

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL FLORES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56871

FILED

MAY 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for county jail time.¹ Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

In his motion, filed on August 12, 2010, appellant claimed that he was entitled to 114 days of credit for time served in county jail from his arrest until sentencing. This court has recognized that a claim for presentence credits should be raised on direct appeal or in a timely post-conviction petition for a writ of habeas corpus. Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006). Thus, appellant's motion should have been construed as a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(c).


Appellant's motion was untimely filed because it was filed more than three years after entry of the judgment of conviction on April 6,

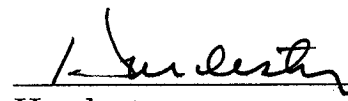
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

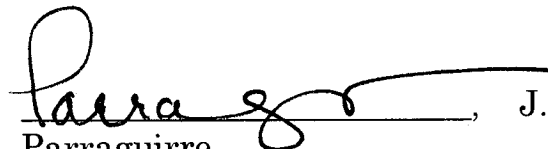
2007.² NRS 34.726(1). Appellant's petition was also successive as he had previously filed a post-conviction petition for a writ of habeas corpus.³ NRS 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.726(1); NRS 34.810(3). Appellant did not allege cause or actual prejudice, and we therefore conclude that the district court did not err in denying his petition.

Moreover, as a separate and independent ground to deny relief, appellant was not entitled to the requested credits because he was on probation for another felony at the time he committed the instant crimes. See NRS 176.055(2)(b). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

²No direct appeal was taken.

³Flores v. State, Docket No. 50890 (Order Affirming in Part, Reversing in Part and Remanding, August 29, 2008).

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Samuel Flores
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk