

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHAD SIMON,  
Appellant,  
vs.  
WARDEN, WELLS CONSERVATION  
CAMP, E.K. MCDANIEL; THE STATE  
OF NEVADA; AND THE STATE OF  
NEVADA, OFFICE OF THE ATTORNEY  
GENERAL, FRANKIE SUE DEL PAPA,  
Respondents.

No. 39674

FILED

FEB 27 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
87 *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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 October 16, 1996, the district court convicted appellant Chad Simon, pursuant to a guilty plea, of possession of a controlled substance. The district court sentenced Simon to serve a term of sixteen to forty-eight months in the Nevada State Prison. The district court suspended the prison sentence and placed Simon on probation for an indeterminate period not to exceed thirty-six months. No direct appeal was taken.

Apparently, Simon left Washoe County in violation of his probation and relocated to Clark County. Simon was subsequently convicted in Clark County of Grand Larceny in district court case number

C173035. On May 31, 2001, Simon's probation in the instant case was revoked and the original sentence imposed. The district court ordered the sentence to be served concurrently to Simon's sentence in district court case number C173035, with eighty-four days credit for time served.

On January 24, 2002, Simon 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 Simon or to conduct an evidentiary hearing. On April 10, 2002, the district court denied Simon's petition. This appeal followed.

In his petition, Simon claimed that he was entitled to an additional one hundred and forty-two days credit for time served. Simon argued that he was entitled to credit for the time he served from January 10, 2001, the date he was arrested for violating his probation,<sup>1</sup> and May 31, 2001, the date his probation was revoked. Simon is not entitled to credit in district court case number C173035 because he was on probation for the instant offense at the time he was imprisoned for the subsequent

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<sup>1</sup>In its order denying the petition, the district court notes that the arrest of violator action letter indicates that Simon was arrested on January 11, 2001. The letter is not part of the record on appeal.

matter.<sup>2</sup> Pursuant to NRS 176.055 Simon is entitled to credit for time served in the instant case.<sup>3</sup> However, that time does not include time that Simon spent incarcerated following entry of the subsequent judgment of conviction (district court case number C173035) because, as a result of that entry, any ensuing time served was time served under a conviction other than the one in the instant matter.

We therefore reverse the district court's order and remand the matter for further proceedings to determine how much credit for time served Simon is legally entitled to in the instant matter.<sup>4</sup>

Accordingly, we


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<sup>2</sup>See NRS176.055(2)(b) ("A defendant who is convicted of a subsequent offense which was committed while he was . . . [i]mprisoned in a county jail or state prison or on probation or parole from a Nevada conviction is not eligible for any credit on the sentence for the subsequent offense for the time he has spent in confinement which is within the period of the prior sentence, regardless of whether any probation or parole has been formally revoked.").


<sup>3</sup>See also Gaines v. State, 116 Nev. 359, 365, 998 P.2d 166, 170 (2000) (citing Kuykendall v State, 112 Nev. 1285, 1286-87, 926 P.2d 781, 782-83 (1996)).

<sup>4</sup>In his petition, Simon also appeared to argue that his counsel was ineffective for failing to file an appeal raising the issue regarding whether the district court had erred in determining he was not entitled to credit for time served. In light of our disposition in this case we conclude that Simon is not entitled to further relief.

ORDER the judgment of the district court REVERSED and we REMAND this matter to the district court for proceedings consistent with this order.<sup>5</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

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

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<sup>5</sup>We have considered all proper person documents filed or received in this matter, and we conclude that Simon is entitled only to the relief described herein.