

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RALPH BASHAM,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 39433

FILED

DEC 18 2002

JANETT M. ELSON
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

On August 2, 1996, appellant John Ralph Basham was convicted, pursuant to a jury verdict, of sexual assault (count I), battery with the intent to commit sexual assault (count II), and dissuading a victim from reporting a crime (count III). The district court sentenced Basham to serve a life prison term with parole eligibility in 10 years for count I, a concurrent prison term of 26 to 120 months for count II, and a prison term of 19 to 48 months for count III to run consecutively to count II. This court dismissed Basham's direct appeal from the judgment of conviction.¹

On September 1, 2001, Basham filed a proper person post-conviction petition for a writ of habeas corpus, challenging the computation of time that he has served pursuant to the judgment of conviction. The State opposed the petition. Pursuant to NRS 34.750 and

¹Basham v. State, Docket No. 29317 (Order Dismissing Appeal, November 24, 1998).

NRS 34.770, the district court declined to appoint counsel to represent Basham or to conduct an evidentiary hearing. On March 21, 2002, the district court denied Basham's petition. This appeal followed.

In his petition, Basham contended that he is entitled to have his earned good time and other credits applied to the sentence imposed in Count III. Basham reasoned that he is entitled to those credits because he has completed serving the sentence for count II, and is now serving the sentence for count III, which was imposed to run consecutively to count II but concurrent to the life sentence imposed in count I.²

Based on our review of the record, it appears that the district court may have erred in rejecting Basham's petition. The record indicates that the Department of Prisons may be characterizing count III as running consecutively to count I. We note, however, that the judgment of conviction provides that the sentence in Count III shall run consecutively to the term Basham is serving in Count II, but is silent with respect to count I. Where the judgment of conviction is silent in this regard, the sentence imposed runs concurrently, unless a consecutive sentence was imposed by the district court at the sentencing hearing and the written judgment's silence is attributable to a clerical error.³ Provided the district court imposed Basham's sentence in count III to run concurrently to his sentence in count I, Basham is entitled to have any good time credits

²In the petition, Basham argued that the Department of Prison's failure to apply those credits resulted in a breach of contract, and violated the Due Process, Equal Protection, and Double Jeopardy Clauses of the United States and Nevada Constitutions.

³See NRS 176.035(1); NRS 176.565.

earned after the expiration of count II applied to his sentence in count III because that sentence is for a term of years, not a life sentence.⁴

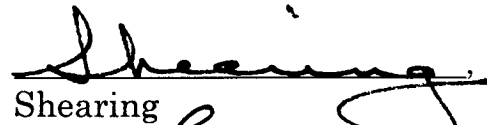
We therefore reverse the order of the district court and remand this matter to the district court for consideration of the issue of whether count III was imposed to run consecutively or concurrently to count I. We note that a review of the sentencing transcript, which was not provided for this court's review, would be necessary in considering this issue. If the district court imposed count III to run concurrently to count I and Basham expired his sentence in count II, Basham is entitled to have his good time and other credits earned after expiration of his sentence in count II applied to his sentence in count III. If, however, the district court imposed count III to run consecutively to count I, then Basham is not entitled to have his good time and other credits applied to count III until he begins serving the sentence in count III, which would occur after the expiration of count I.

Having reviewed the record on appeal and concluded that briefing and oral argument are unwarranted,⁵ and for the reasons set forth above, we

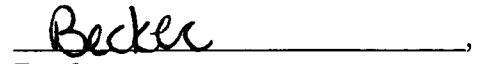
⁴See NRS 209.446; cf. Hunt v. Warden, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995) (in construing the legislative intent of NRS 209.446, this court held that the legislature did not intend for good time credit to be applied to a sentence of life in prison because there is no date from which the credit can be deducted). We note that Hunt does not hold that good time and other credits may not be applied to a sentence of a term of years that is served concurrently with a life sentence.

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

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.⁶

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Richard Wagner, District Judge
Attorney General/Carson City
John Ralph Basham
Pershing County Clerk

⁶We have considered all proper person documents filed or received in
this matter, and we conclude that no further relief is warranted.