

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

HIGH DESERT STATE PRISON;
OFFENDER MANAGEMENT
DIVISION; STATE OF NEVADA,

Appellants,

v.

LUIS RICHARD SANCHEZ,

Respondent.

Case No. 77622

District Court No. A-18-775677-W

APPELLANT'S REPLY BRIEF

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ARGUMENT

In his Answering Brief, Appellee (“Sanchez”), quoted verbatim the district court’s order granting him credit off his minimum sentence or parole eligibility. Answering Brief at 3-5. Sanchez made no further arguments and did not address the arguments made in Appellants’ Opening Brief and the issue before this Court. For this reason, Appellants re-assert and incorporate by reference all arguments raised in their Opening Brief herein.

Sanchez alleged that he “challenges” the portion of the district court’s order that denied his petition for writ of habeas corpus as to the challenge to his work and merit credit calculation. Answering Brief at 5-6. Sanchez raised this argument improperly before this Court because he did not file a cross-appeal challenging that portion of the district court’s order. *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (internal citations omitted) (“[A] respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal. A respondent may, however, without cross-appealing, advance any argument in support of the judgment even if the district court rejected or did not consider the argument”); *see also Greenlaw v. United States*, 128 S. Ct. 2559 (2011).

Sanchez did not seek to support the judgment of the district court denying his argument that he was entitled to work credits. Rather, he seeks to have this Court alter that decision. Answering Brief at 5-6. Because Sanchez sought to alter the rights

of the parties with his argument challenging the district court's judgment, he was required to file a notice of cross-appeal with this Court, which he failed to do. Thus, Sanchez's argument regarding work and merit credits is improperly before this Court and this Court should decline to consider it.

Nevertheless, Sanchez's argument on work and merit credits is meritless. Sanchez argued that he worked in the High Desert State Prison chapel from March 1, 2018 until the present. Answering Brief at 5. NRS 209.4465(2) governs work and merit credits:

2. In addition to the credits allowed pursuant to subsection 1, the Director may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. In addition to the credits allowed pursuant to this subsection, an offender is entitled to the following credits for educational achievement:
 - (a) For earning a general educational development certificate, 60 days.
 - (b) For earning a high school diploma, 90 days.
 - (c) For earning his first associate degree, 120 days.

This statute provides for credit for work actually performed; however (unlike section 1 of the statute which provides for mandatory credit) work credit is discretionary.

Sanchez fails to demonstrate that the Nevada Department of Corrections ("NDOC") did not award him credits for this position. NDOC awarded him work credit every month from March 2018, when he claims he began the position in the chapel. AA 31. NDOC also awarded Sanchez all merit credits he earned towards his

sentence. AA 28-29 (30 days for STOP Sex Offender Core Program II, STOP Sex Offender Core Program III, STOP Sex Offender-Phase IV, Education).

For any work or merit credits that Sanchez did not complete, he is not entitled to receive credit off his sentence because he has no constitutionally protected liberty interest in work credits, even when he is able to work but no work is available. *See Kalka v. Vasquez*, 867 F.2d 546, 547 (9th Cir. 1989); *Toussaint v McCarthy*, 801 F.2d 1080, 1094-95 (9th Cir. 1986). For these reasons, even if this Court were to consider Sanchez's arguments on work and merit credits, it should deny them as meritless.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the judgment of the district court because NRS 209.4465(8)(b) and (d) apply and prohibit the application of good-time credit to Sanchez's minimum term of imprisonment and parole eligibility date.

RESPECTFULLY SUBMITTED this 13th day of June, 2019.

AARON D. FORD
Attorney General

By: /s/ Natasha M. Gebrael
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013, 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and 645 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: June 13, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on June 13, 2019.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that some of the participants in the case are not registered as electronic users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following participants:

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