

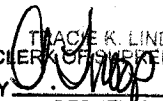
IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LEWIS HERRERA,  
Appellant,  
vs.  
WARDEN, SOUTHERN DESERT  
CORRECTIONAL CENTER, BRIAN  
WILLIAMS,  
Respondent.

No. 54008

**FILED**

**JAN 08 2010**

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

In his proper person post-conviction petition for a writ of habeas corpus, appellant claimed that his credits earned while on probation were not properly calculated. The district court denied the petition without appointing counsel or conducting an evidentiary hearing. NRS 34.750, NRS 34.770.

On February 5, 2009, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 September 4, 2009, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that his credits were not properly calculated. Appellant claimed that if the credits earned while on

probation had been correctly applied he would have expired his probationary term prior to having probation revoked.

The district court correctly concluded that any claim as to the calculation of presentence credits was subject to the procedural time bar set forth in NRS 34.726. See Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006) (recognizing that a claim for presentence credits must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance with NRS chapter 34). Because appellant did not attempt to demonstrate good cause, see NRS 34.726(1), we conclude that the district court did not err in denying the claim as procedurally time barred.

The district court also correctly concluded that appellant was not entitled to relief on any challenge to the computation of time served. The record does not support appellant's claim that he expired his probationary term before revocation of that term. The one-year jail term imposed as a condition of probation cannot be deducted from the probationary term imposed because that period of incarceration while satisfying the condition of probation and applicable to reduce the sentence of imprisonment upon revocation of probation did not qualify as time served on probation towards expiration of the probation term.<sup>1</sup> See NRS 176.055(1) (providing for presentence credit applied against the duration of the sentence of imprisonment imposed by the district court). Appellant's claim that he was entitled to 480 days of good time credits for the period spent on probation was factually deficient as he did not

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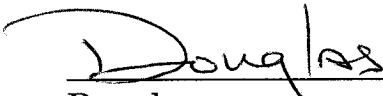
<sup>1</sup>Appellant's own documents reveal that the one-year jail term was satisfied before sentencing with less than one year of actual time served.

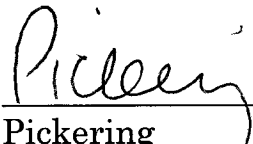
demonstrate that he was entitled to or actually earned this amount of credits. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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>2</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge  
Daniel Lewis Herrera  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</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.