

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEN ROBERTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56132

FILED

OCT 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.


Appellant Ken Roberts claims that the district court erred by failing to award him an additional 433 days of credit for time served in presentence custody. Roberts relies on Johnson v. State, 120 Nev. 296, 89 P.3d 669 (2004), and argues that he is entitled to receive the 433 days of credit in both this case and his Washoe County case because, in addition to the Washoe County charges, he was confined pursuant to a no bail bench warrant issued in this case and because the sentences imposed in this case and in the Washoe County case were imposed to run concurrently with one another.

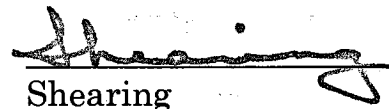
We conclude that the district court did not err by denying Roberts' petition. Roberts' claim for presentence credit challenged "the validity of the judgment of conviction and sentence" and should have been raised in a direct appeal. Griffin v. State, 122 Nev. 737, 746, 137 P.3d 1165, 1170 (2006). Roberts waived this claim because it was not raised in a direct appeal, see Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058,

1059 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999), and the claim was not properly raised in a post-conviction petition for a writ of habeas corpus because it was not presented as an ineffective assistance of counsel claim, NRS 34.810(1)(a), Griffin, 122 Nev. at 745, 137 P.3d at 1170. Additionally, Roberts failed to demonstrate that he was entitled to any additional credit.¹ See NRS 176.055(1). Roberts' reliance on Johnson is misplaced because Johnson relates to concurrent sentences within a single judgment of conviction and not concurrent sentences between separate judgments of conviction. Therefore, we

ORDER the judgment of the district court AFFIRMED.²

 _____, J.
Pickering

 _____, Sr.J.
Rose

 _____, Sr.J.
Shearing

¹Roberts' counsel has filed a motion for leave to amend the supplemental fast track statement and appendix with a copy of the "Washoe County Jail Inmate Booking Information Form" to establish his claim for credit. Because this document was not presented to or considered by the district court below, we may not consider it on appeal. See A Minor v. State, 85 Nev. 323, 325, 454 P.2d 895, 896 (1969). Accordingly, we deny the motion to amend.

²The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.

cc: Hon. Kathy A. Hardcastle, District Judge
Ornoz Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk