


IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS ISIDRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56850

FILED

MAY 09 2011

TRACIE 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 “motion for amended judgment of conviction to include jail time credits.”¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

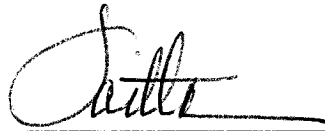
In his motion filed on August 4, 2010, appellant claimed he was entitled to 121 days of credit for time served from October 26, 2008, through February 24, 2009. A claim for additional presentence credits is a claim challenging the validity of the judgment of conviction and sentence that “must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance . . . with NRS chapter 34.” Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006). Therefore, appellant’s motion was not the correct avenue to seek additional credit for time served.

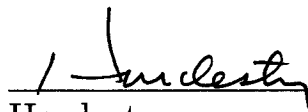
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

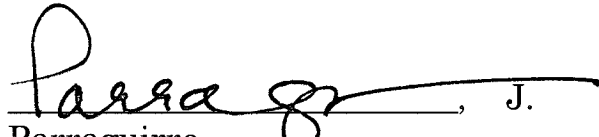
Further, even construing appellant's motion as a post-conviction petition for a writ of habeas corpus, appellant's motion was properly denied. Appellant filed this motion more than one year after the judgment of conviction was filed on March 4, 2009. Thus, it was untimely filed. See NRS 34.726(1). Appellant's motion was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id.

Appellant did not attempt to demonstrate cause for the delay and he failed to demonstrate that he would be unduly prejudiced because his claim lacked merit. Appellant was not entitled to credit for time served because appellant committed the instant offense while on probation. NRS 176.055(2)(b). Thus, even if construed as a post-conviction petition for a writ of habeas corpus, appellant's claim was procedurally barred. Therefore, the district court did not err in denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Abbi Silver, District Judge
Carlos Isidro
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk