

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNATHAN M. GREEN A/K/A  
JOHNATHAN GREEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63228

**FILED**

DEC 13 2013

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

*ORDER OF AFFIRMANCE*

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; David B. Barker, Judge.

In his petition filed on January 30, 2013, appellant sought additional presentence credit. 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

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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).

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.

Pickering, C.J.  
Pickering

Hardesty, J.  
Hardesty

Cherry, J.  
Cherry

cc: Hon. David B. Barker, District Judge  
Johnathan M. Green  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

*Allen D. Harrison*  
CLERK OF THE COURT

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**ORDER**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
FRANK M. PONTICELLO  
Chief Deputy District Attorney  
Nevada Bar #00370  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212.  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

CASE NO: 10C264398-2  
DEPT NO: XVIII

JOHNATHAN M. GREEN, aka,  
Jonathan Green,  
#1739207  
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: 04/01/2013  
TIME OF HEARING: 8:15 A.M.

THIS CAUSE having come on for hearing before the Honorable DAVID BARKER,  
District Judge, on the 1st day of April, 2013, the Petitioner not being present, represented by  
MICHAEL H. WILFONG, Deputy Public Defender, the Respondent being represented by  
STEVEN B. WOLFSON, Clark County District Attorney, by and through FRANK M.  
PONTICELLO, Chief Deputy District Attorney, and the Court having considered the matter,  
including briefs, transcripts, arguments of counsel, and documents on file herein, now  
therefore, the Court makes the following findings of fact and conclusions of law:

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**FINDINGS OF FACT**

1. Defendant is represented by the Clark County Public Dcfender.
2. Defendant filed a proper person Petition for Writ of Habeas Corpus challenging credit for time served, and seeking a total of THREE HUNDRED SIXTY-EIGHT (368) days credit based on time he spent in Walker's Residential Care Facility.
3. Defendant attached an exhibit to his proper person petition for writ of habeas corpus which contained the handwritten note, "July 9 picked up in California 2012."
4. Defendant spent ONE HUNDRED EIGHTY-SIX (186) days in the Clark County Detention Center prior to sentencing.
5. Defendant was placed on probation and was being supervised in the State of California pursuant to the interstate compact.
6. While on probation, defendant was arrested and convicted of a new crime in the State of California, and the Division of Parole and Probation sought and obtained a warrant for the defendant's arrest for violating his probation.
7. Defendant was booked into the Clark County Detention Center on July 14, 2012.
8. At the probation revocation hearing on July 25, 2012, Defendant, who was represented by counsel, stipulated to having violated his probation.
9. Defendant's probation was revoked at the hearing, and he was sentenced to the original underlying NINETEEN (19) to FORTY-EIGHT (48) months in the Nevada Department of Corrections, and was awarded TWO HUNDRED TWO (202) days credit for time served.
10. The credit for time served accurately reflects the time the defendant spent in the Clark County Detention Center prior to sentencing and the time spent in custody in California and Nevada after being booked on the probation violation warrant.

**CONCLUSIONS OF LAW**

1. Pursuant to State v. District Court (Jackson), 121 Nev. 413, 116 P.3d 834 (2005) the Nevada Supreme Court addressed the issue of whether a defendant is entitled to credit for time served on "house arrest" or in "residential confinement," and held that house

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arrest is not confinement within the meaning of the statute.

- 2. The Court then found at p. 417, that "This usage suggests that the Legislature understood "confinement" to be synonymous with county jail time."
- 3. The Court then held, "We conclude that Jackson's house arrest was merely a reasonable condition imposed upon her release on bail, and we hold that house arrest does not constitute time "actually spent in confinement" for which the duration of a sentence may be credited."
- 4. Since house arrest does not constitute time "actually spent in confinement," time spent in a residential care facility cannot constitute time "actually spent in confinement."

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 10<sup>th</sup> day of April, 2013.

  
DISTRICT JUDGE

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY

  
FRANK M. PONTICELLO  
Chief Deputy District Attorney  
Nevada Bar #00370