

1 File No. 27CV-WR1-2021-0255

2
3 Electronically Filed
4 Feb 17 2022 12:04 p.m.
5 Elizabeth A. Brown
6 Clerk of Supreme Court

7 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF

8 NEVADA IN AND FOR THE COUNTY OF PERSHING

9 * * * * *

10 Marquise Bellamy,
11 Appellant,

12 vs.

13 Tim Garrett, Warden of LCC;
14 and The State of Nevada,
15 Respondents.
16 /

17 RECORD ON APPEAL

18 PLEADINGS

19 VOLUME 1

20 Marquise Bellamy #1102898
21 1200 Prison Road/LCC
22 Lovelock, NV. 89419

23 Office of the Attorney General
24 100 N. Cardon Street
Carson City, NV. 89701

Appellant, in Pro Per

Attorney for Respondents

INDEX

<u>DESCRIPTION</u>	<u>PAGE NO.</u>	<u>VOL.NO.</u>
Affidavit of Mailing (Filed Dec. 13, '21)	9	1
Bellamy's Motion in Opposition to Warden Garrette's Motion to Dismiss Said Petition for Writ of Habeas Corpus Challenging His Computation of Time & Pursuant to Petitioner's First and Fourteenth Amendment Rights to the United States Constitution (Filed Jan. 05, '22)	48-61	1
Case Appeal Statement (Filed Feb. 02, '22)	83-85	1
Notice of Appeal (Filed Feb. 02, '22)	81-82	1
Notice of Appearance for Respondents (Filed Dec. 20, '21)	10-11	1
Notice of Entry of Order (Filed Jan. 18, '22)	74-80	1
Order Directing Response From Attorney General (Filed Dec. 01, '21)	7-8	1
Order Directing Transmission of Record (Filed Feb. 16, '22)	86-88	1
Order Granting Warden Garrette's Motion to Dismiss Bellamy's Petition for Writ of Habeas Corpus (Filed Jan. 18, '22)	69-73	1

1	Petition for Writ of Habeas Corpus		
2	Computation of Time		
3	(Filed Oct. 06, '21)	1-4	1
4	Request for Submission		
5	(Filed Jan. 12, '22)	67-68	1
6	Submission of Motion for		
7	Petition for Writ of Habeas		
8	Corpus Computation of Time		
9	(Filed Nov. 19, '21)	5-6	1
10	Warden Garrette's Motion to		
11	Dismiss Bellamy's Petition for		
12	Writ of Habeas Corpus Challenging		
13	Computation of Time		
14	(Filed Dec. 20, '21)	12-47	1
15	Warden Garrette's Reply in Support		
16	of the Motion to Dismiss Bellamy's		
17	Petition for Writ of Habeas Corpus		
18	Challenging Computation of Time		
19	(Filed Jan. 07, '22)	62-66	1
20			
21			
22			
23			
24			

ORIGINAL

1 Marquise Bellamy #1102898

2 L.C.C. 1200 Prison Road

3 Lovelock, NV 89419

4

5 IN THE 11TH DISTRICT COURT, PERSHING COUNTY NEVADA

6 ~~DISTRICT COURT~~

7 ~~CLARK COUNTY, NEVADA~~

8

9 MARQUISE BELLAMY,

10 Petitioner,

11

12 vs.

13

14 (WARDEN) GARRETTE L.C.C.

15 STATE OF NEVADA, et al;

16 Respondents

17

18 PETITION FOR WRIT OF HABEAS CORPUS COMPUTATION

19 OF TIME

20 Marquise Bellamy is currently incarcerated at

21 Lovelock Correctional Center, and has been since

22 (March/8/2018). Petitioner is serving time for

23 one count of Attempt Sexual Assault, A Category

24 B-Felony. He was sentenced to a term of two —

25 hundred forty months Maximum, "with minimum

26 parole eligibility after eighty-four months. Petitioner

27 was convicted in the 8th Jud. Dist. Ct. under case number

28 C287596-1 - Dept. No. X. Violation of NRS 200.364.200 -

1 366, 193.330. Petitioner "comes now" requesting
2 [NDOC] to start applying the statutory Goodtime
3 credits to my minimum sentence pursuant to
4 (Assembly Bill No. 125), "effective October 01/2021.
5 Revises provisions relating to credits against
6 sentences of offenders. (BDR 16-233
7 Existing law provides that under certain
8 circumstances an offender may earn credits to
9 reduce his or her sentence of imprisonment, which
10 must be deducted from the maximum term or the
11 maximum aggregate term imposed by a sentence.
12 For certain offenders, credits must also be de-
13 ducted from the minimum term or the minimum
14 aggregate term imposed by a sentence. However,
15 credits earned by offenders convicted of certain
16 offenses, such as a Category B felony, may not
17 be deducted from the minimum term or the minimum
18 aggregate term imposed by a sentence. Pursuant to
19 CNRS 209.4465) and the rulings by the Supreme
20 court in Jessica Williams v. State, 402 P.3d 1260
21 (Nev. 2017). "Nonetheless," section one(1) of this bill"
22 [AB-125] eliminates the restricts against de-
23 ducting credits from the minimum term or the minimum
24 aggregate term imposed by a sentence. Section (1)
25 also revises the applicability of this bill and provision
26 to offenses committed on or after (July 01/2007). Section-
27 (2) of this bill makes the changes in section 1 -
28 retroactive for offenders who committed offenses -

1 before October 1, 2021 the effective date of this
2 bill, unless doing so would violate the ex Post Facto
3 Clause of the United States Constitution or Nevada
4 Constitution. NRS 209.4465 Possessed certain
5 restrictions that did not allow certain prisoner
6 to receive statutory good time credits, work credits,
7 nor program credits to be deducted from the minimum
8 sentence to reduce it. Petitioner has a liberty
9 interest in receiving the meritorious credits
10 towards my minimum sentence which would cause
11 me to go to the parole board sooner than I would
12 with^{out} the new Assembly Bill No. 125 being in
13 effect. Petitioner is eligible for the credits per my
14 case attorney and NRS and OR AB 125. Petitioner
15 is requesting that [NDOC] start applying the
16 credits to my minimum sentence to properly
17 adjust my sentence,

18

19 Conclusion

20 Petitioner prays that this Court
21 properly inquire that [NDOC] start applying
22 the credits in a reasonable time-frame
23 or as may be instructed by the Court.

24 Signature: Maj. Bury

25 Name: Marquise Bellamy #1102898

26

27

28

Certificate of Service

I hereby Certify that I mailed a true and correct copy of the foregoing Petition for Writ of habeas Corpus Computation of time by providing copies to the L.C.'s Law Library Free Staff Clerk for mailing. Postage Prepaid for delivery by U.S. Mailing Services, Dated This 04 Day of Oct 2021 and addressed as follows.

Clerk of The Court Aaron Ford
P.O. Box H. 11th Judicial Dist NU Attorney General
Court Pershing County 100 N Carson St
NU 89419 Carson City, NU 89701

Signature: Marquise Bellamy
Name: Marquise Bellamy #1102898

Dated This 04 Day of Oct 2021

Signature: Marquise Bellamy
Name: Marquise Bellamy #1102898

1. Marquise Bellamy #1102898

2. L.C.C.-1200 Bryson Road

3. Love Lock, NV 89419

4.

5.

6. IN THE 11TH DISTRICT COURT OF THE STATE OF NEVADA

7. IN AND FOR THE COUNTY OF PERSHING

8.

9.

10. MARQUISE BELLAMY

11. Petitioner,

12.

13. VS.

14.

15. WARDEN GARRETT OF L.C.C.

16. STATE OF NEVADA et al,

17. Respondents.

18.

19.

20.

21. "Comes Now", Petitioner Marquise Bellamy in prose

22. and Move This Court For Submission of Motion For

23. Petition For writ of Habeas Corpus Computation of

24. time. This Motion is based on all papers and documents


25. on file with this Court. Petitioner Filed and or Presented

26. his Petition For writ of habeas Corpus Computation of

27. time to the L.C.C.'s Law Library Free Staff Clerk on

28. October/04/2021 For mailing. This Court Filed Said-

1 document on (October 06/2021), Pertaining to
2 AB-125 that became effective October 01/2021
3 relevant to Statutory Goodtime Credits being
4 applied to the Minimum Sentence of Category (B)
5 Felonies. Dated This 15th Day of NOV 2021

6
7 Signature: 
8 NAME: Marquise Bellamy #1162898

9
10
11 Certificate of Service By Mail

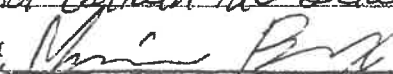
12
13 I hereby Certify that I mailed a true and correct copy
14 of the foregoing submission of Motion by Presenters
15 Same to the LCC's Law Library Free Staff Clerk
16 For mailing by U.S. Mail Postage Prepaid & addressed
17 as follows Dated: This 15th Day of NOV 2021

18
19 11th Dist Court - PO BOX H Attorney General Office 100
20 Come Lock, NV 89419 Carson St Carson City NV

21
22 Name: Marquise Bellamy

S/S: 

23
24 Affirmation Pursuant to NRS: 239B.030

25 This document does not contain the Social Security Number of
26 any person. S/S: 

27 Name: Marquise Bellamy #1162898

28 Dated: This 15th Day of NOV 2021

Case No. 27CV-WR1-2021-0255

Pursuant to NRS 239B.030, the undersigned affirms that this Document does not contain the social security numbers.

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

MARQUIS BELLAMY,

Petitioner,

vs

WARDEN GARRETT of LCC, STATE OF
NEVADA, et. al,

Respondents.

**ORDER DIRECTING RESPONSE
FROM ATTORNEY GENERAL**

WHEREAS, Petitioner, MARQUIS BELLAMY, filed a Petition for Writ of Habeas Corpus Computation of time on October 6, 2021, and there being no response on file and good cause appearing;

IT IS HEREBY ORDERED that the Office of the Attorney General shall file a response to the said Petition on or before 20 days from the date of this Order.

///

///

///

///

///

**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: Marquise Bellamy vs Warden Garrett of Lovelock Correctional Center,
State of Nevada, et al.
Case Number: 27CV-WR1-2021-0255
Type: Order to Respond

It is so Ordered.

Judge Shirley

1 CASE NO. 27CV-WR1-2021-0255

2
3
4 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF PERSHING
6

7 MARQUIS BELLAMY,

8 Petitioner,

9 vs.

AFFIDAVIT OF MAILING

10 WARDEN GARRETT of LCC, STATE OF
11 NEVADA, et. al.,
Respondents.

12 I, Adriana Ramos , being first duly sworn depose and say: That I am, and was when
13 the herein described mailing took place, a citizen of the United States, over 21 years of age,
14 and not a party to, nor interested in, the within action; that I am a Deputy Court Clerk of the
15 11th Judicial District Court and that I deposited in the United States Post Office at Lovelock,
16 Nevada, a copy of ORDER DIRECTING RESPONSE FROM ATTORNEY GENERAL that
17 was enclosed in a sealed envelope with first class prepaid postage, addressed to:

18 Nevada Attorney General's Office
19 100 N. Carson St.
Carson City, NV 89701

20 DATED this 13 day of December, 2021.

21 KATE MARTIN
22 CLERK OF THE COURT

23 By: /s/ Adriana Ramos
Deputy Court Clerk
24

CASE NO. 27CV-WR1-2021-0255

*Pursuant to NRS 239B.030, the undersigned affirms that
This document does not contain social security numbers.*

**IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING**

MARQUIS BELLAMY,

Petitioner,

v.

WARDEN GARRETT OF LCC,
STATE OF NEVADA, ET. AL,

Respondents.

**NOTICE OF APPEARANCE FOR
RESPONDENTS**

The State of Nevada, by and through counsel, AARON D. FORD, Attorney General of the State of Nevada, hereby notifies the Court and respective parties to this action that Chief Deputy Attorney General HEATHER D. PROCTER has assumed responsibility for representing the interests of the named respondent, the Attorney General of the State of Nevada, and the interests of the State of Nevada in the above-entitled action.

Attorney General Aaron D. Ford should be removed from notices on this case and all future pleadings and notices should be directed to the undersigned counsel.

RESPECTFULLY SUBMITTED this 20th day of December ,2021.

AARON D. FORD
Attorney General

By: /s/ Heather D. Procter
HEATHER D. PROCTER (Bar No. 8621)
Chief Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1271

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 20th day of December, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing, **NOTICE OF APPEARANCE FOR RESPONDENTS**, to the following:

Marquise Bellamy, #1102898
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89519

/s/ Lisa M. Clark

CASE NO. 27CV-WR1-2021-0255

*Pursuant to NRS 239B.030, the undersigned affirms that
This document does not contain social security numbers.*

**IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING**

MARQUIS BELLAMY,

Petitioner,

v.

WARDEN GARRETT OF LCC,
STATE OF NEVADA, ET. AL,

Respondents.

**WARDEN GARRETTE'S MOTION TO
DISMISS BELLAMY'S PETITION
FOR WRIT OF HABEAS CORPUS
CHALLENGING COMPUTATION OF TIME**

Respondent, Warden Garrette and the State of Nevada, et al. (collectively Warden Garrette),¹ by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, moves to dismiss Petitioner Marquise Bellamy's (Bellamy) petition for writ of habeas corpus challenging computation of time as unexhausted. In the alternative, Warden Garrette moves for dismissal with prejudice for failing to state a claim upon which relief may be granted. Finally, Warden Garrette seeks a referral for forfeiture of credits for filing a frivolous petition. This motion is based on the following points and authorities, the attached exhibits, and all papers and pleadings on file.

CERTIFICATION OF COUNSEL

Counsel did not confer with Bellamy prior to filing the foregoing motion to dismiss on behalf of Warden Garrette. Warden Garrette moves to dismiss Bellamy's petition, because Bellamy "fail[s] to state a claim upon which relief can be granted." NRCP 12(b)(5). As Bellamy failed to exhaust administrative
///

¹ The correct spelling of the warden's last name is Garrett. However, Respondents use Bellamy's spelling to remain consistent with the pleadings.

remedies prior to filing suit, this Court cannot grant him any relief, and a motion to dismiss under NRCp 12(b)(5) is exempt from the requirement to confer. 11JDCR 3.10(c).

POINTS AND AUTHORITIES

I. INTRODUCTION AND ISSUE STATEMENT

Bellamy presents a state habeas petition challenging the computation of his sentence based upon Assembly Bill (AB) 125. Petition at 2. He alleges Warden Garrette and the Nevada Department of Corrections (NDOC) refuses to comply with AB 125, which allegedly became effective October 1, 2021. *Id.*

This Court filed Bellamy's petition on October 6, 2021. Petition at 1. Bellamy must therefore exhaust his administrative remedies through the NDOC prior to filing his petition. *See* NRS 34.724(1). Because Bellamy failed to exhaust his administrative remedies, this Court should dismiss his petition without prejudice.

In the alternative, Bellamy fails to state a claim upon which relief may be granted. NRCp 12(b)(5). His sole basis for relief is AB 125, which was never made into law. Therefore, this Court should dismiss his petition with prejudice.

Finally, for filing a frivolous petition, this Court should refer Bellamy to the NDOC Director for consideration of forfeiture of credits.

Warden Garrette's motion to dismiss presents the following issues: (1) Whether this Court should dismiss Bellamy's petition without prejudice because he failed to exhaust NDOC's administrative remedies before he filed suit; (2) whether this Court should dismiss Bellamy's petition with prejudice for failing to state a claim upon which relief may be granted; and (3) whether this Court should refer Bellamy for consideration of the forfeiture of credits. Warden Garrette will show the Court should answer all three questions affirmatively and grant the instant motion.

II. STATEMENT OF THE FACTS AND ADMISSIBLE EVIDENCE

Bellamy is an inmate in the lawful custody of the NDOC pursuant to a judgment of conviction in the Eighth Judicial District Court in Case No. C287596-1. Exhibit 1. On September 23, 2015, the court adjudged Bellamy guilty of attempt sexual assault in violation of NRS 200.364, 200.366, and 193.330, a

///

category B felony committed on December 13, 2012. *Id.*; Exhibit 2. The court sentenced Bellamy to 84-240 months, consecutive to an unrelated matter. Exhibit 1 at 1-2.

AB 125 was a piece of legislature in 2021 that proposed changing the restrictions contained in NRS 209.4465(8)(d) that prohibited the application of good time credits to the minimum sentences for category B felonies committed after July 1, 2007. However, that bill failed in committee and was never signed into law. *See* Exhibit 3.

Bellamy failed to exhaust the NDOC's administrative remedies before he filed his petition for writ of habeas corpus on October 6, 2021. *See* Exhibit 4. As Bellamy failed to exhaust his administrative remedies through the NDOC before filing his petition, Warden Garrette moves this Court for dismissal without prejudice. In the alternative, Bellamy fails to state a claim upon which relief may be granted as his entire petition is based upon a bill that was never made into law. Finally, Warden Garrette seeks a referral for forfeiture of credits as Bellamy seeks relief based upon a law that never passed; a fact he would have known that had he followed exhaustion requirements.

III. DISCUSSION

A. Legal Authority: The Court Must Dismiss a Petition Where the Petitioner Fails to Exhaust NDOC's Administrative Remedies.

In 2019, the Nevada Legislature modified the language of NRS 34.724, adding a requirement that, effective January 1, 2020, an inmate must exhaust all available administrative remedies before initiating a state habeas petition challenging NDOC's computation of time credits against his or her sentence:

1. Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State, **or who, after exhausting all available administrative remedies**, claims that the time the person has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that the person has served.

NRS 34.724(1) (emphasis added).

The purpose of this change was to give the NDOC the first opportunity to correct any purported errors by addressing inmate time-credit challenges internally before an inmate filed a habeas petition with the court. Further, the NDOC grievance procedure permits inmates to resolve a time-calculation claim

1 quickly and efficiently. *See Woodford v. Ngo*, 548 U.S. 81, 89 (2006) (finding exhaustion of
2 administrative remedies (1) “gives an agency an opportunity to correct its own mistakes with respect to
3 the programs it administers,” thus discouraging a claimant’s “disregard of the agency’s procedures”; and,
4 (2) “promotes efficiency,” as “[c]laims generally can be resolved much more quickly and economically
5 in proceedings before an agency than through litigation in . . . court.” (internal quotation marks and
6 citations omitted)).

7 Consequently, as of January 1, 2020, an inmate must exhaust all available administrative remedies
8 prior to filing a habeas petition pursuant to NRS 34.720, *et seq.* *See Berry v. Fell*, 131 Nev. 339, 341-42,
9 357 P.3d 344, 345 (Nev. App. 2015). This Court properly dismisses a petition without prejudice when
10 the plaintiff fails to exhaust his administrative remedies. NRS 34.810(4); *Rosequist v. Int’l Ass’n of*
11 *Firefighters Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), *overruled on other grounds by*
12 *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007).

13 To exhaust administrative remedies related to the NDOC’s calculation of time credits, an inmate
14 must first avail themselves of the NDOC grievance process. NDOC Administrative Regulation (AR) 740
15 sets forth the grievance procedures applicable to all Nevada inmates. Exhibit 5. There are three levels of
16 grievances within AR 740: an informal grievance (AR 740.08), a first-level grievance (AR 740.09), and
17 a second-level grievance (AR 740.10). *Id.* at 9-14. An inmate dissatisfied with a decision at a lower level
18 may appeal the decision by filing a higher-level grievance. *Id.* Once a merits decision is rendered on a
19 second-level grievance, the NDOC administrative grievance process is exhausted.

20 Proper administrative exhaustion also requires inmates to comply with the agency’s deadlines and
21 “other critical procedural rules . . .” *Woodford*, 548 U.S. at 90-91. A mandatory requirement that inmates
22 exhaust all available administrative remedies *before* petitioning the court for relief “afford[s] corrections
23 officials time and opportunity to address complaints internally.” *Porter v. Nussle*, 534 U.S. 516, 525
24 (2002).

25 **B. Analysis: This Court Should Dismiss Bellamy’s Petition as He Failed to Exhaust**
26 **NDOC’s Administrative Remedies.**

27 Although Bellamy filed his petition after January 1, 2020, he failed to exhaust his administrative
28 remedies through the NDOC before filing his petition challenging the computation of his time credits.

1 See Exhibit 4. While he submitted an informal grievance in 2018 addressing good time credits, that
2 grievance clearly predated the introduction of AB 125 for the 2021 Legislature. *Id.* at 2. Nor did Bellamy
3 complete exhaustion of his 2018 grievance. *Id.* Bellamy's failure to exhaust all his administrative
4 remedies is a complete bar to his current petition. NRS 34.724(1); NRS 34.810(4).

5 Bellamy wholly fails to demonstrate (or even allege) he exhausted his administrative remedies
6 through the NDOC before he commenced litigation in this Court as NRS 34.724(1) requires. Contrarily,
7 Warden Garrette affirmatively demonstrates Bellamy did *not* exhaust his administrative remedies through
8 the NDOC grievance system prior to filing suit. See Exhibit 4; Exhibit 5 at 9-14. Consequently, NRS
9 34.810(4) bars this Court from considering his petition. This Court should therefore dismiss Bellamy's
10 petition without prejudice.

11 **C. Legal Authority: Failure to State a Claim Is Cause for Dismissal.**

12 NRCP 12(b)(5) provides for dismissal when a movant fails to state a claim upon which relief can
13 be granted. The court must presume all factual allegations in the petition are true and draw all inferences
14 in favor of the petitioner. See *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013).
15 Dismissal is appropriate when it appears beyond a doubt that petitioner can prove no set of facts which,
16 even if true, would entitle them to relief. *Id.*

17 **D. Analysis: Bellamy Fails to State a Claim Upon Which Relief Can Be Granted**
18 **Because AB 125 Never Became Law.**

19 NRS 209.4465(8) applies to crimes committed on or after July 1, 1997, and prohibits application
20 of good time credits towards the minimum sentences of various offenses, including all category B
21 felonies. AB 125 (2021) sought to amend NRS 209.4465(8) by removing the designation for category B
22 felonies. It is AB 125 that Bellamy solely relies upon for relief. Petition at 2. However, AB 125 never
23 passed all the necessary committees and was never signed into law by the governor. See Exhibit 3. As
24 Bellamy fails to state a claim upon which relief can be granted, and it is beyond a doubt that he cannot
25 prove any set of facts to the contrary, this Court should dismiss his petition with prejudice.

26 **E. Legal Authority: This Court Can Refer Inmates for Forfeiture of Credits.**

27 A referral for forfeiture of credits is appropriate in civil actions if the court finds the petitioner
28 filed a document that (1) contains a claim or defense included for an improper purpose; (2) is not

1 supported by existing law or a reasonable argument for a change in existing law; or (3) contains
2 allegations or information presented as fact for which evidentiary support is not available or is not likely
3 to be discovered after further investigation. NRS 209.451(1); *Hosier v. State*, 121 Nev. 409, 412, 117
4 P.3d 212, 214 (2005) (finding referral for forfeiture of credits pursuant to NRS 209.451(1)(d) applied to
5 a petition for writ of habeas corpus, which was deemed a “civil action” for purposes of the statute).

6 **F. Analysis: This Court Should Refer Bellamy for Forfeiture of Credits Based Upon**
7 **His Frivolous Petition.**

8 Bellamy’s petition is frivolous and wholly without merit. Based upon the petition and this motion
9 to dismiss, his claims are not warranted by existing law and contain allegations presented as fact for
10 which evidentiary support is not available. NRS 209.451(1)(d)(2), (3). This Court should refer Bellamy
11 to the NDOC Director for the forfeiture of credits as deemed appropriate.

12 **CONCLUSION**

13 Warden Garrette has shown Bellamy failed to exhaust NDOC’s administrative remedies before
14 he filed his habeas petition challenging the computation of his time. This bars his petition. In the
15 alternative, this Court should dismiss Bellamy’s petition as he fails to state a claim upon which relief
16 may can be granted because the bill he relies upon never became law. For that reason, this Court should
17 also refer Bellamy to the Director of the NDOC for consideration of forfeiture of credits for filing a
18 frivolous petition. Accordingly, this Court should dismiss Bellamy’s petition for writ of habeas corpus
19 with prejudice and enter an order referring Bellamy for consideration of the forfeiture of credits.

20 RESPECTFULLY SUBMITTED this 20th day of December,2021.

21 AARON D. FORD
22 Attorney General

23 By: /s/ Heather D. Procter
24 HEATHER D. PROCTER (Bar No. 8621)
25 Chief Deputy Attorney General
26 State of Nevada
27 Office of the Attorney General
28 100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1271

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 20th day of December, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing **WARDEN GARRETTE'S MOTION TO DISMISS BELLAMY'S PETITION FOR WRIT OF HABEAS CORPUS CHALLENGING COMPUTATION OF TIME**, to the following:

Marquise Bellamy, #1102898
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89519

/s/ Lisa M. Clark

INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Judgment of Conviction, Eighth Judicial District Court Case No. C287596-1	2
2.	Amended Information, Eighth Judicial District Court Case No. C287596-1	2
3.	Legislative History for AB 125 (2021)	2
4.	NDOC Inmate Grievance History, dated 12/16/21	3
5.	NDOC Administrative Regulation 740, effective November 20, 2018	14

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MARQUISE JOSEPH BELLAMY
aka Marquis Bellamy
#2722329

Defendant.

CASE NO. C287596-1

DEPT. NO. X

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of ATTEMPT SEXUAL ASSAULT (Category B Felony) in violation of NRS 200.364, 200.366, 193.330; thereafter, on the 23rd day of September, 2015, the Defendant was present in court for sentencing with counsel ARNOLD WEINSTOCK, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee, \$3,268.68 Restitution plus \$3.00 DNA Collection Fee, the Defendant is sentenced as follows: a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of

1 EIGHTY-FOUR (84) MONTHS in the Nevada Department of Corrections (NDC),
2 CONSECUTIVE to C277279; with ZERO (0) DAYS credit for time served. As the
3 \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed, the
4 Fee and Testing in the current case are WAIVED.
5

6 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME
7 SUPERVISION is imposed to commence upon release from any term of
8 imprisonment, probation or parole. In addition, before the Defendant is eligible for
9 parole, a panel consisting of the Administrator of the Mental Health and Development
10 Services of the Department of Human Resources or his designee; the Director of the
11 Department of Corrections or his designee; and a psychologist licensed to practice in
12 this state; or a psychiatrist licensed to practice medicine in Nevada must certify that
13 the Defendant does not represent a high risk to re-offend based on current accepted
14 standards of assessment.
15

16
17 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in
18 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release
19 from custody.
20

21 DATED this 24 day of September, 2015
22
23

24 
25 JESSE WALSH
26 DISTRICT COURT JUDGE 
27
28

EXHIBIT 2

EXHIBIT 2

AUG 03 2015

BY, 
TERI BERKSHIRE, DEPUTY

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JENNIFER CLEMONS
6 Chief Deputy District Attorney
7 Nevada Bar #10081
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,

14 -vs-

15 MARQUISE JOSEPH BELLAMY, aka,
16 Marquis Bellamy, #2722329
17 Defendant.

Case No: C-13-287596-1
Dept No: X

AMENDED
INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss.

20 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
21 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

22 That MARQUISE JOSEPH BELLAMY, aka, Marquis Bellamy, the Defendant(s)
23 above named, having committed the crime of **ATTEMPT SEXUAL ASSAULT (Category**
24 **B Felony - NRS 200.364, 200.366, 193.330 - NOC 50119)**, on or about the 13th day of
25 December, 2012, within the County of Clark, State of Nevada, contrary to the form, force and
26 effect of statutes in such cases made and provided, and against the peace and dignity of the
27 State of Nevada, did then and there willfully, unlawfully, and feloniously attempt to sexually
28 assault and subject H.V., a female person, to sexual penetration, to-wit: by attempting to insert
his finger(s) into the genital opening of the said H.V., against her will, or under conditions in

///

///

1 which Defendant knew, or should have known, that H.V. was mentally or physically incapable
2 of resisting or understanding the nature of Defendant's conduct.

3
4 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

5
6
7 BY 

JENNIFER CLEMONS
Chief Deputy District Attorney
Nevada Bar #10081

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 DA#12F20120X/jm/SVU
27 LVMPD EV#1212131215
28 (TK2)

EXHIBIT 3

EXHIBIT 3

AB125

[HOME](#) / [BILLS AND RESOLUTIONS](#) / [ASSEMBLY BILLS](#) / AB125

Summary	Revises provisions relating to credits against sentences of offenders. (BDR 16-233)
Introduction Date	Monday, February 15, 2021
Exempt	DECLARED EXEMPT
Fiscal Notes	Effect on Local Government: No. Effect on the State: No.

