

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WILLIAM HART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40307

FILED

FEB 12 2004

ORDER OF REVERSAL AND REMAND

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 to amend the judgment of conviction nunc pro tunc to reflect the intent and truth in sentence.

On February 20, 2001, the district court convicted appellant, pursuant to guilty pleas, of one count of burglary in district court case number CR00-1679, one count of burglary in district court case number CR00-2214, one count of possession of a credit card without the cardholder's consent in district court case number CR00-2215, and one count of burglary in district court case number CR00-2244. The district court imposed the following terms to be served in the Nevada State Prison: (1) for case number 1679, a term of 48 to 120 months, with 2 days of credit for time served; (2) for case number 2214, a term of 48 to 120 months, with 8 days of credit for time served; (3) for case number 2215, a term of 19 to 48 months, with 161 days of credit for time served; and (4) for case number 2244, a term of 48 to 120 months, with no credit for time served. The district court entered separate judgments of conviction in each case and imposed all of the terms to run concurrently. No direct appeal was taken.

On August 29, 2001, appellant filed a proper person motion for an amended judgment of conviction to include jail time credits in case

numbers 1679, 2214 and 2244. The State filed an opposition. The district court denied appellant's motion. No appeal was taken.

On August 23, 2002, appellant filed a proper person motion for an amended judgment of conviction nunc pro tunc to reflect the intent and truth in sentence.¹ On September 16, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant sought application of 171 days of presentence credits to his controlling sentence—case number 2244. Appellant also sought additional credits in his remaining concurrent sentences. It appears that appellant argued that the miscalculation of credits affected the amount of time he must ultimately serve. The district court determined that appellant's presentence credits, as set forth in the written judgments of conviction, were correctly applied to determine appellant's parole eligibility pursuant to NRS 213.1213.²

¹NRS 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 was a challenge to the computation of time he has served. See Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996). Accordingly, appellant should have filed a post-conviction petition for a writ of habeas corpus, not a motion for an amended judgment of conviction. Id. Because the motion was supported by sufficient factual allegations, we conclude that the procedural label is not critical in this case in resolving appellant's claim for credits.

²NRS 213.1213 provides:

If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics,

continued on next page . . .

Although the district court correctly concluded that the presentence credits, as set forth in the written judgments of conviction, were correctly applied pursuant to NRS 213.1213, it appeared from this court's review of the record that the correct amount of credits were not properly given in each district court case. NRS 176.055(1) provides that "the court may order that credit be allowed against the duration of the sentence . . . for the amount of time which the defendant has actually spent in confinement before conviction, unless his confinement was pursuant to a judgment of conviction for another offense." This court has interpreted this language to mandate that all time served be credited to a defendant's ultimate sentence.³

In the instant case, appellant was convicted separately in four judgments of conviction of four separate offenses. The terms were imposed to run concurrently. The documents before this court indicate that appellant was incarcerated from September 16, 2000, through February 20, 2001, in case number 2215 and from September 20, 2000, through February 20, 2001, in case numbers 1679 and 2214.⁴ Appellant was

. . . continued

eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.

³Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996).

⁴Appellant was also incarcerated from June 30, 2000, through July 1, 2000, in case number 1679, from July 26, 2000, through August 2, 2000, in case number 2214, and from August 28, 2000, through August 28, 2000, in case number 2215. These credits were properly applied to the judgments of conviction as set forth earlier. Appellant is not entitled to application of any of these credits to case number 2244.


incarcerated from October 11, 2000, through February 20, 2001, in case number 2244. However, credit for the period of mid-September 2000, through February 20, 2001, was credited only to appellant's sentence in case number 2215. Application of additional credit in case numbers 1679, 2214 and 2244 will affect the ultimate sentences served in these cases. Because it appeared that appellant was incarcerated for multiple offenses at the same time and because the sentences for these offenses were imposed to run concurrently, it appeared that the district court erred in failing to provide appellant with credit for time spent incarcerated in each case to each judgment of conviction.

Thus, this court directed the State to show cause why this matter should not be remanded to the district court for further proceedings. The State has responded to this court's order and concedes that this matter should be remanded to the district court for an award of additional credit.⁵ The State concedes that appellant should be given additional credit as follows: (1) in case 1679, an additional 153 credits for a total of 155 credits; (2) in case 2214, an additional 153 credits for a total of 161 credits; and (3) in case 2244, an additional 133 credits for a total of 133 credits. The State also notes that the proper amount of credits for case number 2215 was in actuality 158 days of credit for time served. Therefore, we reverse the order of the district court and remand the matter for the district court to enter amended judgments of conviction reflecting the credits as set forth above.


⁵Pursuant to this court's order, the State provided a thorough discussion of appellant's custodial status and credits.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.⁶ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁷


_____, J.
Agosti


_____, J.
Rose


_____, J.
Maupin

cc: Hon. Steven P. Elliott, District Judge
Michael William Hart
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have considered all proper person documents filed or received in this matter. We conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.