

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN M. MURRAY,

No. 36602

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

FEB 02 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court properly denied appellant's petition.¹ Therefore, briefing and oral argument are not warranted in this case.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Shearing J.

Shearing

Agosti J.

Agosti

Leavitt J.

Leavitt

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Steven M. Murray
Clark County Clerk

¹On August 29, 2000, appellant filed a second notice of appeal in this court that was docketed in Docket No. 36602. In his second notice of appeal, appellant purports to appeal from the district court's denial of his petition for rehearing in the district court. To the extent that appellant appeals from the denial of his petition for rehearing, we lack jurisdiction to consider that portion of the appeal because no court rule or statute provides for an appeal from an order of the district court denying a petition for rehearing. See *Phelps v. State*, 111 Nev. 1021, 900 P.2d 344 (1995).

²See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

³We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

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AP 169

1 ORDD
2 FRANKIE SUE DEL PAPA
3 Attorney General
4 By: VICTOR HUGO SCHULZE, II
5 Deputy Attorney General
6 Criminal Justice Division
7 Nevada Bar No. 3596
8 555 E. Washington Avenue, Suite 3900
9 Las Vegas, Nevada 89101
10 702/486-3420

FILED

AUG 18 10 40 AM '00

Schulze, Victor Hugo
CLERK

11 Attorneys for Respondents.

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 *****

15 STEVEN M. MURRAY,
16 Petitioner,

CASE No: C111959
DEPT No: XV

17 vs.

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS

18 THE STATE OF NEVADA
19 Respondents.

20 This matter came before the court on July 26, 2000, on Petitioner Steven M. Murray's petition
21 for writ of habeas corpus and his subsequent "Hearing Brief". The Petitioner was not personally
22 present, being confined in the custody of the Nevada department of Prisons; the Respondents were
23 present through their attorney Victor-Hugo Schulze, II, Deputy Attorney General, Special
24 Prosecutions/Habeas Corpus Unit.

25 In this petition, the Petitioner alleges that he has been imprisoned in excess of his lawful
26 sentence in the amount of seventy days. In support of his contention, the Petitioner attached as an
27 exhibit to the petition a form that purports to list minimum parole eligibility timelines for various
28 sentences; neither the source nor the authenticity of this exhibit has been explained or demonstrated by
29 Murray. Without offering any analysis for his contentions, the Petitioner asserts that he has earned
30 "approximately" 2,692 credits applicable to his sentence, and he further asserts that "it takes 7 years 2

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COUNTY CLERK

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1 months and 13 days to expire petitioner's 12 year sentence . . . , or "approximately 2,628 days". The
2 Petitioner does not furnish the court with the basis for these allegations.

3 In response to the allegations in the petition, the Respondents filed an Opposition and an
4 Addendum to Opposition. Attached to the Addendum as an exhibit is an affidavit by the Correctional
5 Case Records Manager for the Nevada Department of Prisons and a detailed time audit of the
6 Petitioner's sentence. In her affidavit, the Correctional Case Records Manager explains that she
7 reviewed the sentence history and sentence structure of the Petitioner's sentence according to the
8 Department's records, including the Petitioner's original sentence, the reversal of his case by the
9 Supreme Court, and his resentencing to twelve years imprisonment with credit for time served of 1,447
10 days for time previously served prior to his resentencing. The Affidavit goes on to state that all credits
11 earned and lost by the Petitioner on the previous sentence have been posted to the new sentence,
12 including 44 credits for working, and 58 statutory credits lost for a violation of the Code of Penal
13 Discipline, a relevant fact obviously overlooked by the Petitioner in the petition. The Manager's
14 affidavit concludes by explaining that upon the Petitioner's return to prison, after he was resentedenced,
15 he was immediately eligible to appear before the Board of Parole Commissioners, and in fact did appear
16 before the Board. On October 26, 1998, the Petitioner appeared before the Parole Board and was
17 denied parole. His next hearing before the Board is scheduled for February 1, 2001.

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20 The court finds that the petition lacks merit on two separate grounds. First, it is clear from the
21 petition and the Manager's affidavit that the allegations in the petition are bald and conclusory at best,
22 failing to provide the court with any foundation or basis for the facts alleged regarding the central
23 allegation that the prisoner has expired his sentence. The exhibit attached to the petition does not assist
24 the court because no evidence of its source or authenticity has been proffered by the Petitioner. At
25 worst, the allegations in the petition appear to be misleading to the extent that facts regarding the
26 Petitioner's loss of credits for an infraction of the Code of Penal Discipline, clearly a relevant issue
27 here, and the Petitioner's actual appearance before, and denial by, the Parole Board, have been omitted.
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1 The omission of relevant facts is of great concern to the court because it appears that the Petitioner has
2 been less than honest in the presentation of his claim in violation of Nev. Rule Civ. P. 11 which
3 commands that litigants before the courts of this state present their claims fully and honestly.

4 Secondly, the affidavit of the Correctional Case Records Manager establishes that the Petitioner
5 has not served more time in prison than was ordered by the court. He has received all of the credits due
6 to him, and that he has already appeared before the Parole Board, whereupon he was denied parole.
7 The affidavit and its accompanying detailed time audit establish that the Petitioner has a projected
8 expiration date of January 19, 2002. The court accepts as true the allegations forwarded in the
9 Correctional Case Records Manager's affidavit and the accompanying detailed time audit of the
10 Petitioner's sentence, and finds that the Petitioner's allegations that he has served more time than he
11 was ordered by the court to serve are meritless.

12 Because the court finds that the allegations in the petition are bald and conclusory, and because
13 the evidence submitted by the Respondents establishes that the Petitioner's sentence has been correctly
14 structured with all proper credits posted,
15

16 **IT IS THEREFORE ORDERED** that the Petitioner's petition for writ of habeas corpus
17 heretofore filed on April 13, 2000 be and herby is **DENIED**.

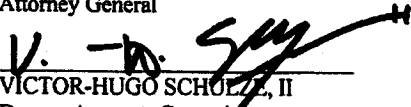
18 Dated: 8-17-00

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20 
21 DISTRICT COURT JUDGE

22 Respectfully submitted by:

23 FRANKIE SUE DEL PAPA
24 Attorney General

25 By:

26 
27 VICTOR-HUGO SCHOLZE, II
28 Deputy Attorney General
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