

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL NORMAN BERGT,
Appellant,
vs.
BRIAN WILLIAMS,
Respondent.

No. 57509

FILED

JUL 13 2011

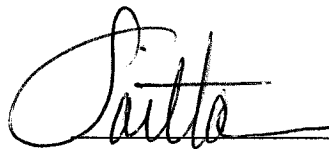
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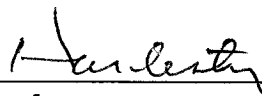
ORDER OF AFFIRMANCE

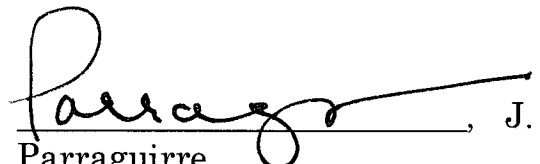
This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kathy A. Harcastle, Judge.

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. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We therefore affirm the denial of the petition for the reasons stated in the attached district court order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.


Hardesty, J.

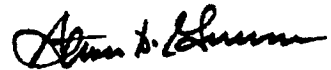

Parraguirre, J.

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).

cc: Hon. Kathy A. Hardcastle, District Judge
Michael N. Bergt
Attorney General/Las Vegas
Eighth District Court Clerk

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DISTRICT COURT

CLARK COUNTY, NEVADA

10 MICHAEL NORMAN BERGT,) Case No.: A-10-624592
11)
12) Petitioner,) Dept. No.: IV
13)
14) v.)
15) BRIAN WILLIAMS, et. al.,)
16) Respondents.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PETITION FOR

WRIT OF MANDAMUS

17
18 THIS CAUSE having come on for hearing before the Honorable KATHY HARDCASTLE,
19 District Court Judge, on the 22nd day of November, 2010, IN CHAMBERS, the Petitioner
20 MICHAEL NORMAN BERGT not being present, in proper person, and the Respondents, not
21 being present, represented by CATHERINE CORTEZ MASTO, Attorney General for the State of
22 Nevada, by and through ADAM L. WOODRUM, Deputy Attorney General, and the Court having
23 considered the matter in chambers on the record only, without oral argument, including briefs
24 and all pleadings and documents on file herein, now, therefore, the Court makes the following
25 findings of fact and conclusions of law:

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1 **FINDINGS OF FACT:**

- 2 • Petitioner is currently incarcerated in the Nevada Department of Corrections serving four
3 sentences, arising out of the same incident, imposed in the Eighth Judicial District Court,
4 case number C238777.
- 5 • On September 3, 2010, Petitioner filed the instant Petition claiming he was not being
6 properly credited for completion of certain classes while incarcerated.
- 7 • Petitioner presented three certificates of completion for which he did not believe he
8 received proper credit.
- 9 • Petitioner argued that for these "approved correctional programs" he has already received
10 discretionary meritorious credits pursuant to NRS 209.449(2).
- 11 • Believing he has already received discretionary credit, he applied to this Court to order
12 application of mandatory credit pursuant to NRS 209.449(1)

13 **CONCLUSIONS OF LAW:**

14 **A. PETITIONER HAS NOT MET HIS BURDEN OF PROVING THAT HE HAS NOT RECEIVED**
15 **ALL CREDIT TO WHICH HE IS ENTITLED.**

- 16 • It is true that a mandatory parole statute or "good time" statute can create a liberty
17 interest.
- 18 • However, unless a state statute mandates that parole "shall" be granted "unless" a
19 designated exception applies, no federal due process protected interest arises. *Baumann*
20 *v. Arizona Dept. of Corrections*, 754 F.2d 841, 844 (9th Cir.1985).
- 21 • Because Nevada's credit statutes vest discretion in prison officials, "they create no due
22 process liberty interest." *Clyde v. Hargrave*, 770 F. Supp 553, 557 (D. Nev. 1991).
- 23 • Regardless, Petitioner has received the full benefit of the good time credit statutes.
- 24 • Petitioner believes he was already credited with *discretionary* credit pursuant to NRS
25 209.449(2), and now should be credited with *mandatory* credit pursuant to NRS
26 209.449(1).
- 27 • Petitioner relies partly in error on NRS 209.449, which only concerns "vocational
28 education and training."

