IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RANDY ALESNA MCDANIEL,
Appellant,
vs.
JOHN HENLEY, WARDEN NNCC,
Respondent.

No. 88693-COA

FILED

NOV 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Randy Alesna McDaniel appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 26, 2024. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

In his petition, McDaniel contended that (1) he was entitled to 196 days of credit for presentence confinement, (2) he was entitled to an additional 30 days of credit for post-sentence confinement, and (3) trial counsel was ineffective for failing to object to the sentencing court's decision not to award him any presentence credit.

As an initial matter, the district court erroneously determined that McDaniel's petition did not challenge the validity of his judgment of conviction or sentence. Although McDaniel titled his pleading "petition for writ of habeas corpus (time computation)," McDaniel challenged the amount of presentence credit; "a claim for presentence credit is a challenge to the validity of the judgment of conviction and sentence" and not a challenge to the computation of time served. *Griffin v. State*, 122 Nev. 737, 746, 137 P.3d 1165, 1170 (2006). And McDaniel's claim that counsel was ineffective at sentencing could only be brought in a postconviction habeas petition challenging the validity of a judgment of conviction or sentence. *See*

Gonzales v. State, 137 Nev. 398, 401-03, 492 P.3d 556, 560-62 (2021). Nonetheless, we affirm the district court's order for the reasons discussed below. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

McDaniel was convicted pursuant to a guilty plea, and his independent claim for presentence credit was outside the scope of a postconviction habeas petition stemming from a guilty plea. *See* NRS 34.810(1)(a) (stating a postconviction habeas petition stemming from a guilty plea may allege only "that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel"); *Griffin*, 122 Nev. at 745, 137 P.3d at 1170 (stating that, "[b]ecause the scope of claims that may be raised in a habeas corpus petition is limited," a claim for presentence credit "should be presented as an ineffective assistance of counsel claim—trial counsel was ineffective for failing to ensure that the defendant received the proper amount of credit or appellate counsel was ineffective for failing to raise the issue of presentence credit on appeal"). Therefore, we conclude McDaniel is not entitled to relief on this claim.

Regarding McDaniel's claim of ineffective assistance of counsel, the district court did not specifically address this claim in its written order. Nonetheless, we assume the district court denied this claim for the purposes of our review because it considered and denied McDaniel's related claim that he was entitled to presentence credit and it purported to deny

McDaniel's petition in its entirety.[1] *See State v. Bennett*, 119 Nev. 589, 605, 81 P.3d 1, 12 (2003) (assuming the district court denied certain claims that were neither specifically addressed nor expressly denied).

To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. "A claim of ineffective assistance of counsel presents a mixed question of law and fact that is subject to independent review." *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

McDaniel claimed counsel should have sought presentence credit because his sentence was ordered to run concurrent to his sentence in another criminal case. "[W]hen a district court imposes a sentence in a criminal case, it must give a defendant credit for any time the defendant has actually spent in presentence confinement absent an express statutory

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[1]We remind the district court that the "failure to address and specifically resolve in its written judgment each and every claim presented in a petition can often present subsequent reviewing courts, both state and federal, with unintended difficulties," *State v. Bennett*, 119 Nev. 589, 605 n.40, 81 P.3d 1, 12 n.40, and that it is required to provide specific findings of fact and conclusions of law with respect to each claim raised in the petition, NRS 34.830(1).

provision making the defendant ineligible for that credit." *Poasa v. State*, 135 Nev. 426, 426, 453 P.3d 387, 388 (2019). NRS 176.055(2)(b) provides as follows:

> "A defendant who is convicted of a subsequent offense which was committed while the defendant was . . . on probation . . . from a Nevada conviction *is not eligible for any credit on the sentence for the subsequent offense* for the time the defendant has spent in confinement which is within the period of the prior sentence, regardless of whether any probation . . . has been formally revoked."

(Emphasis added.) In this matter, McDaniel does not dispute that he was on probation for a prior offense when he committed the instant offense. Moreover, NRS 176.055(2)(b) does not provide any exception for when a defendant's sentence is ordered to run concurrent to the sentence imposed in the matter for which they were on probation. Thus, McDaniel was not entitled to any credit toward his sentence for the instant offense.[2] *See Gaines v. State*, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000) ("The plain and unequivocal language of NRS 176.055(2)(b) prohibits a district court from crediting a parolee or probationer for time served on a subsequent offense if such offense was committed while on probation or parole."). Therefore, McDaniel failed to demonstrate counsel was deficient or a reasonable

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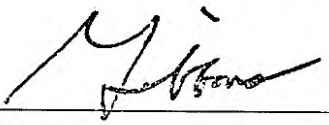
[2]To the extent McDaniel relies upon the supreme court's decision in *White-Hughley v. State*, that case applies when "a defendant simultaneously serves time in presentence confinement for multiple cases and the resulting sentences are imposed concurrently." 137 Nev. 472, 472, 495 P.3d 82, 83 (2021). Here, McDaniel did not simultaneously serve time in presentence confinement for multiple cases; rather, McDaniel had already been sentenced in his prior case and was on probation for that prior offense when he committed the instant offense.

probability of a different outcome but for counsel's error, and we conclude McDaniel is not entitled to relief on this claim.

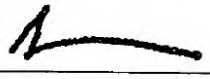
As for McDaniel's claim for post-sentence credit, we conclude it was improperly raised in his postconviction habeas petition challenging the validity of a judgment of conviction or sentence. Although the judgment of conviction is required to set forth "[t]he exact amount of credit granted for time spent in confinement before conviction," NRS 176.105(1)(d), the time spent in confinement after sentencing is not time spent in presentence confinement. Rather, all time served after sentencing is time served pursuant to the conviction and is included in the computation of time served. *See* NRS 176.335(3) ("The term of imprisonment designated in the judgment of conviction must begin on the date of sentence of the prisoner by the court."). Therefore, any claim for post-sentence credit had to be raised in a separate postconviction habeas petition challenging the computation of time served, *see* NRS 34.738(3), and we conclude McDaniel is not entitled to relief on this claim.

Having concluded McDaniel is not entitled to relief, we conclude the district court did not err by denying McDaniel's petition, and we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. John Schlegelmilch, District Judge
Randy Alesna McDaniel
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk