

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORLANDO GARIBAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54420

ORLANDO GARIBAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54463

ORLANDO GARIBAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54611

ORLANDO GARIBAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54633

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying motions to modify and correct sentence (Docket No. 54420), a motion to withdraw the guilty plea (Docket No. 54463), a motion for jail time credit (Docket No. 54611), and a motion to modify the judgment of conviction (Docket No. 54633). Eighth Judicial District Court, Clark

County; Valerie Adair, Judge. We elect to consolidate these appeals for disposition.¹ NRAP 3(b).

Docket No. 54420

In a motion to modify sentence filed on July 28, 2009, appellant claimed that the district court relied on the false assumption that he could be charged with sexual assault and lewdness with a minor. In a motion to correct sentence filed on the same date, appellant claimed that the district court lacked jurisdiction because the original charges, sexual assault and lewdness, were redundant.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the motions. Appellant's claims fell outside the scope of claims of both a motion to modify and a motion to correct an illegal sentence, and appellant may not challenge the validity of his decision to enter a guilty plea in either motion.² Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, we affirm the order denying the motions.

Docket No. 54463

In a motion to withdraw the guilty plea filed on August 11, 2009, appellant claimed the State withheld valuable evidence, he was wrongfully accused of having a prior conviction in 1974, his counsel was ineffective at sentencing and failed to advise him of the conditions of lifetime supervision, and he was innocent.

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Notably, appellant entered a guilty plea to a single count of coercion (sexually motivated).

The equitable doctrine of laches precluded consideration of the motion because there was an almost two-year delay from entry of the judgment of conviction on November 15, 2007, an implied waiver exists from appellant's knowing acquiescence in existing conditions, and the State would suffer prejudice if the matter had to be brought to trial. Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000). Therefore, we affirm the order of the district court denying the motion.³

Docket No. 54611

In a motion for jail time credit filed on September 1, 2009, appellant sought 414 days of credit for time spent on probation as well as an unspecified number of good time credits for time spent on probation.

A claim for presentence credits is a claim challenging the validity of the judgment of conviction and sentence that must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance with NRS chapter 34. See Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169-70 (2006). Thus, appellant's motion should have been treated as a post-conviction petition for a writ of habeas corpus. Regardless of the label, the district court did not err in determining that the motion lacked merit as the record reveals that appellant was not entitled to any credits for time spent on probation because he was not actually incarcerated. NRS 176.055(1) (providing for presentence credit for actual confinement). In addition to the fact that appellant's claim for good time credits earned while on probation was factually deficient, those credits would only have applied to the probationary term and would not

³We note that appellant failed to set forth any specific facts supporting his claim that the State withheld evidence and that he was innocent. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

have carried over to the term of incarceration when appellant's probation was revoked on February 19, 2009. NRS 176A.500(5); Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, we affirm the order of the district court denying the motion.

Docket No. 54633

In a motion to modify the judgment of conviction filed on September 3, 2009, appellant claimed that the district court erred in requiring him to sign a civil confession of judgment as part of the terms of probation set forth in the original judgment of conviction. Appellant's claim fell outside the narrow scope of claims permitted in a motion to modify the sentence. Edwards, 112 Nev. at 708, 918 P.2d at 324. Therefore, we affirm the order of the district court denying the motion. Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁴

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Valerie Adair, District Judge
Orlando Garibay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk