IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LAWRENCE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53624

FILED

SEP 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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 probation and house arrest credits. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On April 11, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with a deadly weapon, victim over the age of 60 years. The district court sentenced appellant to serve two consecutive terms of 24 to 84 months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed 4 years. No direct appeal was taken.

On May 17, 2007, the district court entered an order revoking probation, executing the original sentence, and providing appellant with 233 days of credit for time served. No appeal was taken from this order.

On December 14, 2007, appellant filed a proper person motion to amend the judgment of conviction for jail time credits in the amount of



09-21464

660 days. The State opposed the motion. The district court denied the request for 660 days, but determined that 2 additional days of presentence credit should be provided. On January 15, 2008, the district court entered a second order revoking probation and amending the judgment of conviction to include 235 days of credit for time served. No appeal was taken from this order.

On March 5, 2009, appellant filed a motion for an amended judgment of conviction to include probation and house arrest credits in the district court. The State opposed the motion. On March 27, 2009, the district court summarily denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he should receive 20 days of credit for time served for each month on probation pursuant to NRS 176A.500(5), as amended in 2007. Appellant further appears to claim that his probation should not have been revoked, but rather he should have been placed in residential confinement pursuant to NRS 176A.660.

To the extent that appellant claimed he was entitled to additional credits, appellant's claim was patently without merit. NRS 176A.500(5) provides that a probationer "must be allowed for the period of his probation a deduction of 20 days from that period for each month he serves." However, appellant's probation was revoked prior to the enactment of subsection 5 of NRS 176A.500. 2007 Nev. Stat., ch. 525, § 8.7, at 3184-85. Second, credits earned pursuant to NRS 176A.500 are deducted from the period of probation and do not apply to the sentence

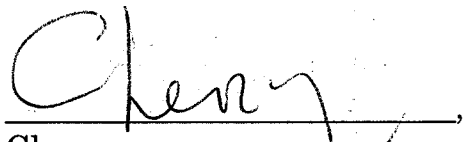
that has been suspended during the period of probation. Thus, we conclude that the district court did not err in denying relief on this claim.

To the extent that appellant challenged the revocation of probation, his challenge was raised in an improper vehicle. A challenge to the revocation of probation should be raised in a direct appeal from an order revoking probation within 30 days from the filing date of the order or in a petition for a writ of habeas corpus filed within a reasonable time period from the revocation of probation. Daniels v. State, 115 Nev. 330, 988 P.2d 791 (1999) (recognizing an appeal from an order revoking probation); NRAP 4(b) (setting forth the time limits to file a notice of appeal); see generally Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004) (recognizing that entry of an amended judgment of conviction may be good cause for a late habeas corpus petition when the petition challenges the amendment to the judgment of conviction). Appellant did not pursue either accepted mode of challenge. Moreover, as a separate and independent ground to deny relief, appellant's claim for relief lacked merit. NRS 176A.660 provides that the district court may consider residential confinement for a probationer who violates the conditions of probation, but NRS 176A.660 does not mandate placement in residential confinement. The decision of whether to revoke probation and execute the original sentence or to place an offender in residential confinement lies within the discretion of the district court. NRS 176A.660(1). Thus, we conclude that the district court did not err in denying relief on this claim.

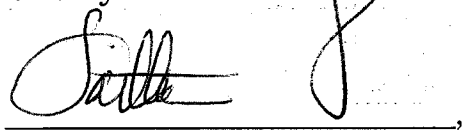
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

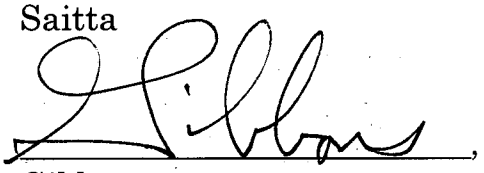
ORDER the judgment of the district court AFFIRMED.[1]



_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Michael Lawrence Johnson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[1]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.