

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK JOSEPH O'KELLY A/K/A
PATRICK J. OKELLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39552

FILED

JAN 24 2003

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's motion to amend the judgment of conviction to include presentence custody credit.

On August 9, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a credit card without the cardholder's consent. The district court sentenced appellant to serve a prison term of 19 to 48 months. The district court did not award appellant credit for time served in presentence confinement. Appellant did not file a direct appeal.

On April 4, 2002, appellant filed a proper person motion in the district court seeking a hearing to determine whether he was entitled to presentence incarceration credit.¹ In the motion, appellant alleged that he

¹We note that NRS 34.724(2)(c) specifically provides that a post-conviction petition for a writ of habeas corpus is "the only remedy available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction." Appellant's request for jail time credits is a challenge to the computation of time he has served. See Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996), clarified on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000). Accordingly, appellant should have filed a post-conviction

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was constitutionally entitled to 81 days credit for time served in jail between May 10, 2001, the date he was arrested, and July 30, 2001, the date he was sentenced.² In particular, appellant argued that such credit was constitutionally mandated pursuant to this court's holding in Kuykeadall v. State.³ The State opposed the motion, alleging appellant had already been credited for time served in presentence incarceration in District Court Case No. C173219. The district court denied the motion. This timely appeal followed.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion because he received all the presentence incarceration credit to which he was entitled. NRS 176.055(1)

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petition for a writ of habeas corpus, not a motion for credit. Id. Because the motion is supported by sufficient factual allegations, we conclude that the procedural label is not critical in this case in resolving his claim for credits.

²In the motion, appellant raised two additional arguments. First, appellant alleged that his guilty plea was not knowing because he was not advised, prior to pleading guilty, that "withholding 81 days of presentence custody credit was a consequence of his guilty plea." Second, appellant argued that the sentence imposed was illegal because he is serving a sentence of 48 months and 81 days having been denied credit for presentence incarceration. We decline to consider appellant's additional claims because appellant may not challenge the validity of his judgment of conviction in a document challenging the computation of time. See generally NRS 34.738(3).


³112 Nev. 1285, 926 P.2d 781 (1996).

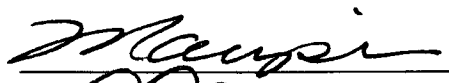
does not allow credit for time served in confinement if the "confinement was pursuant to a judgment of conviction for another offense."⁴

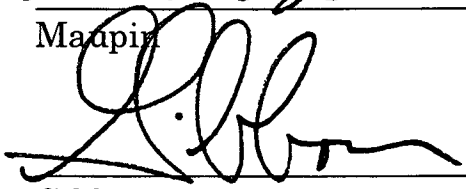
Here, the time appellant served in presentence confinement from May 10, 2001, the date of his arrest in the instant case, to June 4, 2001, the date he was sentenced in case number C173219, was credited to appellant's sentence in that case. Additionally, appellant was not entitled to presentence incarceration credit for time served after June 4, 2001, until his sentencing in the instant case, which occurred on July 30, 2001, because he was serving the sentence imposed in case number C173219.

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, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

⁴See Gaines v. State, 116 Nev. 359, 365-66, 998 P.2d 166, 170 (2000) (recognizing that this court's holding in Kuykendall did not affect the unequivocal prohibition of incarceration credit set forth in NRS 176.055).

⁵We 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
Patrick Joseph O'Kelly
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk