

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS STUMPF,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59497

FILED

APR 11 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *Angela*  
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is a proper person appeal from an order denying in part and granting in part a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition filed on April 21, 2011,<sup>2</sup> appellant claimed that he did not receive enough presentence credit. Specifically, appellant claimed that he should receive 16 additional days of credit. The district court reached the merits, granted the petition in part, and determined that appellant was entitled to presentence credit totaling 154 days.<sup>3</sup> The district court appeared to reject the claim for additional credit.<sup>4</sup>

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<sup>1</sup>This 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>The petition was received in the district court on April 14, 2011, but not filed until April 21, 2011.

<sup>3</sup>The order of the district court determined that appellant should receive 3 additional days of presentence credit, for a total of 154 days of credit. However, the original judgment of conviction provided appellant

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Based upon our review of the record on appeal, we conclude that the district court erred in reaching the merits of the claims raised in the petition because the petition was procedurally barred and application of the procedural bars is mandatory. State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Appellant's claim that he did not receive sufficient presentence credit is a challenge to the validity of the judgment of conviction and sentence and such a claim is subject to the procedural time bar set forth in NRS 34.726(1). See NRS 34.726(1) (providing that a petition that challenges the validity of the judgment of conviction and sentence must be filed within one year from entry of the judgment of conviction unless good cause is shown); Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169-70 (2006).<sup>5</sup> Appellant's petition was untimely as it was filed more than one year after the entry of the judgment of conviction on September 24, 2009. NRS 34.726(1). The petition was procedurally barred absent a demonstration of good cause—

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*...continued*

with 153 days of credit. There is no explanation for this discrepancy in the order.

<sup>4</sup>The district court's order failed to comply with the requirements of NRS 34.830(1).

<sup>5</sup>Appellant also claimed that despite the fact he was provided with 153 days of presentence credit in the judgment of conviction, the Department of Corrections was only applying 151 days of credit. This claim challenges the computation of time served and cannot be raised in a post-conviction petition for a writ of habeas corpus challenging the validity of the judgment of conviction. NRS 34.738(3). However, we note that any denial of this claim would be without prejudice for appellant to properly and separately file a post-conviction petition for a writ of habeas corpus challenging the computation of time served. NRS 34.730; NRS 34.738.

cause for the delay and undue prejudice. Id. Appellant failed to present an argument that he had cause for the delay. Thus, we conclude that the petition was procedurally time-barred and that the entirety of the petition should have been denied. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Michelle Leavitt, District Judge  
Douglas Stumpf  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk