

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK ALLEN LEVINSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39888

FILED

MAY 08 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion for an amended judgment of conviction to include credits.

On November 9, 2000, the district court convicted appellant, pursuant to a guilty plea, of coercion. The district court sentenced appellant to serve a term of nineteen to seventy-two months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period of three years. On September 4, 2001, the district court entered an order revoking appellant's probation and amending the judgment of conviction. Appellant was given sixty-seven days of credit for time served. No direct appeal was taken.

On June 4, 2002, appellant filed a proper person motion for an amended judgment of conviction to include credits in the district court.<sup>1</sup> The State opposed the motion. Appellant filed a reply. On July 2, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he was entitled to an additional one hundred and eighty days of credit for the time he spent on house arrest as a condition of his probation. Under NRS 176.055(1), the district court may order credit for time that the defendant has "actually spent in confinement before conviction." A defendant is entitled to credit only for confinement that "is tantamount to incarceration in a county

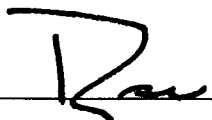
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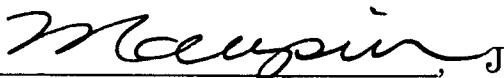
<sup>1</sup>We note that NRS 34.724(2)(c) specifically provides that a post-conviction petition for a writ of habeas corpus is "the only remedy available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction." Appellant's request for jail 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 petition for a writ of habeas corpus, not a motion for credit. Id. However, because the motion is supported by sufficient factual allegations, we conclude that the procedural label is not critical in this case. Further, contrary to the State's argument in its opposition, appellant's motion is not procedurally time barred. A habeas corpus petition raising a claim challenging the computation of time served is not subject to the procedural time bar of NRS 34.726(1).


jail."<sup>2</sup> We conclude that appellant's time spent under house arrest was not time "actually spent in confinement" pursuant to NRS 176.055. Accordingly, we conclude that the district court properly denied appellant's request for credit.

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.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>2</sup>Grant v. State, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983).

<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Kathy A. Hardcastle, District Judge  
Mark Allen Levinson  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk