

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD GOOSBY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39609

FILED

FEB 04 2003

ORDER OF AFFIRMANCE

APPOINTED BY COURT  
CLERK OF SUPREME COURT  
BY *J. Ruben*  
DEPUTY CLERK

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

On November 15, 2001, the district court convicted appellant Todd Goosby, pursuant to a guilty plea, of possession of a controlled substance. The district court sentenced Goosby to serve a term of thirteen to forty-eight months in the Nevada State Prison, with no credit for time served. No direct appeal was taken.

On December 20, 2001, Goosby filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Goosby or to conduct an evidentiary hearing. On April 24, 2002, the district court denied Goosby's petition. This appeal followed.<sup>1</sup>

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<sup>1</sup>Pursuant to NRAP 3(e), on May 9, 2002, the clerk of this court received from the clerk of the district court a copy of the notice of appeal that Goosby filed in district court case number C172099 on May 6, 2002. Therefore, it is clear that Goosby filed a timely notice of appeal in that case and that this court has jurisdiction to consider this appeal. We note, however, that the record on appeal in district court case number C172099 that was subsequently transmitted to this court by the district court clerk

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In his petition, Goosby claimed that he was entitled to credit for time served. Specifically, Goosby argued that he should have received credit from April 15, 1999, the date he was sentenced in district court case number C155261, to July 5, 2001, the date he was sentenced in the instant case. We conclude that the district court did not err in denying Goosby's petition.

NRS 176.055(2)(b) provides that a person convicted of a subsequent offense while on probation is not eligible for credit on the sentence for the subsequent offense for the time spent in confinement within the period of the prior sentence, regardless of whether probation has been formally revoked. Goosby was on probation in district court case number C155261 when he committed the instant, subsequent offense. Goosby also failed to allege sufficient facts demonstrating that he was entitled to credit.<sup>2</sup> Specifically, Goosby failed to provide the dates of his actual periods of confinement.<sup>3</sup> Therefore, Goosby is not entitled to credit in this case.

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*... continued*

on August 23, 2002, does not contain a copy of that notice of appeal. Instead, it appears that the clerk of the district court may have mistakenly filed that notice of appeal as part of the record of the proceedings conducted in district court case number C155261. Accordingly, we direct the clerk of the district court to review and correct the records of those two proceedings.


<sup>2</sup>See Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996) (clariifed on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000)).


<sup>3</sup>See id.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Goosby is not entitled to relief and that briefing and oral argument are unwarranted.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Jackie Glass, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Todd Goosby  
Clark County Clerk

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<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).