

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON SHANE TALBERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61295

FILED

NOV 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingram*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an amended judgment of conviction.¹ Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On October 21, 1998, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon and/or to promote gang activity (count 1), and two counts of attempted murder with the use of a deadly weapon and/or to promote gang activity (counts 2 and 3). The district court sentenced appellant to serve two consecutive terms of life with the possibility of parole for count 1, two consecutive terms of 60 to 192 months for count 2 to be served consecutively to count 1, and two consecutive terms of 60 to 192 months for count 3 to be served concurrently to counts 1 and 2. The district court gave appellant 612 days of presentence credit.

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).

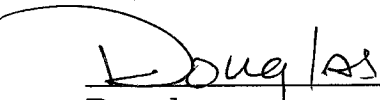
On February 28, 2012, appellant filed a proper person motion to amend the judgment of conviction. In his motion, appellant claimed that the judgment of conviction needed to be corrected as it failed to set forth the minimum term to be served for parole eligibility for count 1, the presentence investigation report had made no recommendation regarding count 1, he had no opportunity to comment on the presentence report, and if the judgment was to be amended, he should be provided with 5,509 days of credit. The district court amended the judgment of conviction to specify the minimum terms of parole eligibility for count 1—two consecutive terms of life with the possibility of parole after 20 years had been served—and denied the remaining requests for relief.² The district court entered the amended judgment nunc pro tunc to October 2, 1998, the original sentencing date.


Based upon our review of the record on appeal, we conclude that the district court properly amended the judgment of conviction to include the minimum parole eligibility terms for count 1 and correctly denied the remaining relief requested. A motion to amend the judgment of conviction to correct a clerical error is the improper vehicle in which to complain about the presentence investigation report. Appellant was not entitled to 5,509 days of presentence credit as the amended judgment of

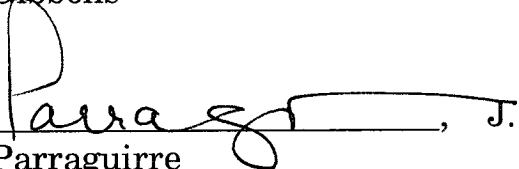
²At the time appellant committed his crimes, the minimum parole eligibility for first-degree murder was twenty years. 1995 Nev. Stat., ch. 443, § 44, at 1181. The deadly weapon and gang enhancements provided for equal and consecutive terms at the time appellant committed his crimes. 1995 Nev. Stat., ch. 455, § 1, at 1431; 1991 Nev. Stat., ch. 403, § 2, at 1057.

conviction was entered nunc pro tunc to the original sentencing date.³
Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

³An order entered nunc pro tunc has retroactive effect to the date specified—October 2, 1998, in this case. It would have been improper to award as presentence credits those credits earned in prison as flat, statutory and work time. The original judgment of conviction provides the prison with the actual presentence credits and the prison would calculate any “retrodate” from those credits, not credits earned while in prison. Any additional issues with the computation of time served must be raised in a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(c).

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Steven P. Elliott, District Judge
Brandon Shane Talbert
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk