

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARSHALL ALBION CLAFFEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35213

**FILED**

DEC 05 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

MARSHALL ALBION CLAFFEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35214

ORDER OF AFFIRMANCE

Docket Nos. 35213 and 35214 are proper person appeals from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.<sup>1</sup>

On November 8, 1979, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon in commission of a crime in district court case number C45925. The district court sentenced appellant to serve in the Nevada State Prison a term of fifteen (15) years for the robbery charge and a consecutive term of fifteen (15) years for the deadly weapon enhancement. On that same date, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon in commission of a crime in district court case number C45926. The district court sentenced appellant to serve in the Nevada State Prison a term of fifteen (15) years for the robbery charge and a consecutive term of fifteen (15) years for the deadly weapon

<sup>1</sup>See NRAP 3(b).

enhancement. The sentence imposed in district court case number C45925 was to run concurrently with the sentence imposed in district court case number C45926. Appellant did not file a direct appeal.

On September 9, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court designating both district court cases. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 29, 1999, the district court denied appellant's petition. These appeals followed.

In his petition, appellant contended that he has not been properly credited with all the statutory good time credits to which he is entitled and that he has earned sufficient statutory good time credits under NRS 209.443 to have completely expired his sentences. Further, appellant argued that his sentence is expired under either the Biffath or Bowen formulas for calculating statutory good time credits.<sup>2</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant relief. The Biffath/Bowen calculus is irrelevant because the record repels appellant's calculations.<sup>3</sup> In his petition and in his attached audit titled "Appendix A," appellant postulated that his accounting rested on the supposition that he had never received parole from the instant convictions; however, appellant was paroled on these sentences several times.<sup>4</sup> Although appellant continued to earn flat-time credits while on parole, he was not entitled to any statutory good time or work credits.<sup>5</sup> Also, appellant failed to include in his accounting a divestiture of seven hundred and forty-eight (748) credits

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<sup>2</sup>See Biffath v. Warden, 95 Nev. 260, 593 P.2d 51 (1979); Director, Prisons v. Biffath, 97 Nev. 18, 621 P.2d 1113 (1981); Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 481, 745 P.2d 697, 699-700 (1987).

<sup>3</sup>Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996), clarified on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).


<sup>4</sup>Appellant was on parole for the sentences imposed in district court cases numbers C45925 and C45926 three times: (1) from March 1, 1986 to March 2, 1988, (2) from May 28, 1991 to September 17, 1998, and (3) from May 3, 1999 to July 30, 1999.

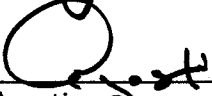
<sup>5</sup>See 1977 Nev. Stat., ch. 430, §45(1), at 851.


resulting from the revocation of his parole in March 1988.<sup>6</sup> Moreover, the State submitted an affidavit from the Correctional Case Records Manager for the Nevada Department of Prisons stating that appellant "has been properly credited for all the statutory good time credits to which he is entitled on [district court] Case Numbers C45925 and C45926." The State also submitted a "Detailed Time Audit" indicating that appellant will not expire the sentences imposed in these two district court cases until 2004. We therefore conclude that the record repels appellant's statutory good time credit calculations, that he has been properly credited with all of the statutory good time credits to which he is entitled, and that the sentences imposed in district court cases numbers C45925 and C45926 are not expired.

Having reviewed the records on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

ORDER the judgments of the district court AFFIRMED.

  
\_\_\_\_\_. J.  
Young

  
\_\_\_\_\_. J.  
Agosti

  
\_\_\_\_\_. J.  
Leavitt

cc: Hon. Jack Lehman, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Marshall Albion Claffey  
Clark County Clerk

<sup>6</sup>See 1975 Nev. Stat., ch. 163, §8(1)(a), at 197.

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).