

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. 41214

**FILED**

FEB 11 2004

ORDER OF AFFIRMANCE

JANET L. W. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
INTERIM CLERK

This is a proper person appeal from orders of the district court denying Carter's motion for modification of sentence and motion to transport and produce inmate.

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>

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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).

On March 13, 2003, Carter filed a motion to request modification of sentence in the district court. On March 18, 2003, Carter filed a motion to transport and produce inmate. The district court denied both motions on April 4, 2003. This appeal followed.<sup>3</sup>

In Carter's motion for modification of sentence, he contended that he should receive 183 days jail time credit for time spent on probation in Michigan. NRS 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." Carter'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 modification of sentence.<sup>4</sup> More importantly, however, Carter provided no support for his allegation that he is entitled to jail time credit against his sentence for time spent on probation.<sup>5</sup> Therefore, the district court did not err in denying this claim.

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<sup>3</sup>We conclude that the district court did not err in denying Carter's motion to transport and produce inmate because an evidentiary hearing was not held concerning his motion. See NRS 209.274.


<sup>4</sup>See Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996), limited in part on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).


<sup>5</sup>See NRS 176.055 (providing that the district court may order credit against the duration of the defendant's sentence for the amount of time the defendant has spent in actual confinement before conviction).

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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

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

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

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).