

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW ERIC HARGRAVE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64140 ✓

MATTHEW ERIC HARGRAVE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64141

FILED

MAR 11 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a “motion for amended judgment of conviction to include jail time credits.”¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge (Docket No. 64140), Eighth Judicial District Court, Clark County; Michael Villani, Judge (Docket No. 64141).

Docket No. 64140

In his August 15, 2013, motion, appellant claimed that he was entitled to additional presentence credits. A claim for presentence credits

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the records are sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). We elect to consolidate these appeals for disposition. *See NRAP 3(b)(2)*.

must be raised in a post-conviction petition for a writ of habeas corpus filed in compliance with the procedural requirements of NRS Chapter 34 and therefore, it was proper to construe the motion as a post-conviction petition. *See* NRS 34.724(2)(b); *Griffin v. State*, 122 Nev. 737, 744, 137 P.3d 1165, 1169-70 (2006).

Appellant filed his motion more than three years after entry of the judgment of conviction on March 26, 2010. Thus, appellant's motion was untimely filed. *See* NRS 34.726(1). Moreover, appellant's motion constituted an abuse of the writ as he raised claims new and different from those raised in his previous post-conviction petition for a writ of habeas corpus.² *See* NRS 34.810(2). Appellant's motion was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Appellant did not attempt to provide cause for the delay. Therefore, the district court did not err in denying the motion.

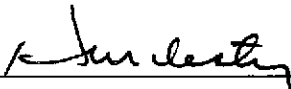
Docket No. 64141


In his August 22, 2013, motion, appellant claimed that he was entitled to additional presentence credits. As stated previously, a claim for presentence credits must be raised in a post-conviction petition for a writ of habeas corpus filed in compliance with the procedural requirements of NRS Chapter 34 and therefore, it was proper to construe the motion as a post-conviction petition. *See* NRS 34.724(2)(b); *Griffin*, 122 Nev. at 744, 137 P.3d at 1169-70.

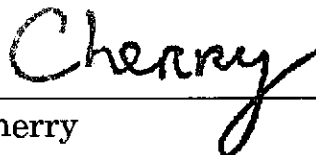
²*Hargrave v. State*, Docket No. 62386 (Order of Affirmance, September 18, 2013).

Appellant filed his motion more than three years after entry of the judgment of conviction on April 1, 2010. Thus, appellant's motion was untimely filed. *See* NRS 34.726(1). Moreover, appellant's motion constituted an abuse of the writ as he raised claims new and different from those raised in his previous post-conviction petition for a writ of habeas corpus.³ *See* NRS 34.810(2). Appellant's motion was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Appellant did not attempt to provide cause for the delay. Therefore, the district court did not err in denying the motion.⁴

Having concluded that appellant is not entitled to relief, we
ORDER the judgments of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

³*Hargrave v. State*, Docket No. 63166 (Order of Affirmance, November 14, 2013).

⁴The district court denied the motion on appeal in Docket No. 64141 without prejudice. However, NRS chapter 34 does not allow for a district court to dispose of a post-conviction petition for a writ of habeas corpus by denying it without prejudice. *See* NRS 34.830(2). As discussed previously, the district court should have denied relief pursuant to application of the procedural bars. However, we affirm because the district court reached the correct result in denying the motion. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

cc: Hon. Jennifer P. Togliatti, District Judge
Hon. Michael Villani, District Judge
Matthew Eric Hargrave
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk