

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPHINE L. MOULCHIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42087

FILED

MAY 05 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's motion for additional credits.

On December 1, 1999, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of driving under the influence of intoxicating liquor and causing death. The district court sentenced appellant to serve a term of 44 to 144 months in the Nevada State Prison. The district court gave appellant 48 days of credit for time served. No direct appeal was taken.

On August 7, 2003, appellant filed a motion for additional credits.² The State opposed the motion. On August 28, 2003, the district court denied appellant's motion. This appeal followed.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²NRS 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 [s]he has served pursuant to a judgment of conviction." Appellant's request for additional credits is a challenge to the computation of time served. Consequently, she should have filed a post-conviction petition for a writ of habeas corpus, not a motion for credits. See Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996). Because the motion is supported by sufficient factual

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In her motion, appellant claimed that she was entitled to an additional 288 days of credit for time spent in a residential treatment facility.

NRS 176.055(1) provides that a defendant is entitled to credit "for the amount of time which the defendant has actually spent in confinement before conviction."³ This court has recognized, however, that a defendant is not entitled to credit for time served in residential confinement because it is time spent "outside of incarceration."⁴ Likewise, in construing NRS 176.055, this court has held that a defendant is only entitled to credit for time served for confinement that so restrains a defendant's liberty that it "is tantamount to incarceration in a county jail."⁵ Appellant failed to demonstrate that her time in a residential treatment facility was tantamount to incarceration in a county jail. Therefore, we conclude that the district court did not err in denying appellant's motion.

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allegations, we conclude that the procedural label is not critical in resolving the claim for credits in the instant case. See id. at 1535-36, 930 P.2d at 102.


³Emphasis added. See also Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996) (holding that purpose of NRS 176.055(1) is to ensure that a criminal defendant receives credit for all time served).

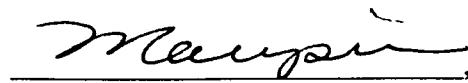
⁴See Webster v. State, 109 Nev. 1084, 1085, 864 P.2d 294, 295 (1993) (discussing residential confinement as a condition of probation).


⁵Grant v. State, 99 Nev. 149, 151, 659 P.2d 878, 879 (1983).

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. John S. McGroarty, District Judge
Josephine L. Moulchin
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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