

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD F. EVERHART,

No. 33924

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

RICHARD F. EVERHART,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER OF AFFIRMANCE

Docket No. 33924 is a proper person appeal from an order of the district court denying appellant's motion for an amended judgment of conviction to include jail time credits. Docket No. 35622 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for writ of habeas corpus. We elect to consolidate these appeals for disposition.¹

On May 18, 1995, the district court convicted appellant, pursuant to a guilty plea, of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole in five years. Appellant expressly waived his right to appeal the conviction.

Docket No. 33924

On February 10, 1999, appellant filed a proper person motion for an amended judgment of conviction to include jail time credits in the district court. The State opposed the petition. On March 2, 1999, the district court denied appellant's motion. This appeal followed.

¹See NRAP 3(b).

²See Struxado v. State, 110 Nev. 745, 879 P.2d 1195 (1994), overruled on other grounds by Lee v. State, 115 Nev. 200, 948 P.2d 164 (1997).

In his motion, appellant contended that he was entitled to 153 days of jail time credit for the time he spent in pre-sentence incarceration from December 9, 1994 to May 10, 1995. In opposition to the motion, the State argued that appellant was not entitled to any credit for time served because appellant was in custody pursuant to a judgment of conviction in a separate district court case and had received credit for time served in that case. Appellant did not challenge the State's position. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. NRS 176.055 precludes the district court from crediting criminal defendants with time served while in custody on another charge.

We conclude that appellant did not demonstrate that he was entitled to relief.

Docket No. 35622

On December 7, 1999, appellant filed a post-conviction petition for a writ of habeas corpus in the district court.⁴ 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 January 14, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than two and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.⁵ Appellant's petition was procedurally barred absent a demonstration of cause for the

⁴See NRS 176.055(1).

Appellant labeled his petition a "motion to vacate judgment of conviction." Because appellant challenged his conviction and sentence, we conclude that the district court properly construed appellant's petition as a post-conviction petition for a writ of habeas corpus. See NRS 176.055(1) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other remedies, law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence and may be used exclusively in place of them").

⁵See NRS 34.726(1).

delay and prejudice.⁶ Appellant did not attempt to establish
cause for the delay. Based upon our review of the records on
appeal, we conclude that the district court did not err in
denying appellant's petition.

Conclusion

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

ORDER the judgments of the district court affirmed.


Shearing


Agosti


Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Richard F. Everhart
Clark County Clerk

See id.

⁶See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975); cert. denied, 423 U.S. 1077 (1975).

⁷We have considered all proper person documents
received in these matters, and we conclude that the relief
requested is not warranted.