Primary Sponsors

[Assemblywoman Bea Duran](#)

[Assemblywoman Rochelle Nguyen](#)

[Assemblyman Edgar Flores](#)

[Assemblyman Howard Watts](#)

Co-Sponsor(s)

[Assemblywoman Sarah Peters](#)

[Assemblywoman Selena Torres](#)

Title	AN ACT relating to offenders; allowing certain offenders to have credits deducted from the minimum term or minimum aggregate term imposed by a sentence; and providing other matters properly relating thereto.
Digest	Existing law provides that under certain circumstances an offender may earn credits to reduce his or her sentence of imprisonment, which must be deducted from the maximum term or the maximum aggregate term imposed by a sentence. For certain offenders, credits must also be deducted from the minimum term or the minimum aggregate term imposed by a sentence. However, credits earned by offenders convicted of certain offenses, such as a category B felony, may not be deducted from the minimum term or the minimum aggregate term imposed by a sentence. (NRS 209.4465) Section 1 of this bill eliminates the restriction against deducting credits from the minimum term or the minimum aggregate term imposed by a sentence for an offender who has been convicted of a category B felony, but provides that an offender who has been convicted of certain offenses remains ineligible to deduct credits from the minimum term or minimum aggregate term imposed by a sentence. Section 1 also revises the applicability of this provision to offenses committed on or after July 1, 2007. Section 2 of this bill makes the changes in section 1 retroactive for offenders who committed offenses before October 1, 2021, the effective date of this bill, unless doing so would violate the ex post facto clause of the United States Constitution or Nevada Constitution.

Most Recent History Action

(No further action taken.)

(See full list below)

Upcoming Hearings

None scheduled

Past Hearings

<u>Assembly Judiciary</u>	<u>Feb 24, 2021</u>	<u>8:00 AM</u>	<u>Agenda</u>	<u>Minutes</u>	Heard
<u>Assembly Judiciary (Work Session)</u>	<u>Apr 01, 2021</u>	<u>8:00 AM</u>	<u>Agenda</u>	<u>Minutes</u>	Amend, and do pass as amended EXH 005

Final Passage Votes

None recorded

Conference Committees

None scheduled

Bill Text

[As Introduced](#)

[Reprint 1](#)

Adopted Amendments

[Amendment 141](#)

Bill History

Date	Action	Journal
Feb 15, 2021	Read first time. Referred to Committee on Judiciary. To printer.	Assembly: Journal Senate: Not discussed
Feb 16, 2021	From printer. To committee.	Assembly: Not discussed Senate: No Floor Session
Mar 02, 2021	Notice of eligibility for exemption.	Assembly: Journal Senate: Not discussed
Apr 13, 2021	From committee: Amend, and do pass as amended. Placed on Second Reading File. Taken from Second Reading File. Placed on Second Reading File for next legislative day.	Assembly: Journal Senate: Not discussed
Apr 14, 2021	Read second time. Amended. (Amend. No. 141.) Rereferred to Committee on Ways and Means. Exemption effective. To printer.	Assembly: Journal Senate: Not discussed
Apr 15, 2021	From printer. To engrossment. Engrossed. First reprint. To committee.	Assembly: Not discussed Senate: Not discussed
Jun 01, 2021	(No further action taken.)	Assembly: No Floor Session Senate: No Floor Session

EXHIBIT 4

EXHIBIT 4



State of Nevada

Department of Corrections

Inmate Grievance History

INMATE NAME		NDOC ID	BOOKING ID
BELLAMY, MARQUISE		1102898	2013-066597
ISSUE ID	DATE REPORTED	ISSUE TYPE	ISSUE REASON
20063097868	02/27/2020	GRIEVANCE W/STAFF ISS	STAFF PERFORMANCE
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
02/27/2020	IF		FERRO, JOE
Proposed Response:	Termination without due process violation of AR.339.07.12 A, .18F		
Official Response:	AR 740.04.2 states; ?It is considered abuse of the inmate grievance procedure when an inmate files a grievance that contains, but is not limited to; More than two (2) continuation forms (DOC 3097) per grievance.?		
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
02/27/2020	IF		CARPENTER, TARA
Proposed Response:	Termination without due process violation of AR.339.07.12 A, .18F		
Official Response:	Inmate signed 3/4/2020.		
	AR 740.04.2 states; ?It is considered abuse of the inmate grievance procedure when an inmate files a grievance that contains, but is not limited to; More than two (2) continuation forms (DOC 3097) per grievance.?		
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
03/05/2020	IF		CARPENTER, TARA
Proposed Response:	Inmate refused to sign. Witness JFerro 3/11/2020.		
Official Response:	AR 740.05.5A states, "all documentation and factual allegations available to the inmate must be submitted at this level with the grievance" Please resubmit with previous DOC 3098 attached. Per AR 740.01.5.C "DOC 3097, continuation forms, shall not exceed more than two (2) pages per grievance".		
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
03/18/2020	IF		CARPENTER, TARA
Proposed Response:	Termination without due process violation of AR.339.07.12 A. ...[SHOLQUIEN, 03/31/2020 10:37:00] 4th Rejection: Your grievance has been received and rejected for multiple 3098s at the Informal due to (reason). This grievance can no longer be responded to as it has been rejected four times for being improper. You were given multiple opportunities to correct these errors. You have failed to re-submit with first and original DOC 3098.		
Official Response:	Inmate signed rejection on 3/19/2020. AR 740.05.5A states, "all documentation and factual allegations available to the inmate must be submitted at this level with the grievance.? Please resubmit with original and first DOC 3098 attached.		



