

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY DONALD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38107

FILED

APR 19 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Schmidt*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a 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. Therefore, briefing and oral argument are not warranted in this case.<sup>1</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

*Young*, J.  
Young

*Agosti*, J.  
Agosti

*Leavitt*, J.  
Leavitt

<sup>1</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Kathy A. Hardcastle, District Judge  
Attorney General/Carson City  
Gary Donald  
Clark County Clerk

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6 GARY DONALD,  
7 )  
8 Petitioner,  
9 vs.  
10 JERRY KELLER,  
11 Respondents.

Case No. C105946  
Dept. No. IV

12  
13 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

14 DATE: June 6, 2001  
15 TIME: 9:00 a.m.

16 GARY DONALD's Petition for a Writ of Habeas Corpus came on for hearing on June 6, 2001.  
17 DONALD, in proper person, was not present being an inmate in the custody of the Nevada Department  
18 of Prisons, at High Desert State Prison, in Indian Springs, Nevada. The Respondent was represented by  
19 legal counsel, FRANKIE SUE DEL PAPA, by Deputy Attorney General, Rene L. Hulse. Upon  
20 reviewing the Petition and pleadings and papers on file herein, the Court finds as follows:

21 1. Pursuant to a Judgment of Conviction entered on or about December 12, 1992,  
22 DONALD was convicted of Possession of Controlled Substance with the Intent to Sell and was  
23 sentenced to serve a term of twelve (12) years in the Nevada Department of Prisons. The district court  
24 suspended that sentence and placed DONALD on probation.

25 2. DONALD's probation was revoked on June 22, 1993, and he was ordered to begin  
26 serving the original twelve (12) year term of his sentence.

27 3. DONALD thereafter paroled to the streets on April 26, 1995. On May 13, 1996, the  
28 Board of Parole Commissioners ("Parole Board") issued a retake warrant for DONALD's arrest as an

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555 E. Washington, Suite 3900  
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*Handwritten initials*

absconder from supervision because his whereabouts were unknown. DONALD was arrested upon that  
2 warrant nearly five (5) years later by the Chicago police on February 22, 2001.

3 4. After being returned to Nevada, DONALD appeared before the Parole Board on April  
4 30, 2001, on a parole violation hearing. The Parole Board determined that DONALD absconded from  
5 supervision on May 13, 1996, and found him guilty of violating the conditions of his parole. The Parole  
6 Board revoked DONALD's parole and assessed a loss of flat time in the amount of 1,764 days, and  
7 statutory good time in the amount of 578 days pursuant to NRS 213.15185.

8 5. In his Petition for a Writ of Habeas Corpus, DONALD argues that he is not lawfully in  
9 the custody of the Department of Prisons because his sentence under Case Number C105946 expired  
10 while he was on parole and prior to his being returned to the State of Nevada on the retake warrant in  
11 February 22, 2001.

12 6. A prisoner who is paroled and leaves the state without permission from the board or who  
13 does not keep the board informed as to his location as required by the conditions of his parole shall be  
14 deemed an escaped prisoner and arrested as such. NRS 213.15185(1).

15 7. The time a person is an escaped prisoner is not time served on his term of imprisonment.  
16 NRS 213.15185(4).

17 8. If an absconder's parole is lawfully revoked and he is thereafter returned to prison, he  
18 forfeits all previously earned credits earned to reduce his sentence pursuant to chapter 209 of NRS and  
19 shall serve any part of the unexpired maximum term of his original sentence as may be determined by  
20 the parole board. NRS 213.15185(2).

21 9. DONALD was deemed an escaped prisoner on May 13, 2001, and therefore was no  
22 longer serving time upon his term of imprisonment. NRS 213.15185(4). The amount of flat and  
23 statutory good time lost pursuant to DONALD's parole revocation hearing completely comports with  
24 the amount of time that DONALD was on absconder status.

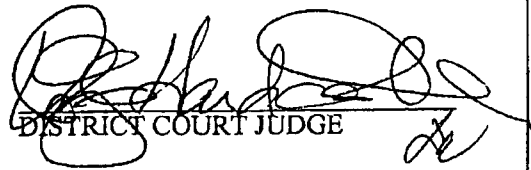
25 10. DONALD's sentence did not and could not expire while he was an absconder.

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11. DONALD has failed to show that his return to custody was unlawful.  
Based upon the foregoing, and with good cause appearing,  
IT IS HEREBY ORDERED that DONALD's Petition for a Writ of Habeas Corpus is denied.

DATED: June 12, 2001.

  
DISTRICT COURT JUDGE

Submitted this 6<sup>th</sup> day of June, 2001, by:

FRANKIE SUE DEL PAPA  
Attorney General

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