

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN HOWARD STRICKLAND,

No. 34709

Appellant,

vs.

DIRECTOR, NEVADA DEPARTMENT OF
PRISONS, ROBERT BAYER,

Respondent.

FILED

JUN 12 2001

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

Appellant John Howard Strickland was released on parole on December 30, 1992, after serving almost two and one-half years of a ten-year prison term for a Nevada burglary conviction. He subsequently left Nevada without permission and thereafter failed to report to his parole officer. Nevada parole officials issued a warrant for the retaking of appellant. After four years had passed, Nevada parole officials were informed that on July 22, 1997, appellant had been convicted in Oklahoma of felony driving under the influence of liquor and sentenced to serve two years in the Oklahoma Department of Corrections. Nevada parole officials placed a detainer with Oklahoma, and after appellant's release from Oklahoma's custody, he was returned to custody in Nevada. On May 12, 1998, the Nevada Board of Parole Commissioners

("the board") conducted a parole violation hearing and revoked appellant's parole. The board declined to credit appellant's original burglary sentence with the amount of time he was determined to have been an absconder from his Nevada parole.

Appellant, assisted by counsel, filed a post-conviction petition for a writ of habeas corpus challenging his confinement and the board's computation of credit for time served on his Nevada burglary sentence. The State filed an answer, and on July 8, 1999, the district court entered its order denying the petition. Appellant appeals from that order, contending that the district court erred in denying his petition without conducting an evidentiary hearing. We disagree.

Appellant first challenges the district court's denial of his claim that, upon revocation of his parole, the board was required to credit his Nevada sentence with the time he served in Oklahoma's custody on the Oklahoma felony DUI conviction. We disagree. At the time of appellant's parole revocation hearing, former NRS 213.160(1)-(2) provided, in relevant part, that an absconding parolee "shall be deemed an escaped prisoner and arrested as such," and upon lawful revocation of parole and return to prison, he "shall serve any part of the unexpired maximum term of his original sentence as may be determined by the board."¹ Subsection 4 of the statute also provided that "[t]he time a person is an escaped prisoner

¹See 1995 Nev. Stat., ch. 443, § 240, at 1262.

is not time served on his term of imprisonment."² Under former NRS 213.160(4), appellant's escape from the supervision of Nevada parole officials operated to suspend service of his Nevada sentence. Further, contrary to appellant's assertion, his status as an escaped prisoner for purposes of calculating service of his Nevada sentence did not terminate when he was taken into Oklahoma's custody for committing a felony DUI in that state. Appellant's incarceration in Oklahoma was solely attributable to his offense and conviction in that state. Appellant was neither in the custody nor under the control of Nevada parole authorities; therefore, we conclude that he is not entitled to credit toward his Nevada sentence for the period of that incarceration.³

In support of his next claim of error, appellant refers vaguely to several unspecified occasions when he was allegedly arrested in Oklahoma prior to his arrest for felony

²See id.

In 1999, subsequent to the board's revocation of appellant's parole, NRS 213.160 was replaced in revision by NRS 213.15185. The revised version of the statute, together with NRS 213.15187, which was also enacted in 1999, now expressly gives the board discretion to credit an escaped parolee with time he serves in another jurisdiction on new charges in that jurisdiction. See 1999 Nev. Stat., ch. 9, §§ 1, 3, at 23-24.

³We note that other courts have similarly upheld the denial of credit for time served outside the custody and control of the paroling authority. See, e.g., Vaughn v. Commonwealth, 307 F. Supp. 688, 689-90 (W.D. Va. 1969); Bush v. Maxwell, 192 N.E.2d 774, 775-76 (Ohio 1963); Ontiveros v. Utah Bd. of Pardons, 897 P.2d 1222, 1224 (Utah Ct. App. 1995) (and cases cited therein).

DUI, and he states that Nevada failed to retake custody of him on these occasions. Based on these allegations, appellant argues that the district court erred in rejecting his claim that the board exceeded its statutory jurisdiction pursuant to NRS 213.1099(3), which provides that a parolee "remains subject to the jurisdiction of the board from the time he is released on parole under the provisions of this chapter until the expiration of the maximum term of imprisonment imposed by the court." He contends that the board acted in excess of its jurisdiction by misinterpreting former NRS 213.160(4) to extend its statutory jurisdiction pursuant to NRS 213.1099(3), and by attempting to indefinitely supervise him. According to appellant, NRS 213.1099(3) must be interpreted to allow the board's jurisdiction to revoke his parole to be tolled upon his escape from Nevada supervision only until he was taken into Oklahoma's custody for his offenses in that state. This claim lacks merit.

As we have already explained, appellant was not serving his Nevada sentence after he absconded from Nevada parole supervision. Therefore, the board's jurisdiction to revoke parole, which expires concomitantly with expiration of the maximum term of a parolee's Nevada sentence, was not diminished by any instance of arrest or detention by Oklahoma authorities for offenses committed in that jurisdiction.⁴

⁴Cf. Zerbst v. Kidwell, 304 U.S. 359 (1938) (interpreting federal parole act similarly); Anderson v. Corall, 263 U.S. 193 (1923) (same).

Moreover, appellant has not demonstrated that the board acted to revoke his parole beyond the maximum term of his sentence, even absent any extension of the board's jurisdiction due to appellant's escape from Nevada parole supervision. Accordingly, the district court did not err in rejecting this claim.

Appellant further argues that the board's failure to credit him for the time after his Oklahoma arrests for minor offenses or for time served during his incarceration for the felony DUI punishes him twice for the same offense in violation of double jeopardy proscriptions. However, appellant was not serving his Nevada sentence when in Oklahoma's custody for offenses committed there or when at liberty following any arrest in that state. Therefore, he cannot demonstrate that he was subjected to any increased punishment for his Nevada conviction.⁵

We have reviewed appellant's remaining contentions, and we conclude that the district court did not err in denying

⁵Cf. Merna v. State, 95 Nev. 144, 591 P.2d 252 (1979) (holding that probationer held in county jail awaiting probation revocation hearing is not being punished twice for same crime, but is being held for engaging in a separate course of conduct); Beauchamp v. Murphy, 37 F.3d 700, 708 (1st Cir. 1994) (time escaped Massachusetts prisoner spent in Illinois jail while fighting extradition was not punishment for Massachusetts conviction and denial of credit toward sentence for that conviction did not violate double jeopardy proscription); see also Hall v. Bostic, 529 F.2d 990 (4th Cir. 1975) (neither due process nor double jeopardy require credit for time served while at liberty on probation or parole), cited in Van Dorn v. Warden, 93 Nev. 524, 569 P.2d 938 (1977).

these claims without an evidentiary hearing.⁶ Appellant has failed to set forth specific factual allegations, which are not belied by the record and which, if true, would entitle him to relief.⁷

Having considered each of appellant's contentions and concluded that relief is not warranted, we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young

Leavitt J.
Leavitt

Becker J.
Becker

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General
Todd J. Dressel, Deputy Attorney General
White Pine County District Attorney
State Public Defender
White Pine County Clerk

⁶Appellant's remaining contentions are that the district court erred in denying his claims that: (1) he is entitled to immediate release from prison because the parole officials violated his right to due process by failing to immediately retake custody once he was arrested or detained in Oklahoma for offenses committed there; (2) his due process rights were violated by the board's failure to conduct a parole revocation hearing within a reasonable time of his various arrests and detentions in Oklahoma; and (3) he is entitled to credit for time served from the time his Oklahoma sentence allegedly expired until his return to custody in this state.

⁷See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); Pangallo v. State, 112 Nev. 1533, 1536-37, 930 P.2d 100, 103 (1996), overruled on other grounds by Hart v. State, 116 Nev. ___, 1 P.3d 969 (2000).