

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY JACOBS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39631

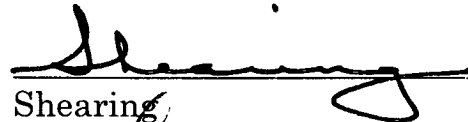
SEP 26 2002

ORDER OF AFFIRMANCE


J. N. BLOOM
CLERK OF THE SUPREME COURT
J. Richards
CLERK

This is a proper person appeal from an order of the district court dismissing a motion for second amended judgment of conviction. We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court properly dismissed appellant's motion. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we


ORDER the judgment of the district court AFFIRMED.



Shearing, J.



Leavitt, J.



Becker, J.

¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Johnny Jacobs
Washoe District Court Clerk

1 CODE: 2827

FILED

APR 10 2002

RONALD A. LONGTIN, JR., CLERK
By: *[Signature]*
DEPUTY

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

FILED

8 ***

MAY 22 2002

9 THE STATE OF NEVADA,

No. 39631

JANETTE M. CLARK
CLERK OF SUPREME COURT
DEPUTY CLERK

10
11 Plaintiff,

CASE NO: CR91-1593

12 vs.

DEPT. NO.: 10

13
14 JOHNNY JACOBS,

15 Defendant.

16
17 **ORDER DENYING POST-CONVICTION RELIEF**

18 The Court has read and considered Defendant JOHNNY JACOBS's *Motion for Order*
19 *of Second Amended Judgment of Conviction*, filed December 18, 2001, and resubmitted
20 February 26, 2002. No response was filed by the State, although this Court ordered the
21 State to respond on January 2, 2002.

22 Defendant was convicted of numerous drug-related offenses in 1991. His extensive
23 post-conviction motion and appeal history is set forth in the Nevada Supreme Court's most
24 recent Order filed with this Court on March 14, 2002. The instant motion alleges
25 Defendant has not received the 2,003 days credit for time served this Court ordered on
26 July 20, 1999. Defendant also alleges he is still serving time on Counts II and VI which
27 were ten-year sentences to be served concurrently, when he should now be serving time
28 on the ~~twenty-five~~ year sentence imposed in Count XI that was to be served consecutively.

1 Although there may be merit to these claims, there are several impediments to
2 ordering an evidentiary hearing on the matter. First, Defendant's claims are challenges to
3 his continuing incarceration, not to the judgment of conviction. His motion, therefore, does
4 not fall into one of the four post-conviction exceptions to the writ of habeas corpus
5 provisions.¹ As such, the motion needs to have complied with the requirements outlined in
6 NRS 34.720 to 34.830, inclusive.² Although the procedural label for habeas relief is not
7 crucial,³ Defendant has failed to meet the substantive statutory requirements. For
8 example, Defendant's motion is not verified.⁴ Defendant's allegation is not supported by
9 any documentation from his prison counselor or anyone else in support thereof,⁵ and
10 Defendant's motion is not filed in the correct jurisdiction.⁶ "No hearing upon [a] petition
11 may be set until the requirements of NRS 34.740 to 34.770, inclusive, are satisfied." NRS
12 34.730(4).⁷

13 **ACCORDINGLY, IT IS HEREBY ORDERED** that Defendant's motion is dismissed
14 without prejudice.

15 **DATED** this 10 day of April, 2002.

16 
17 STEVEN P. ELLIOTT
18 District Judge
19

20
21 ¹ These exceptions are motions to modify a sentence based on very narrow due process grounds,
22 motions to correct a facially illegal sentence, motions to withdraw a guilty plea, and motions for a
23 new trial. See Hart v. State of Nevada, 116 Nev. Adv. Op. 66, 1 P.3d 969, 971-72 (2000). See also
24 Edwards v. State of Nevada, 112 Nev. 704, 707, 918 P.2d 321, 323-24 (1996). They are all incident
25 to the proceedings in trial court.

26 ² NRS 34.735, in particular, sets forth the form a habeas petition must substantially follow.

27 ³ See Pangallo v. State, 112 Nev. 1533, 1535-36, 930 P.2d 100, 102 (1996).

28 ⁴ See NRS 34.730.

29 ⁵ A defendant must support any claims with specific factual allegations that are not belied by the
30 record before he is entitled to an evidentiary hearing. Here, the record does not repel Defendant's
31 claim, but it includes pertinent facts Defendant's allegations do not address, such as whether the
32 2,003 days were subtracted from his consecutive sentence in Count XI as opposed to his concurrent
33 sentences in Counts II and VII. See Pangallo, 112 Nev. at 1536, 930 P.2d at 102-03. Defendant also
34 fails to explain why he thinks he is still serving time on Counts II and VII.

35 ⁶ Habeas challenges to continuing incarceration must be filed in the county of incarceration. See NRS
36 34.738. See also Nev. Const. art. 6, § 6(1).

37 ⁷ It should be noted that the deficiencies addressed in this opinion are illustrative, not exhaustive.

1 **CERTIFICATE OF MAILING**

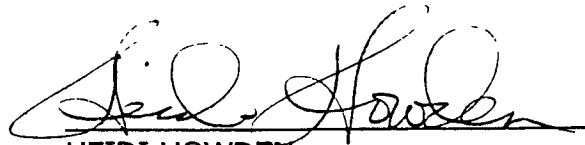
2 I hereby certify that I am an employee of the Second Judicial District Court of the
3 State of Nevada, in and for the County of Washoe; that on the 10 day of April, 2002, I
4 deposited for mailing a copy of the foregoing document addressed to:
5

6 Johnny Jacobs
7 P.O. Box 1989-35544
8 Ely, NV 89301

9 Donald York Evans, Esq.
10 P.O. Box 864
11 Reno, NV 89504-0864

12 Washoe County District Attorney's Office
13 P.O. Box 30083
14 Reno, NV 89520
15 (Via Interoffice Mail)

16 **DATED** this 10 day of April, 2002.

17 

18 HEIDI HOWDEN
19 Administrative Assistant