IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY J. SKELTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37097

FILED

DEC 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a motion for jail time credit.

On April 22, 1998, the district court convicted appellant Timothy J. Skelton, pursuant to a guilty plea, of one count each of burglary and forgery. The district court sentenced Skelton to serve concurrent prison terms of thirty-six to ninety months and twelve to forty-eight months. The district court then suspended execution of the sentence and placed Skelton on probation for three years. On March 20, 2000, the district court revoked Skelton's probation and ordered that the original sentence be executed with credit for eight days of presentence incarceration.

On October 9, 2000, Skelton filed a proper person motion for amended judgment of conviction to include jail time credits.[1] In

[1]We note that the appropriate means of challenging the computation of time served pursuant to a judgment of conviction is to file a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(c); Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996), limited in part on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000). However, we conclude that the procedural label is not crucial in this case.

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particular, Skelton sought credit for 767 days from his arraignment on February 9, 1998 until the revocation hearing on March 15, 2000. The State opposed the motion. On November 7, 2000, the district court denied the motion. This appeal followed.

NRS 176.055(1) provides that a defendant is entitled to credit "for the amount of time which the defendant has actually spent in confinement before conviction."[2] The plain language of the statute only requires credit for time that the defendant is actually incarcerated prior to sentencing. Moreover, this court has held that a defendant is "not entitled to credit for time spent on probation outside of incarceration."[3]

Here, the record demonstrates that Skelton was not in custody during the time for which he seeks credit. In particular, the record demonstrates that Skelton was not in custody at his arraignment on February 9, 1998; he was on an own recognizance release. Moreover, the record reveals that at each proceeding thereafter, including the revocation hearing on March 15, 2000, Skelton was not in custody. In fact, he was not remanded to custody until the end of the revocation hearing. It therefore appears that Skelton seeks credit for time spent on probation outside of incarceration. As explained above, he is not entitled to that credit.[4] Accordingly, we conclude that the district court properly denied the motion.

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[2]See also Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996) (holding that although language in NRS 176.055(1) is discretionary, the purpose of the section is to ensure that a defendant receives credit for all time served).

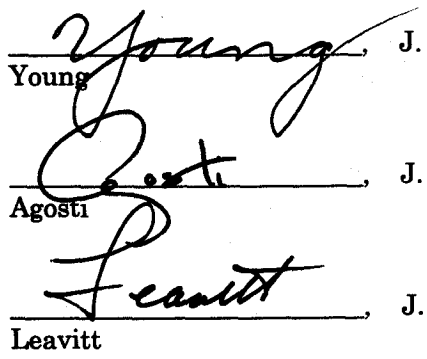
[3]Webster v. State, 109 Nev. 1084, 1085, 864 P.2d 294, 295 (1993); see also Van Dorn v. Warden, 93 Nev. 524, 569 P.2d 938 (1977).

[4]Skelton seemed to suggest in his motion that he was in an inpatient treatment program during part of the probationary period. The record belies that claim. But even assuming that Skelton was in such a program during probation, it would be insufficient to change the character of his probation from a conditional liberty to actual confinement. See Grant v.

continued on next page . . .

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]



Young, J.

Agosti, J.

Leavitt, J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Timothy J. Skelton
Clark County Clerk

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State, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983) (stating that defendant was not entitled to credit for time served in residential drug treatment programs as condition of probation where record lacked any evidence of confinement or restraints on liberty in connection with the programs and that "fact that he was not free to leave either program without violating his probation, standing alone, does not necessarily indicate restraints on his liberty akin to incarceration").

[5]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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