barred and without good cause.

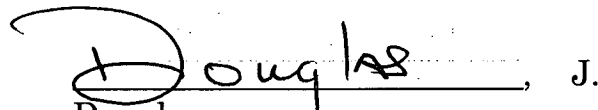
Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. NRS 176.055(1) provides that a defendant will be given credit for the amount of time actually spent in confinement before the conviction, unless the confinement was pursuant to the judgment of conviction for another offense. The record on appeal indicates that appellant was in custody pursuant to a Colorado judgment of conviction from October 31, 2006 through May 14, 2007 (the date a Nevada detainer was signed by a Nevada judge). Therefore, we conclude that the district court did not err in denying the motion.

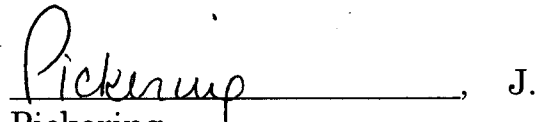
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Luckett 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
Jerry S. James
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk