

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON PHILLIPS,
Appellant,
vs.
TIMOTHY FILSON, WARDEN; RENEE
BAKER, WARDEN; JAMES
DZURENDA, DIRECTOR; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; AND THE STATE OF
NEVADA,
Respondents.

No. 72256

FILED

DEC 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

BRANDON PHILLIPS,
Appellant,
vs.
TIMOTHY FILSON, WARDEN; JAMES
DZURENDA, DIRECTOR; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; AND THE STATE OF
NEVADA,
Respondents.

No. 72264 ✓

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

These are consolidated appeals from district court orders denying "First Amendment" petitions for a writ of mandamus.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

In his petitions, Phillips claimed the Nevada Department of Corrections (NDOC) was failing to apply credits to his minimum sentences as required by NRS 209.4465(7)(b). Preliminarily, we note Phillips sought

¹These appeals have been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

relief in the wrong vehicle. Challenges to the computation of time served must be raised in a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(c).

Phillips was incarcerated at the time he filed his petitions. But in response to an order of this court, the State advises Phillips received a parole hearing and has been released on parole. Since a parole hearing would be the only relief available, and no statutory authority or caselaw permits a retroactive grant of parole, see *Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989), Phillips' claims are moot. See *Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989). We therefore decline to consider Phillips' claims regarding credits.


When denying Phillips' petitions, the district court referred him in both cases to NDOC for the forfeiture of credits, concluding his petitions and responses "were not filed in good faith and the factual allegations are not supported by existing law or a reasonable argument for a change in existing law or the interpretation of existing law." In support, the district court found Phillips failed to comply with its requests to allege the date he committed his crimes and his filings in both cases were virtually identical to one another and to those submitted in the case of another petitioner. The failure to allege facts is not a basis for referring an inmate for the forfeiture of credits. See NRS 209.451(1)(d). Further, that Phillips' filings mirror one another and those of another petitioner do not indicate a lack of good faith.² We therefore conclude the district court erred in

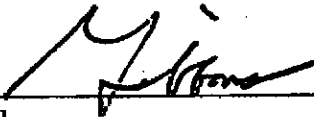
²The petition in Docket No. 72256 was filed in the Eighth Judicial District Court on June 21, 2016, and then transferred to the Seventh Judicial District Court in December 2016. The petition in Docket No. 72264 was filed directly with the Seventh Judicial District Court on November 29,

referring Phillips for the forfeiture of credits, and we remand this case to the district court to remove any referral for discipline from its order. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Hon. Steve L. Dobrescu, District Judge
Brandon Phillips
Attorney General/Carson City
Attorney General/Las Vegas
White Pine County Clerk

2016. It thus appears the duplication was likely the result of Phillips' confusion over venue. In response to district court orders, substantively identical supplemental pleadings were filed in both cases on December 30, 2016.