

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LYNN TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40914

FILED

DEC 01 2003

ORDER OF AFFIRMANCE

JANETTE M. FLOOM
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 county jail time credits.

On August 13, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery and one count of grand larceny auto. The district court sentenced appellant to serve a term of 60 to 150 months for robbery, and a concurrent term of 24 to 60 months for grand larceny auto. Appellant did not file a direct appeal.


On January 3, 2003, appellant filed a proper person motion in the district court seeking credit for jail time.¹ On January 23, 2003, the district court denied appellant's motion. This appeal followed.

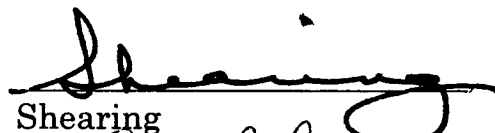
¹NRS 34.724(2)(c) provides that a post-conviction petition for a writ of habeas corpus "[i]s the only remedy available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction." Appellant's request for jail time credits is a challenge to the computation of time he has served. Consequently, he should have filed a post-conviction petition for a writ of habeas corpus, not a motion for county jail time credit. 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). Because the motion is supported by sufficient factual allegations, we conclude that the procedural label is not critical in resolving his claim for credits. See Pangallo, 112 Nev. at 1535-36, 930 P.2d at 102.


In his motion, appellant alleged that he was entitled to 207 days credit for time served in jail between January 29, 1999, the date he was arrested, and August 13, 1999, the date he was sentenced. NRS 176.055(2)(b) provides that a defendant convicted of a subsequent offense which was committed while he was "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." Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. At the time of the instant offenses, appellant was on probation in district court case no. C150771. He therefore failed to demonstrate that he was entitled to credit for time served prior to his sentencing in the instant case.

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.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

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

cc: Hon. Jackie Glass, District Judge
David Lynn Taylor
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk