

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENDRICK D. HARDIMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40507

FILED

FEB 27 2003

ORDER OF AFFIRMANCE

JANETIE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rihard*
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant Kendrick D. Hardiman's motion to modify his sentence.

On November 30, 2001, the district court convicted Hardiman, pursuant to a guilty plea, of one count of possession of a controlled substance, second offense. The district court sentenced Hardiman to serve a prison term of 12 to 34 months, and then suspended execution of the sentence, placing Hardiman on probation for a time period not to exceed 3 years. On August 14, 2002, the district court revoked Hardiman's probation and amended the judgment of conviction, awarding Hardiman 263 days credit for time served in presentence confinement. Appellant did not file a direct appeal.

On October 16, 2002, Hardiman, with the assistance of counsel, filed a motion in the district court seeking 198 days of additional jail time credit.¹ The State did not oppose the motion. On November 26,

¹We 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." Hardiman's request for jail time credit is a challenge to the computation of time he has

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2002, the district court denied the motion, finding that Hardiman had received all the credit he was entitled to. This timely appeal followed.

Hardiman contends that the district court erred in denying his motion seeking additional jail time credits.² Hardiman contends that he is entitled to an additional 198 days credit for time served: 25 days credit for the time period between December 6, 2000, and January 24, 2001, and 173 days credit for the time period between June 11, 2001, to December 2, 2001. We conclude that Hardiman has failed to allege specific factual allegations entitling him to relief.

In Pangallo v. State, this court held that a habeas petitioner in custody on multiple cases seeking jail time credit on one of those cases must allege specific factual allegations entitling him to relief.³ In particular, the petition must have “specified the crimes, case numbers, and sentences being served for convictions other than the one for which he

... continued

served. See Pangallo v. State, 112 Nev. 1533, 1535-36, 930 P.2d 100, 102 (1996), clarified on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000). Accordingly, Hardiman should have filed a post-conviction petition for a writ of habeas corpus, not a motion for modification of sentence. Id. However, we conclude that the procedural label is not critical in this case in resolving his claim for credits for time served and, for purposes of resolving this appeal, we will treat Hardiman’s motion as a post-conviction habeas petition.

²To the extent that Hardiman argues that he is entitled to the jail time credits requested as a matter of right because the State did not oppose the motion, we reject that contention. Hardiman is not entitled to jail time credit for the amount of time spent in confinement pursuant to a judgment of conviction for another offense. See NRS 176.055(1).

³112 Nev. at 1537, 930 P.2d at 103.

seeks jail time credit and [must have] alleged that he did not receive any credit in his other sentences for any of the jail time at issue.”⁴

In the instant case, Hardiman’s petition fails for lack of specificity. Although Hardiman’s petition listed the case numbers of his other convictions, the petition failed to specify the crimes, the sentences, and, most notably, failed to allege that he did not receive jail time credit in his other cases for the time period between December 6, 2000, and January 24, 2001, and between June 11, 2001, to December 2, 2001.⁵ Moreover, based upon our review of the record on appeal, we cannot determine whether Hardiman is entitled to additional jail time credit because he failed to allege specific facts supporting his motion and, thus, the State failed to provide documentation refuting or confirming his claim.⁶ Accordingly, we affirm the district court's order without prejudice

⁴Id.

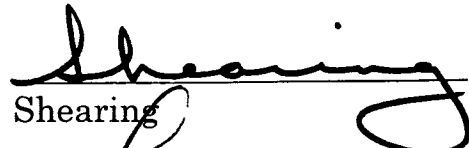
⁵The documents in the record do indicate that, in addition to the 263 days jail credit given in the instant case, Hardiman also received the following credit for presentence confinement: in District Court Case No. C163007, 380 days jail time credited to his 12-34 month sentence in a probation revocation case on July 29, 2002; in District Court Case No. C176571, 353 days jail time credited to his 12-30 month sentence in a probation revocation case on August 5, 2002, and in District Court Case No. C180669, 226 days jail time credited as time served in a misdemeanor case, which the State alleges was served during part of the time period at issue in this case.

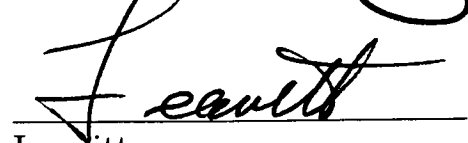
⁶See Pangallo, 112 Nev. at 1537, 930 P.2d at 103 (noting that provided the petition for jail time credits includes sufficient factual allegations, the State as the custodian of records has the burden of providing the relevant records to rebut or confirm the allegations).


to Hardiman's right to file a habeas petition on this matter, properly supported by specific factual allegations.⁷

Having reviewed Hardiman's contention and concluded that it fails for lack of specificity, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See *id.* (noting that a petition for jail time credits that fails for lack of specificity should be dismissed without prejudice to the petitioner's right to file a new habeas petition "properly supported by specific factual allegations").