

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY LEE EURITT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39630

FILED

FEB 04 2003

ORDER OF AFFIRMANCE

JANET H. SLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Appellant Jerry Lee Euritt maintains that the denial was improper because he should have received credit against his sentence for having served 228 days.

In October 2000, Euritt was convicted, pursuant to a guilty plea, of one count of attempted obtaining and using personal identifying information for unlawful purposes. He received a sentence of 24 to 60 months in prison, with credit for 43 days served. He was also ordered to pay \$26,837.99 in restitution. In February 2001, Euritt moved for jail time credit totaling 228 days. The district court denied the motion. In May 2001, Euritt moved to correct alleged statutory clerical errors, again arguing that he deserved credit for 228 days served. The district court denied the motion, and this court dismissed Euritt's subsequent appeal. He filed his instant habeas petition in March 2002, again raising the same claim, and the district court denied it the next month.

NRS 34.726(1) provides that absent a showing of good cause, “a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction” if an appeal was not taken. To show good cause, a petitioner must demonstrate that the delay was not his fault and that dismissing the petition as untimely will unduly prejudice him.¹ Euritt did not appeal his conviction, and he filed his habeas petition about seventeen months after his conviction. Therefore, absent good cause, the petition is untimely.


Euritt has not demonstrated that the delay was not his fault. Nor has he shown that he will be unduly prejudiced. The record reflects that the jail time he seeks credit for was pursuant to a hold placed by California authorities for a probation violation there. In fact, immediately after Euritt pled guilty in this case, the district court exonerated his bail at his own request, and he was thereafter detained pursuant to the California hold. After Euritt was sent to prison in this case, California released its hold and did not prosecute the probation violation. Thus he complains that he spent time in jail for which he received no credit. Under NRS 176.055(1), credit is not given for “confinement . . . pursuant to a judgment of conviction for another offense.” Euritt was confined pursuant to his conviction in California.² We discern no undue prejudice here simply because California chose not to pursue the probation violation

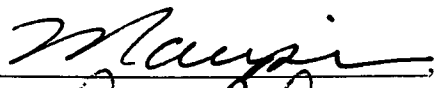
¹NRS 34.726(1)(a) and (b).

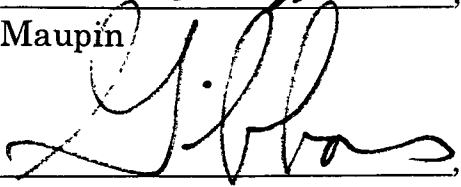
² See Dearing v. State, 90 Nev. 297, 525 P. 2d 601 (1974).

against him after he received a prison term in Nevada. Accordingly,
Euritt's petition is untimely, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Mary Lou Wilson
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk