

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARVIN D. PERKINS,  
Appellant,  
vs.  
THE STATE OF NEVADA; BRIAN  
WILLIAMS; AND SOUTHERN DESERT  
CORRECTIONAL CENTER,  
Respondents.

No. 59783

**FILED**

SEP 12 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malmé*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

In his petition filed on June 20, 2011, appellant claimed that his good time credits earned pursuant to NRS 209.443 were not accurately calculated. Appellant further claimed that he did not receive adequate credits for time spent on parole. Finally, appellant suggested he should receive further credits for earning a high school diploma and completing a therapeutic program.

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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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

The district court determined that appellant received the correct amount of statutory good time credits pursuant to NRS 209.443 for time spent incarcerated. In regards to the credits earned while on parole, the district court determined that appellant had not demonstrated he was entitled to additional credits as he had not proven that he was current on his supervision fees as required by NRS 209.4475 and that during his 2005 parole grant it appeared that his statutory good time credit was incorrectly displayed as work credit (but that he had nonetheless received the credits). The district court also determined that appellant had failed to demonstrate that he completed a diploma or any therapeutic programing.

Statutory good time credits earned while incarcerated

Appellant made only very vague claims regarding the amount of credits earned while incarcerated. Based upon our review of the record on appeal, which includes a detailed credit history, we conclude that the record on appeal supports the district court's conclusion that appellant was not entitled to any additional credits for time spent incarcerated. See NRS 209.443.

High school diploma and therapeutic programing

Appellant alleged that he should receive 60 days for earning a high school diploma and 180 days for completing a therapeutic program. Based upon our review of the record on appeal, we conclude that the district court did not err in rejecting this claim for credits as appellant failed to provide specific facts regarding this claim and offered no documentary support. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Statutory good time credits earned while on parole

Appellant alleged that he did not receive a sufficient amount of credits for various periods of time he has spent on parole. The various periods of parole, as identified by the State and found by the district court, included: 1) May 3, 2004 – September 8, 2004, 2) January 10, 2005 – January 10, 2006, 3) February 1, 2007 – April 26, 2007, and 4) October 2, 2007 – March 27, 2008.

NRS 209.4475 provides offenders on parole on or after January 1, 2004, an opportunity to earn statutory good time credits for each month on parole so long as the parolee was current with any fee to defray costs pursuant to NRS 213.1076 and current with any payment of restitution as required by NRS 213.126. NRS 209.4475(1). Prior to the amendments in 2007, the amount of credit earned was a deduction of 10 days for each month on parole. 2003 Nev. Stat., ch. 46, § 1, at 407. In 2007, the legislature amended NRS 209.4475 to increase the amount of credit to a deduction of 20 days for each month on parole. 2007 Nev. Stat., ch. 525, § 6, at 3177. This increase in the amount of credit was effective for credits earned after July 1, 2007. 2007 Nev. Stat., ch. 525, § 22, at 3196. The Director is required to maintain records of credits earned. NRS 209.4475(5). The credit history report provided by the parties for the district court's review demonstrates problems with the computation of these credits.<sup>2</sup>

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<sup>2</sup>We note that appellant appears to have forfeited a number of these credits when his parole was revoked. Appellant did not challenge the forfeiture of credits.

The credit history report for May 3, 2004 – September 8, 2004, indicates statutory good time credits earned as follows:

May 2004: 1 credit<sup>3</sup>

June 2004: 0 credits

July 2004: 5 credits

August 2004: 12.5 credits

September 2004: 12.5 credits.<sup>4</sup>

If the reported parole dates are accurate, there are two problems with these reported credits. First, the maximum amount of credits that could have been earned during any of these months was 10 credits per month.<sup>5</sup>

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<sup>3</sup>It is not clear if this credit is for time spent actually incarcerated during the month of May 2004, on a pro-rated basis, or if this is credit for time on parole.

<sup>4</sup>During this time period, the credit history report indicates that appellant earned work credits of 20 days per month for May 2004 – June 2004. However, a parolee is eligible for a maximum of 10 days per month for work credits pursuant to NRS 209.4475(2). This discrepancy requires an audit of the credit history.

<sup>5</sup>The parole dates are reported, and the record does not contain actual documentation showing the dates he was on parole. It is unclear if appellant was on parole during August and September 2004, or if he was incarcerated, perhaps awaiting parole revocation. If he was incarcerated, he would have been eligible for credits (at a rate of 12.5 credits per month) pursuant to NRS 209.443. Curiously, the Supervision Fee Transactions sheet provided by the State shows that appellant was billed for parole supervision from October 2004 – December 2004. This would appear inconsistent with information that his parole was revoked and he was incarcerated during this period. If appellant was on parole May 2004 – September 2004, it appears a maximum of 5 supervision fees were required but the sheet provided by the State shows 8 billing charges for

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2003 Nev. Stat., ch. 46, § 1, at 407. The credits of 12.5 days applied in both August and September appear to be those credits that would be available to an inmate pursuant to NRS 209.443, not the 10 days available to a parolee. Second, it does not appear that appellant would have been eligible for any credits for this period because he was not current with his supervision fees. The Supervision Fee Transactions sheet provided by the State shows that appellant was in arrears during these months and not current on his fees.<sup>6</sup> Considering these issues, an audit is necessary to calculate the proper amount of credits, if any, for this time period.

The credit history report for January 10, 2005 – January 10, 2006, indicates statutory good time credits earned as follows:

January 2005: 4 credits

February 2005 – August 2005: 0 credits

September 2005: 9 credits

October 2005: 12.5 credits

November 2005: 12.5 credits

December 2005: 12.5 credits.<sup>7</sup>

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2004. Thus, it would appear an audit of the Supervision Fee Transactions sheet (by comparing the billing with the period actually spent on parole) is necessary to determine the proper billing.

<sup>6</sup>Although it appears that appellant made payments in June and July, at the time he was over \$1,000 in arrears in his fees.

<sup>7</sup>During this time period, the credit history report indicates that appellant earned work credits of 20 days per month for January 2005 – July 2005, and September 2005 – December 2005. However, a parolee is eligible for a maximum of 10 days per month for work credits pursuant to *continued on next page...*

Again, if the reported parole dates are accurate, there are two problems with the reported credits. First, if appellant was eligible to receive any credit during this time, the credits should have been 10 days per month on parole.<sup>8</sup> 2003 Nev. Stat., ch. 46, § 1, at 407. Second, it does not appear that appellant would have been eligible for any credits for January 10, 2005 – January 10, 2006, because he was not current with his supervision fees. The Supervision Fee Transactions sheet provided by the State shows that appellant was in arrears during these months and not current on his fees.<sup>9</sup> Considering these issues, an audit is necessary to calculate the proper amount of credits, if any, for this time period.

The credit history report for February 1, 2007 – April 26, 2007, indicates statutory good time credits earned as follows:

February 2007: 1 credit

March 2007: 6 credits

April 2007: 12.5 credits.<sup>10</sup>

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NRS 209.4475(2). This discrepancy also requires an audit of the credit history.

<sup>8</sup>As discussed previously, the parole dates are reported and not supported by documentation. It is unclear if appellant was actually incarcerated during this period, which may account for the months with 12.5 credits earned pursuant to NRS 209.443.

<sup>9</sup>Although it appears that appellant made a couple of payments during this period, at the time he was over \$1,000 in arrears in his fees.

<sup>10</sup>During this time period, the credit history report indicates that appellant earned work credits of 20 days per month for February 2007 – April 2007. However, a parolee is eligible for a maximum of 10 days per  
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Again, if the reported parole dates are accurate, there are two problems with the reported credits. First, if appellant was eligible to receive any credit during this time, the credits should have been 10 days per month on parole.<sup>11</sup> 2003 Nev. Stat., ch. 46, § 1, at 407. Second, it does not appear that appellant would have been eligible for any credits for time spent on parole February 2007 – April 2007, because he was not current with his supervision fees. The Supervision Fee Transactions sheet provided by the State shows that appellant was in arrears during these months and not current on his fees.<sup>12</sup> Considering these issues, an audit is necessary to calculate the proper amount of credits, if any, for this time period.

The credit history report for October 2, 2007 – March 27, 2008, indicates statutory good time credits earned as follows:

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month for work credits pursuant to NRS 209.4475(2). This discrepancy also requires an audit of the credit history.

<sup>11</sup>As discussed previously, the parole dates are reported and not supported by documentation. It is unclear if he was actually incarcerated during this period, which may account for 12.5 credits earned pursuant to NRS 209.443. Again, curiously, appellant was continuously billed for parole supervision for May 2007 – September 2007, after his parole was reported to have been revoked. If appellant was on parole from February 1, 2007 – April 26, 2007, 3 months of supervision fees would have been required. The Supervision Fee Transactions sheet shows 8 billing charges for 2007, prior to his next grant of parole in October 2007. Thus, it appears an audit of the Supervision Fee Transactions sheet (by comparing the billing with the period actually spent on parole) is necessary.

<sup>12</sup>At the time, he was substantially in arrears in his fees.

October 2007 – March 2008: 12.5 credits each month.<sup>13</sup>

Again, if the reported parole dates are accurate, there are two problems with the reported credits. First, if appellant was eligible to receive any credit during this time, the credits should have been 20 days per month on parole.<sup>14</sup> NRS 209.4475(1). Second, it does not appear that appellant would have been eligible for any credit for time spent on parole October 2007 – March 2008, because he was not current with his supervision fees. The Supervision Fee Transactions sheet provided by the State shows that appellant was in arrears during these months and not current on his fees.<sup>15</sup> Considering these issues, an audit is necessary to calculate the proper amount of credits, if any, for this time period.

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<sup>13</sup>During this time period, the credit history report indicates that appellant earned work credits of 20 days per month for October 2007 – February 2008. However, a parolee is eligible for a maximum of 10 days per month for work credits pursuant to NRS 209.4475(2). This discrepancy also requires an audit of the credit history.

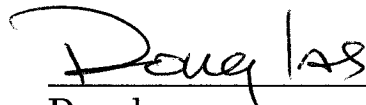
<sup>14</sup>As discussed previously, the parole dates are reported and not supported by documentation. It is unclear if he was actually incarcerated during this period, which may account for the months with 12.5 credits earned pursuant to NRS 209.443. Again, curiously, appellant was billed for parole supervision for April 2008, after his parole was reported to have been revoked. If appellant was on parole October 2007 – March 2008, 6 months of supervision fees would be required. The Supervision Fee Transactions sheet shows 7 billing charges. Thus, it appears an audit of the Supervision Fee Transaction sheet (by comparing the billing with the period actually spent on parole) is necessary.


<sup>15</sup>At the time, appellant was substantially in arrears in his fees.

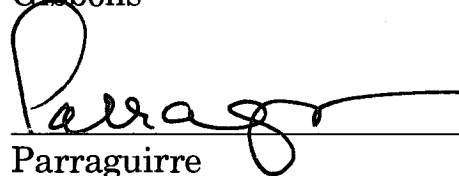


Given the circumstances discussed above, we reverse the decision of the district court to deny appellant's claim relating to credits for time spent on parole. A comprehensive audit of both the credit history report and the Supervision Fee Transactions sheet will be necessary for the district court's resolution of the claim.<sup>16</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge  
Marvin D. Perkins  
Attorney General/Carson City  
Attorney General/Las Vegas  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>16</sup>Because eligibility to earn credits for time spent on parole is contingent upon payment of parole supervision fees, an accurate billing statement is essential.