

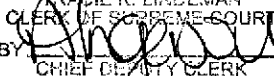
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH BARRETT,
Appellant,
vs.
ROBERT LEGRAND, WARDEN,
Respondent.

No. 68136

FILED

AUG 25 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying in part and dismissing in part, a post-conviction petition for a writ of habeas corpus.¹ Eleventh Judicial District Court, Pershing County; Michael Montero, Judge.

In his petition filed on May 3, 2013, appellant Kenneth Barrett first claimed the Nevada Department of Corrections (NDOC) was incorrectly calculating his statutory credits. Specifically, he claimed the NDOC was only giving him 6 days of credit every month instead of 10 days of credit. He also claimed this made the statute vague and confusing. These claims lacked merit. Barrett failed to demonstrate the NDOC was incorrectly calculating his statutory credits or that the statute was vague. Barrett has been receiving 10 days of credit every month as required by the statute. *See* NRS 209.446(1)(a). Therefore, the district court did not err in denying this claim.

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).

Second, Barrett claimed the incorrect statute has been applied to determine his statutory credits. He asserts the crimes he committed in September 1985 were committed before July 1, 1985, because the State argued at his trial his criminal conduct was continuous for an 18-month period that also encompassed time before July 1, 1985. This claim is without merit. The crimes were committed in September 1985, and therefore, the correct statute for determining statutory credits has been applied to Barrett's sentences. *See id.* Accordingly, the district court did not err in denying this claim.


Third, Barrett claimed the NDOC has denied him work credits because it has not assigned him a job. This claim is a challenge to the conditions of confinement, which is not cognizable in a post-conviction petition for a writ of habeas corpus. *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, the district court did not err in dismissing this claim.


Finally, Barrett claimed his parole eligibility date should have occurred at two years into his sentence for robbery rather than at three years. Specifically, he claims that NRS 200.380(2) lists the punishment for robbery as 2 years to 15 years; therefore, he should have received his first parole hearing at 2 years.

Barrett's claim is moot because he received parole for his robbery count in October of 2013. We note, however, Barrett's claim also lacked merit. At the time he was convicted, a minimum sentence did not have to be specified. 1967 Nev. Stat., ch. 211, § 2, at 458. Instead, Barrett would be eligible for parole when he served one third of his sentence. *See* NRS 213.120(1). Therefore, the district court did not err in denying this claim.

Having considered Barrett's claims and concluded they lack merit, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Montero, District Judge
Kenneth Barrett
Attorney General/Carson City
Pershing County District Attorney
Pershing County Clerk

²We have reviewed all documents Barrett has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Barrett has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.