- 1 • None of the certificates presented qualify as "vocational education and training."
- 2 • Petitioner's certificates are for "training programs," or "correctional programs" or
- 3 substance abuse programs.

- 4 • NRS 209.449 reads:

5 Credits for completion of vocational education and training or other program.

6 1. An offender who has no serious infraction of the regulations of the
7 Department, the terms and conditions of his or her residential confinement, or the laws of
8 the State recorded against the offender must be allowed, in addition to the credits
9 provided pursuant to NRS 209.433, 209.443, 209.446 or 209.4465, a deduction of 60
10 days from the maximum term of the offender's sentence for the successful completion of:

11 (a) A program of vocational education and training; or

12 (b) Any other program approved by the Director.

13 2. If the offender completes such a program with meritorious or exceptional
14 achievement, the Director may allow not more than 60 days of credit in addition to the 60
15 days allowed for completion of the program.

- 16 • Training and correctional programs are governed by NRS 209.4465(5), with credit levels
17 being set by the Director pursuant to administrative regulation.
- 18 • NRS 209.4465(5) states "The Director may allow not more than 90 days of credit each
19 year for an offender who engages in exceptional meritorious service."
- 20 • According to NDOC administrators, this authority is interpreted broadly to permit NDOC to
21 offer credit for rehabilitative programming.
- 22 • The maximum credit which can be granted for all NRS 209.4465 programs during a year
23 is 90 days.
- 24 • There exists no authority in Nevada law or NDOC regulations to allow the NDOC to grant
25 double credit for NRS 209.4465(5) programs.
- 26 • Petitioner improperly relies on NRS 209.449 in an attempt to significantly multiply the
27 credit for each course in which he has participated.
- 28 • NRS 209.4465(5) makes no provision for double credit for exceptional or meritorious
performance.
- Furthermore, no non-vocational program has been certified pursuant to the director's
discretion for NRS 209.449(1)(b) credit.

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- Substance abuse programs are awarded credit under NRS 209.448, which mandates (in part)
...a deduction of not more than 60 days from the maximum term of the offender's sentence for the successful completion of a program of treatment for the abuse of alcohol or drugs which is conducted jointly by the Department and a person who is licensed as a clinical alcohol and drug abuse counselor...
- Like NRS 209.4465, no provision is made for double credit for NRS 209.448 programs.

B. PETITIONER HAS RECEIVED ALL CREDIT TO WHICH HE IS ENTITLED

- Petitioner received the appropriate amount of credit for each certificate presented to the Court.
- Petitioner presented three certificates of completion. Proper credit was received for each pursuant to the States' exhibits as follows:

TITLE	CREDIT	DATE
SOS, Help for Emotions	15	Sep 2009
Thinking for a Change	15	Feb 2010
Addiction Prevention	60	June 2010

- As shown here, Petitioner has received all credit to which he is entitled for the certificates he presented.
- Petitioner is incorrect regarding the application of NRS 209.449 to the instant circumstance.
- Petitioner presented no law or fact which would entitle him to the requested relief and therefore failed to meet his burden for issuance of a writ of habeas corpus.

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1 Based on the foregoing:

2 IT IS ORDERED that Petitioner Bergt's Petition for Writ of Habeas Corpus filed
3 September 3, 2010, should be and is hereby DENIED.


4 DATED this ____ day of December, 2010.

5 
6
7 HONORABLE DISTRICT COURT JUDGE

8 (58)

9
10 Respectfully Submitted By:

11 CATHERINE CORTEZ MASTO
12 Attorney General

13 By: 
14 ADAM L. WOODRUM
15 Deputy Attorney General
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