

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT M. GOLDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53938

FILED

JAN 08 2010

TRACE 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 petition for a writ of mandamus and a petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Having reviewed the record on appeal, we conclude that substantial evidence supports the decision of the district court to deny relief, and we affirm the denial of the petitions for the reasons stated in the attached order. Therefore, briefing and oral argument are not warranted in this case. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

[Signature], J.
Hardesty

[Signature], J.
Douglas

[Signature], J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Dwight M. Golden
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

FINDINGS OF FACT

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2 1. On April 24, 2007, Golden's probation in C199498 was revoked and he was
3 sentenced to serve 19 to 48 months in the Nevada Department of Corrections. On April 25,
4 2008, Golden was released on parole. On July 30, 2008, Golden pled guilty to a gross
5 misdemeanor charge of Attempt Pandering in C245208. A parole revocation hearing was
6 held regarding the sentence in C199498 on August 28, 2008 at which time Golden's parole
7 was revoked and the Board further forfeited 275 days of good time credit.

8 2. On January 16, 2009 Golden filed the instant Petition for Writ of Habeas Corpus
9 (Post-Conviction). Golden followed that document with a Petition for Writ of Mandamus also
10 dated January 16, 2009. Therein, Golden claims that the Parole Board violated his right to
11 due process when it took away his stat time credits in violation of some agreement not to do
12 so. Golden has also filed various motions which are also before the Court for decision.

13 3. On April 8, 2009, the State filed its Answer on behalf of the Parole Board which
14 contained copies of the Parole Board's files relevant to Golden's revocation. No written
15 agreement appears in those files. Regardless, the parties agree there was at least an oral
16 agreement that the Department of Parole and Probation would recommend Golden not lose
17 any good time as part of a guilty plea in the parole revocation proceeding.

18 4. Golden alleges and Respondents do not dispute that the Department of Parole
19 and Probation did make that recommendation to the Parole Board, and that the Parole Board
20 chose to reject the recommendation. Golden has failed to allege or demonstrate in anything
21 other than bare naked allegations that the Parole Board was actually bound by any agreement
22 with Golden.

23 5. Golden's claims are baseless and amounted to nothing more than bare naked
24 allegations. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

25 6. The Court finds Golden's petition is without merit and that an evidentiary hearing
26 is not required.

27 7. Moreover, Golden's motions are without merit and shall be denied, except that
28 Golden's Motion to Withdraw Counsel is granted.

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CONCLUSIONS OF LAW

1. A parolee who is revoked "forfeits all credits for good behavior previously earned to reduce his sentence pursuant to Chapter 209 of NRS." See NRS 213.1519. Put another way, if the parolee is revoked, earned credits are automatically forfeited. The Board retains discretion to *return* some or all of those credits, but is under no obligation to do so. NRS 213.1519. Any credits for good behavior earned after release on parole but prior to violation also are automatically forfeited, subject to restoration as the Board may see fit. NRS 213.1518. The Parole Board's discretion is, by law, an "act of grace" which does not "establish a basis for any cause of action against the State..." NRS 213.10705.

2. Golden's allegation that the Parole Board was bound to follow the recommendation of the Department of Parole and Probation is contrary to Nevada law. The Parole Board had discretion to reduce Golden's good time credits as it saw fit, and lawfully exercised that discretion in the instant case.

3. Pursuant to NRS 34.770(1), the Court, upon review of the return, answer, and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. The Nevada Supreme Court in Hargrove v. State, 100 Nev. 498, 886 P.2d 222 (1984), held that to the extent a petitioner advances merely "naked" allegations, he is not entitled to an evidentiary hearing.

4. Furthermore, NRS 34.770 provides that if the reviewing court determines that a petitioner is not entitled to relief and an evidentiary hearing is not required, the court shall dismiss the petition without a hearing. An evidentiary hearing is not necessary in the instant case as all of Golden's claims are contrary to law and belied by the record. As such, Golden's petition for post conviction relief should be denied and Golden shall not be transported to these proceedings.

5. Because Golden's claims can be denied as a matter of law, his allegations do not support additional fact-finding, and the requested documents were already produced with the Parole Board's Answer, Golden's Motion for Production of Documents shall be denied. Likewise, because the Court denies the Petition for Post-Conviction Relief and Petition for Writ

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of Mandamus, Golden's Motion for O.R. Release shall be denied.

ORDER

Based on the Findings of Fact and Conclusions of Law contained herein:

IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief and Petition for Writ of Mandamus shall be, and they are, hereby **DENIED**, and;

IT IS FURTHER ORDERED Golden's Motion for Production of Documents, Motion for O.R. Release, and Motion for Transportation to Hearing are hereby **DENIED**, and;

IT IS FURTHER ORDERED Golden's Motion to Withdraw Counsel is hereby **GRANTED**.

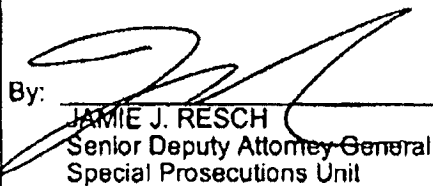
DATED this 27th day of April, 2009.


HONORABLE DISTRICT COURT JUDGE 

Attorney General's Office
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Submitted By:

CATHERINE CORTEZ MASTO
Attorney General

By: 
JAMIE J. RESCH
Senior Deputy Attorney General
Special Prosecutions Unit