

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS CARTER A/K/A CURTIS  
CARTER, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40919

FILED

FEB 25 2004

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 Curtis Carter's petitions for a writ of habeas corpus, and from an order of the district court revoking Carter's probation.

On March 22, 2001, the district court convicted Carter, pursuant to a guilty plea, of attempting to draw and pass a check without sufficient funds in drawee bank with intent to defraud. The district court sentenced Carter to serve a term of 12 to 34 months in the Nevada State Prison. This sentence was suspended, and Carter was placed on probation. Additionally, the court ordered Carter to pay restitution in the amount of \$4,005.51. No direct appeal was taken.

On October 31, 2002, the district entered an order revoking probation due to Carter's violation of probation conditions. Carter's

original sentence was thereafter imposed.<sup>1</sup> Carter appealed his probation revocation, and this court dismissed the appeal as untimely.<sup>2</sup>

On November 11, 2002, Carter filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Carter filed petitions for a writ of habeas corpus alleging substantially the same claims on November 25, 2002, and November 26, 2002. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Carter or to conduct an evidentiary hearing. On April 8, 2003, the district court denied Carter's petitions. This appeal followed.<sup>3</sup>

In his November 11, 2002 petition, Carter first alleged that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of

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<sup>1</sup>The district court entered an amended judgment of conviction on October 31, 2002, to reflect Carter's probation revocation.

<sup>2</sup>Carter v. State, Docket No. 40686 (Order Dismissing Appeal, January 24, 2003).

<sup>3</sup>Because Carter had previously filed a post-conviction petition for a writ of habeas corpus on November 11, 2002, Carter's November 25, 2002 and November 26, 2002 petitions were successive. See NRS 34.810(1)(b)(2), (2). Therefore, the district court did not err in denying these petitions. In addition to appealing the denial of his petitions for a writ of habeas corpus, Carter also appeals from an order of the district court revoking his probation. This court dismissed Carter's prior appeal from this order as untimely. We continue to lack jurisdiction to consider an appeal from this order. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

reasonableness, and the deficient performance prejudiced the defense.<sup>4</sup> Further, a petitioner must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>5</sup>

Carter contended that his trial counsel was ineffective for failing to argue on his behalf. However, Carter failed to provide specific facts to support his claim, or articulate how counsel's performance was deficient in this area.<sup>6</sup> Therefore, the district court did not err in denying this claim.

Carter next alleged that his waiver of a preliminary hearing was unknowing, and that he was not financially able to make restitution payments. These claims fall outside the scope of a post-conviction petition for a writ of habeas corpus when the conviction is the result of a guilty plea.<sup>7</sup> Consequently, the district court did not err in denying these claims.

Lastly, Carter contended that he should receive jail credit for time spent on probation in Michigan. The district court may order credit against the duration of a defendant's sentence for the amount of time the

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<sup>4</sup>Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>5</sup>Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

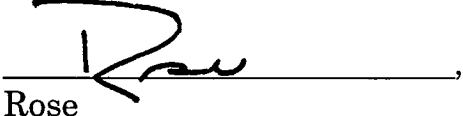
<sup>7</sup>See NRS 34.810(1)(a).

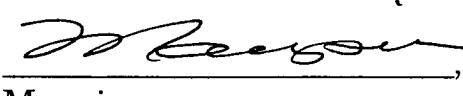
defendant has spent in actual confinement before conviction.<sup>8</sup> There is no legal support for Carter's proposition that he should receive jail credit for time spent on probation. Therefore, we affirm the order of the district court on this issue.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Carter is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Shearing

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

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

cc: Hon. Kathy A. Hardcastle, District Judge  
Curtis Carter Jr.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>NRS 176.055.

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).