

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN RAY HOLMES,
Appellant,
vs.
WARDEN WSCC,
Respondent.

No. 83887-COA

FILED

JUL 27 2022

ELIZABETH SPURW
CLERK OF APPEALS COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin Ray Holmes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 10, 2021. First Judicial District Court, Carson City; James Todd Russell, Judge.

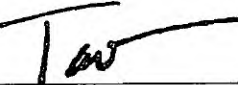
Holmes claimed the Nevada Department of Corrections (NDOC) failed to apply the 4 years, 160 days Holmes spent in county jail as credit for time served toward the deadly weapon enhancement sentence imposed consecutively to his first-degree murder sentence.¹ The record reflects that the NDOC applied Holmes' presentence credit toward his sentence for first-degree murder, leaving nothing left to apply to his

¹Holmes was found guilty by way of jury verdict of first-degree murder with use of a deadly weapon (Count I) and attempted murder with use of a deadly weapon (Count II). For Count I, Holmes was sentenced to a prison term of life with the possibility of parole plus an equal and consecutive prison term of life with the possibility of parole for the deadly weapon enhancement. For Count II, Holmes was sentenced to a prison term of 20 years plus an equal and consecutive 20-year prison term for the deadly weapon enhancement. The sentencing court ordered Count II to run concurrently to Count I and held that Holmes was entitled to 4 years, 160 days of presentence credit for time served.

enhancement sentence. See *Kuykendall v. State*, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996) (holding that an offender is entitled to have all of his presentence time served credited toward his ultimate sentence); *Nev. Dep't of Prisons v. Bowen*, 103 Nev. 477, 481, 745 P.2d 697, 699 (1987) (holding that "the penalty for a primary offense and the enhancement penalty imposed pursuant to NRS 193.165 are separate and distinct, and the consecutive sentences imposed must be treated as separate sentences for all purposes"); *Mays v. Eighth Judicial Dist. Court*, 111 Nev. 1172, 1176, 901 P.2d 639, 642 (1995) (providing that presentence confinement may be split among two or more consecutive sentences). Accordingly, we conclude the district court did not err by denying Holmes' petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Kevin Ray Holmes
Attorney General/Carson City
Carson City Clerk