State of Nevada

Department of Corrections

Inmate Grievance History

ISSUE ID	DATE REPORTED	ISSUE TYPE	ISSUE REASON
20063067971	07/02/2018	GRIEVANCE	SENTENCE ISSUES
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
07/02/2018	IF		STAMMERJOHN, COLETTE
Proposed Response:	Not receiving satutory good time credit for class "B" felony under NRS. 209.4465 (7) (B) subsection 8 (A)(B)(C)(D) must be deducted from the minimum and maximum 20 days per month off front and back number off sentence. This is a violation of my 5ht, 8th, 14th, amendment right to the U.S. constituion (details in continuation form) (continued)		
Official Response:			
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
07/25/2018	IF	DENIED	STAMMERJOHN, COLETTE
Proposed Response:			
Official Response:	Inmate signed 8/1/18 In response to your Informal Grievance regarding the application of "good time credits" being applied to both the minimum and maximum of you sentence. Your time is calculating correctly as your Judgment of Conviction for case number C287596-1 clearly states "a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of EIGHTY-FOUR (84) MONTHS in the Nevada Department of Correction, CONSECUTIVE to C277279." Your current sentence began on 05/20/2016 and calculating 84 months from this date results in approximately 05/19/2023 for you first Parole Eligibility Date. In addition, NRS 209.4465.8 states "Credits earned pursuant to this section by an offender who has NOT been convicted of: (b) A sexual offense that is punishable as a felony and (d) A category A or B felony." You have been convicted of a Category B sexual offense. Grievance Denied		
ISSUE ID	DATE REPORTED	ISSUE TYPE	ISSUE REASON
20063054783	08/21/2017	GRIEVANCE	JOB
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
08/24/2017	IF		RUSSELL, PERRY
Proposed Response:	I have been fired for a General wtire up I haven't seen the Lieutenant or Sergeant and Im being removed from my work position. Without being found guilty. ...[DSIPES, 10/05/2017 09:27:58] // IM disagrees and signed 10/02/2017.		
Official Response:	DOC 3098 - Per AR 740, do not use the grievance process to write a kite. See your Caseworker and Custody to resolve first.		



State of Nevada

Department of Corrections

Inmate Grievance History

ISSUE ID	DATE REPORTED	ISSUE TYPE	ISSUE REASON
20063027442	07/06/2016	GRIEVANCE	SENTENCE ISSUES
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
07/06/2016	IF		ELMORE, BRENT
Proposed Response: Inmate grieves he is not receiveing his statutory good time credit.			
Official Response:			
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
08/11/2016	IF	DENIED	ELMORE, BRENT
Proposed Response:			
Official Response: Inmate Bellamy, It is the NDOC's understanding that the "VonSeydewitz Order" only applies to inmate VonSeydewitz, and the Nevada Supreme Court did not issue a binding opinion requiring application to all inmates. So, unless the Courts or the Legislature require at some point in the future the application of the VonSeydewitz holding to all inmates, the NDOC is not obligated at this time to do so. Grievance denied.			
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
09/21/2016	IF		STROUD, BRUCE
Proposed Response: I should receive my stat good time. ...[HSAMS, 09/30/2016 11:57:32] Inmate signed DOC 3098.			
Official Response: You need to resubmit on a new 1st level and attached this entire packet along with your informal response page.			

EXHIBIT 5

EXHIBIT 5

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
740**

INMATE GRIEVANCE PROCEDURE

Supersedes: AR 740 (02/12/10); and AR 740 (Temporary, 06/16/14); 09/16/14; (Temporary, 01/03/17); 03/07/17; 08/30/17

Effective Date: Temporary 11/20/18

AUTHORITY: NRS 209.131, 209.243; 41.031; 41.0322; 41.0375; 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115

PURPOSE:

The purpose of this Administrative Regulation (“AR”) is to set forth the requirements and procedures of the administrative process that Nevada Department of Corrections (“NDOC”) inmates must utilize to resolve addressable grievances and claims including, but not limited to, claims for personal property, property damage, disciplinary appeals, personal injuries, and any other tort or civil rights claim relating to conditions of confinement. Inmates may use the Inmate Grievance Procedure to resolve addressable inmate claims only if the inmate can factually demonstrate a loss or harm. This procedure describes the formal grievance processes and will guide NDOC employees in the administration, investigation, response and resolution of inmate grievances. The provisions of this AR shall be effective on or after the effective date of this AR. The provisions of this AR are not retroactive and do not apply to incidents and/or claims that occurred prior to the effective date of this AR. Only inmate claims arising out of, or relating to, issues within the authority and control of the NDOC may be submitted for review and resolution by way of the grievance process. A good faith effort will be made to resolve legitimate inmate claims without requiring the inmate to file a formal grievance. This AR does not create any right, liberty or property interest, or establish the basis for any cause of action against the State of Nevada, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

RESPONSIBILITY

1. The Director, through the Deputy Directors (DDs), shall be responsible in establishing and supervising an inmate grievance process that provides an appropriate response to an inmate’s claim, as well as an administrative means for prompt and fair resolution of, inmate problems and concerns.
2. The Deputy Director or designated Administrator shall be responsible for 2nd level grievances.
3. The Warden through the Associate Wardens (AWs) shall be responsible in managing the grievance process at each institution and any facilities under the control of the parent institution. The AW may designate an Inmate Grievance Coordinator to conduct functions

required by this regulation under the AW authority and supervision.

