

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL GUTIERREZ,
Appellant,
vs.
ADAM ENDEL, AWP AND DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS, JACKIE CRAWFORD,
Respondents.

No. 42680

FILED

AUG 19 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Manuel Gutierrez's post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On October 27, 1995, the district court convicted Gutierrez of one count of trafficking between 14 and 28 grams of a controlled substance (count I), and two counts of trafficking between 4 and 14 grams of a controlled substance (counts II and III).¹ The district court sentenced Gutierrez to serve a term of ten years in the Nevada State Prison for count I, and terms of three years for counts II and III. All sentences were imposed to run consecutively.

¹The district court entered a corrected judgment of conviction on November 15, 1995, and a second corrected judgment of conviction on April 15, 1996.

On September 18, 2002, Gutierrez filed a proper person post-conviction petition for a writ of habeas corpus in the district court.² The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Gutierrez or to conduct an evidentiary hearing. On October 7, 2002, the district court denied Gutierrez's petition. This appeal followed.

In his petition, Gutierrez challenged his parole eligibility and the application of statutory good-time credits to his sentence for count I. However, Gutierrez expired his sentence for count I in March 2002. Gutierrez's challenge to the computation of time he served on an expired sentence is moot.³ Moreover, as an alternate and independent ground to deny relief, his claim is without merit. NRS 453.3405 provided that Gutierrez was not eligible for parole until he served the mandatory minimum sentence for count I. For these reasons, the district court did not err in denying his petition.


²Gutierrez labeled his petition a "petition/motion for rehearing and/or motion for directed verdict/motion notwithstanding the judgment, or stay upon appeal." Because Gutierrez challenged the computation of time he has served on a sentence, we elect to construe his filing as a petition for a writ of habeas corpus. See NRS 34.724(2)(c); 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. 563, 1 P. 3d 969 (2000).

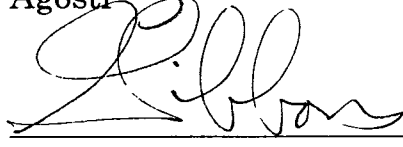
³See Johnson v. Director, Dep't Prisons, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Gutierrez is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Becker

 _____, J.
Agosti

 _____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
Manuel Gutierrez
Attorney General Brian Sandoval/Ely
White Pine County Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).