

IN THE SUPREME COURT OF THE STATE OF NEVADA

HECTOR CARL SANTIAGO,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 54076

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

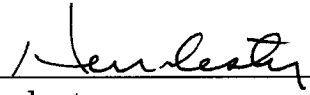
This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

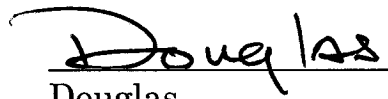
Having reviewed the record on appeal, we conclude that substantial evidence supports the decision of the district court to deny relief and that the district court did not err as a matter of law. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We therefore affirm

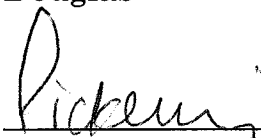
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

the denial of the petition for the reasons stated in the attached district court order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Steve L. Dobrescu, District Judge
Hector Carl Santiago
Attorney General/Ely
White Pine County Clerk

²We 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.

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Case No. HC-0812023

Dept No. 1

WHITE PINE COUNTY CLERK
BY 

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE**

HECTOR CARL SANTIAGO,

Petitioner,

-vs-

E.K. McDANIEL, Warden,

Respondent.

**ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS**

Petitioner, Hector Carl Santiago, a prisoner at Ely State Prison, was convicted in Case No. C153203A and C155292 on March 25, 1999 and June 10, 1999, respectively. In case C153203A, Petitioner plead guilty to one count of Conspiracy to Commit Robbery (sentenced to 12 to 48 months) and one count of Robbery (sentenced 26 to 120 months.) In case C155292, Petitioner plead guilty to one count of Conspiracy to Commit Robbery (sentenced to 12 to 48 months) and one count of Robbery, Victim 65 Years of Age or Older (sentenced to 26 to 120 months), plus an equal enhancement for use of a deadly weapon (sentenced to 26 to 120 months) to run concurrent to the Conspiracy to Commit Robbery count and consecutively with the Robbery count. Petitioner has been paroled from the Robbery count and is currently serving his time for

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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the enhancement.

Santiago filed a Petition for Writ of Habeas Corpus on December 31, 2008. On January 6, 2009, the Court issued an Order to Respond. The Attorney General's office filed a Notice of Representation of Respondent on January 6, 2009 and a Return was filed on January 20, 2009. On February 9, 2009 Petitioner filed an Opposition and Answer to Return and Motion for Sanctions. On February 20, 2009, Respondent filed an Answer to Petition for Writ of Habeas Corpus. On February 20, 2009, Respondent filed a Reply to Opposition to Return, Opposition to Motion for Sanctions and a Motion to Add Party.

The matter is now properly before the Court. Additional briefing or argument is not necessary.

DISCUSSION

Under Chapter 34 of the Nevada Revised Statutes, "[e]very person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint."¹ However, writs of habeas corpus cannot be employed to adjudicate all grievances of those who are imprisoned. The Nevada Supreme Court has recognized that "[i]n a post-conviction habeas corpus action, a prisoner may only challenge the judgment of conviction or sentence in a criminal case, or the computation

¹NRS 34.360.

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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1 of time the prisoner has served pursuant to a judgment of conviction.”²

2 Calculation of good time credits in this case are governed by NRS
3 209.4465. Petitioner challenges the calculation of his time and good time credits and
4 also claims that he was denied parole consideration. Petitioner seeks relief in the form of
5 immediate release from custody of the Nevada Department of Corrections.

6 **I. Effect of Assembly Bill 510**

7 Petitioner’s claim revolves around the 2007 amendments to NRS 209.4465
8 which govern the increased monthly accrual of good-time credit from ten (10) days per
9 month to twenty (20) days per month (AB 510). The amendments apply retroactively to
10 July 1, 2000 for certain categories of convictions. Petitioner claims the amendments
11 apply retroactively to July 1997 and that as a result he has accrued eighteen (18) months
12 of good time credit. Respondent argues that Petitioner is not eligible under the
13 retroactivity section because of the type of crime for which he was convicted.
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15 Upon review of the law, the Court finds that Petitioner is not eligible for
16 retroactive application. The changes made to NRS 209.4465, effective July 2007, give
17 the Petitioner twenty (20) days of good-time credit per month beginning in July 2007.³
18 The amendment is not retroactive for felonies involving use of force or threatened use of
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23 Dotson v. State, 114 Nev. 582, 585 n. 3, 958 P.2d 81 (1998). See also Bowen v. Warden, 100 Nev. 489,
24 490, 686.

25 3

26 NRS 209.4465(1) provides, in pertinent part: An offender who is sentenced to prison for a crime
committed on or after July 1, 1997, who has no serious infraction of the regulations of the Department, the
terms and conditions of his residential confinement or the laws of the State recorded against him, and who
performs in a faithful, orderly and peaceable manner the duties assigned to him, must be allowed: . . . a
deduction of 20 days from his sentence for each month he serves.





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force upon a victim and category B type felonies.⁴ Here, Petitioner was convicted of two (2) counts of Robbery which is a crime involving use of force or threatened use of force and is a category B felony.⁵ Therefore, he is not eligible for retroactive application of the 2007 amendments.

II. Denial of Parole Consideration

The logic of Petitioner's argument is difficult to follow. It appears his claim is that Respondent has miscalculated his sentences and as a result he has served a longer period of time in custody. Petitioner's only active sentence is the enhancement count for Case No. C155292. Petitioner claims that Respondent erred because he began serving his sentence for the enhancement in Case No. C155292 on the same day that he was paroled for the robbery count in Case No. C153203A. Petitioner asserts that this is illegal because it is in violation of the court's judgment that the robbery and enhancement counts on Case No. C155292 be served consecutively. Even if Petitioner's allegations in this regard are true, the Court fails to see how he is entitled to any relief.

Petitioner also claims that he was never given consideration for parole on the C155292 robbery count since the Respondent allowed the sentence to expire. According to Petitioner, had he been paroled when first eligible for parole on October 14, 2000 for the robbery count in C155292, the enhancement count would have expired on March 14, 2007, and therefore, he should be released immediately.

⁴NRS 209.4465(8).

⁵NRS. 200.380.



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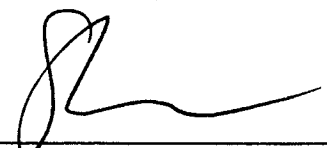
Respondent argues that Petitioner has been allowed the opportunity for parole and presents undisputed evidence that parole hearings were held on February 7, 2006, February 16, 2007 and August 12, 2008.

An inmate does not have a right to parole or a liberty interest in parole.⁶ Eligibility for parole does not create an expectation interest that parole will be granted.⁷ The decision whether to grant parole is fully within the Parole Board's discretion.⁸ In addition, Petitioner's argument above about why he should be released assumes he would have been paroled early. Such an assumption is nothing more than pure speculation. Further, because Petitioner has either expired his sentence or been granted parole on all but the enhancement, even if he was denied a parole hearing this claim is moot.

Good cause appearing,

IT IS HEREBY ORDERED that this Petition for Writ of Habeas Corpus is **DENIED.**

DATED this 3RD day of June, 2009.



DISTRICT JUDGE

⁶
NRS 213.10705. See also Severance v. Armstrong, 96 Nev. 836 (1980).

⁷
Severance v. Armstrong, 97 Nev. 95, 624 P.2d 1004 (1981). See also Weakland v. Board of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984).

⁸Id.