

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNON SIMMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55231

FILED

JUL 15 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 Eighth Judicial District Court, Clark County; David Wall, Judge.

In his petition, appellant challenged the computation of time served.² 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.

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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²We note that the petition was not included in the record on appeal. However, the petition was contained in the district court's files as an attachment to a setting document and transmitted to this court for review. We remind the clerk of the district court of the duty to file a petition for a writ of habeas corpus with those documents that comprise the record on appeal.

State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). For the reasons stated in the attached district court order, we

ORDER the judgment of the district court AFFIRMED.³

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. David Wall, District Judge
Shannon Simmons
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk

³We 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.

ORIGINAL

9

1 **ORDER**
2 **CATHERINE CORTEZ MASTO**
3 **Attorney General**
4 **JAMIE J. RESCH**
5 **Senior Deputy Attorney General**
6 **Nevada Bar No. 7154**
7 **Office of the Attorney General**
8 **555 E. Washington Ave., Ste. 3900**
9 **Las Vegas, Nevada 89101-1068**
10 **P: (702) 486-3783**
11 **F: (702) 486-2377**
12 **e-mail: jresch@ag.nv.gov**
13 **Attorneys for Plaintiff THE STATE OF NEVADA**

FILED

JAN 13 7 41 AM '10

Ann L. Johnson
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

10 SHANNON SIMMONS,

11 Petitioner,

12 v.

13 DWIGHT NEVEN, Warden, et. al.,

14 Respondents.

Case No.: C247871

Dept. No.: XX

Date of Hearing: Dec. 16, 2009

Time of Hearing: 8:30 a.m.

15 **FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER DENYING PETITION FOR WRIT**
16 **OF HABEAS CORPUS (POST CONVICTION)**

17 THIS CAUSE having come on for hearing before the Honorable DAVID T. WALL,
18 District Court Judge, on the 13th day of December, 2009, the Petitioner not being present, in
19 proper person, and the Respondents represented by CATHERINE CORTEZ MASTO,
20 Attorney General for the State of Nevada, by and through Jamie J. Resch, Senior Deputy
21 Attorney General, and the Court having considered the matter, including briefs, transcripts,
22 arguments of counsel, and all pleadings and documents on file herein, now, therefore, the
Court makes the following findings of fact and conclusions of law:

23 ///

///

///

///

///

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CLERK OF THE COURT

JAN 13 2010

RECEIVED

FINDINGS OF FACT

1
2 1. Simmons is currently an inmate at High Desert State Prison. On August 17,
3 2008, Simmons was arrested pursuant to a warrant which alleged Count 1 – Attempt Murder
4 with use of a Deadly Weapon, Count 2 and 3 – Coercion, Count 4 – Battery with use of a
5 Deadly Weapon Resulting in Substantial Bodily Harm, and Count 5 – Child Abuse and
6 Neglect. A plea deal was eventually reached and on April 8, 2009, Simmons was sentenced
7 to 30 to 96 months in prison on the charge of Battery with use of a Deadly Weapon Resulting
8 in Substantial Bodily Harm.

9 2. Simmons was given 258 days credit for time served. On or about September
10 30, 2009, Simmons filed the instant Petition for Writ of Habeas Corpus (Post-Conviction).
11 Simmons contends that under NRS 209.4465, he is allowed 20 days of good time per month
12 and 10 days of work time per month towards his sentence, including an allowance of said time
13 for the time Simmons spent in pre-trial detention.

14 3. Simmons has failed to state with any specificity what errors he believes have
15 been committed by the Department of Corrections, and does not identify what he believes the
16 proper calculations to be. In response to the petition, Department of Corrections timekeeping
17 records were submitted and indicate Simmons's sentence is in compliance with NRS
18 209.4465.

19 4. The Court finds Simmons has alleged insufficient facts to support his claims.
20 NRS 34.735. Simmons's claims amount to nothing more than unsubstantiated conclusions
21 which are belied by the record and fail as a matter of law. Simmons has received all pre-
22 sentence credits to which he is entitled.

23 5. Simmons'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 Simmons's petition is without merit and that an evidentiary
26 hearing is not required.

27 ///

28 ///

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CONCLUSIONS OF LAW

1
2 1. NRS 209.4465 prescribes the method under which meritorious credits are
3 computed for offenders sentenced to prison from crimes committed after July 17, 1997. An
4 offender may earn up to twenty days of "good time" credit per month, and ten days of
5 "employment/study" time per month, above and beyond the day-for-day credit an inmate
6 receives by being incarcerated.

7 2. "Offender" is defined as "Any person convicted of a crime under the laws of this
8 State and sentenced to imprisonment in the state prison." NRS 209.081.

9 3. As such, the plain reading of NRS 209.4465 makes clear there is no statutory
10 basis for inmates of the Department of Corrections to receive good time or work time credits
11 for time spent in custody prior to being sentenced. See also Kuykendall v. State, 112 Nev.
12 1285, 1287, 926 P.2d 781 (1996).

13 4. Nonetheless, the records of the Department of Corrections further confirm
14 Simmons has received all pre-conviction credit for time served to which he is entitled.

15 5. Pursuant to NRS 34.770(1), the Court, upon review of the return, answer, and all
16 supporting documents which are filed, shall determine whether an evidentiary hearing is
17 required. The Nevada Supreme Court in Hargrove v. State, 100 Nev. 498, 686 P.2d 222
18 (1984), held that to the extent a petitioner advances merely "naked" allegations, he is not
19 entitled to an evidentiary hearing.

20 6. Furthermore, NRS 34.770 provides that if the reviewing court determines that a
21 petitioner is not entitled to relief and an evidentiary hearing is not required, the court shall
22 dismiss the petition without a hearing. An evidentiary hearing is not necessary in the instant
23 case as all of Simmons's claims are conclusory, fail as a matter of law, and are belied by the
24 record. As such, Simmons's petition for post conviction relief should be denied.

25 ///

26 ///

27 ///

28 ///

ORDER

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

IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby DENIED.

DATED this 11th day of January, 2010.


HONORABLE DISTRICT COURT JUDGE

Submitted By:

CATHERINE CORTEZ MASTO
Attorney General

By:


JAMIE J. RESCH
Senior Deputy Attorney General
Criminal Justice Division

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28