740.01 ADMINISTRATION OF INMATE GRIEVANCES

1. All grievances, whether accepted or not, will be entered into NOTIS.
2. Each institution/facility shall establish locked boxes where all inmates have access to submit their grievances directly to the box. Keys will be issued by the Warden, to an AW and/or a designated staff.
 - A. Lock boxes will be maintained in segregation/max units in a manner in which the inmate will be allowed to have direct access. A designated staff may go cell to cell to pick up grievances in segregation /max units due to security and safety concerns, if necessary.
 - B. Emergency grievances will be handed to any staff member for immediate processing per this regulation.
3. Grievances will be treated as legal correspondence and will be gathered daily, Monday through Friday, excluding holidays, by the AW or designated Grievance Coordinator(s) and or designated staff member.
4. Grievance forms will be kept in housing units and may be accessed through the unit staff, the unit caseworker or in the Institutional Law Library.
5. Grievances may be GRANTED, DENIED, PARTIALLY GRANTED, ABANDONED DUPLICATE NOT ACCEPTED, OR GRIEVABLE, RESOLVED, SETTLEMENT OR WITHDRAWN or referred to the Investigator General's Office at any level as deemed appropriate after the claim in the grievance has been investigated. PREA grievances shall immediately be referred to the Inspector General. Grievance findings or responses will not be titled "Substantiated."
6. The Grievance Coordinator should record receipts, transmittals, actions, and responses on all grievances to NOTIS within three (3) working days of receipt.
 - A. The coordinator should sign, date and enter the approximate time as noted on DOC 3091, 3093 and 3094.
 - B. The front page of the grievance should be date stamped the day entered into NOTIS.
7. Monthly and annual grievance reports generated by NOTIS will be reviewed by the Deputy Directors (DDs), Wardens and Associate Wardens (AWs) on a quarterly and annual basis.

740.02 GRIEVANCE RECORDS

1. Grievance documents shall be stored at the facility/institution where the grievance issue occurred. The results of the grievance shall be stored in NOTIS.

- A. Grievance files shall be in separate files for each inmate and maintained in alphabetical order.
 - B. Grievance copies shall not be placed in an inmate's Institutional or Central File, nor shall they be available to employees not involved in the grievance process, unless the employee has a need for the information in the grievance or the responses to the grievance.
2. Grievance files shall be maintained at each institution for a minimum of five (5) years following final disposition of the grievance.
 3. Employees who are participating in the disposition of a grievance shall have access to records essential to the disposition of the grievance only.
 4. Inmates will not have access to grievance records unless ordered by a court, as grievance records are considered confidential and they may be redacted, if appropriate.
 5. Upon completion of each level of the grievance process, the form and copies of all relevant attachments shall be maintained in the inmate's separate grievance file. Originals shall be given to the inmate.

740.03 GRIEVANCE ISSUES

1. Inmates may use the Inmate Grievance Procedure to resolve addressable inmate claims, only if the inmate can factually demonstrate a loss or harm. Grievances may be filed to include, but not limited to, personal property, property damage, disciplinary appeals, personal injuries, and any other tort claim or civil rights claim relating to conditions of institutional life. The inmate must state the action or remedy that will satisfy the claim in the grievance.
 - A. If the inmate does not factually demonstrate a loss or harm and does not state the action or remedy that will satisfy the claim in the grievance, the grievance will not be accepted and returned to the inmate with an explanation as to what was missing in order for the grievance to be processed.
 - B. A Grievance will not be used as an inmate request form (DOC 3012) to advise staff of issues, actions or conditions that they do not like but suffered no harm or loss.
 - C. A Grievance must be legible, with a clearly defined remedy requested.
2. All allegations of inmate abuse by Department staff, employees, agents or independent contractors, shall be immediately reported to the Warden, AWs, and the Inspector General's Office, in accordance with investigator guidelines via the NOTIS reporting system.

- A. Any grievance reporting of sexual abuse against an inmate will be referred to the Warden or designee for entry into the NOTIS reporting system and referral to the Office of the Inspector General.
 - B. Inmates who allege abuse other than sexual abuse will be interviewed by a supervisor of the staff who allegedly committed the abuse to ascertain if he/she agrees to pursue administrative remedies, which will be documented in the NOTIS system.
3. Only inmate claims arising out of, or relating to, issues within the authority and control of the Department may be submitted for review and resolution. Non-grievable issues include:
- A. State and federal court decisions.
 - B. State, federal and local laws and regulations.
 - C. Parole Board actions and/or decisions.
 - D. Medical diagnosis, medication or treatment/care provided by a private/contract community hospital.
4. Claims for which the inmate lacks standing will not be accepted, including, but not limited to:
- A. Filing a grievance on behalf of another inmate unless the inmate is so physically or emotionally handicapped as to be incapable of filing a grievance, and with the other inmate's approval, or in the case(s) of any third party reporting of Sexual Abuse.
 - B. The inmate filing the grievance was not a direct participant in the matter being grieved, except a third party allegation of sexual abuse.
 - C. An inmate may not file more than one (1) grievance per seven (7) day week, Monday through Sunday. More than one (1) grievance filed during the seven day week period will not be accepted, unless it alleges sexual abuse or it is an emergency grievance that involves health or safety claims.
 - D. The inclusion of more than one grievance issue, per form will be cause for the grievance to not be accepted.
 - E. Grievances that have the same issue in a previously filed grievance will not be accepted, even if the requested action or remedy is different on the subsequent grievance.
5. In the event an inmate's claim is not accepted or not within the intended scope of this Regulation, the inmate may not appeal that decision to the next procedural level.

6. An inmate whose grievance is denied in its entirety may appeal the grievance to the next level, within the substantive and procedural requirements outlined herein, unless the action requested has already been Granted at a lower level.
 - A. Administrators or employees of the institution shall automatically allow appeals without interference unless the grievance is granted..
 - B. An inmate's election not to sign and date any grievance form at any level shall constitute abandonment of the claim.
 - C. If the Grievance is "**Granted**" at any level, the grievance process is considered complete and the inmate's administrative remedies exhausted, and the inmate cannot appeal the decision to a higher level.
7. Time limits shall begin to run from the date an inmate receives a response.
8. An overdue grievance response at any level is not an automatic finding for the inmate.
 - A. The response must be completed, even if it is overdue.
 - B. The inmate may proceed to the next grievance level, if a response is overdue.
 - C. The overdue response does not count against the inmate's timeframe for an appeal if he or she waits for the response before initiating the appeal.
9. Inmates who participate in or utilize the Inmate Grievance Procedure shall not be subjected to retaliation, i.e. an assertion that an employee took some adverse action against an inmate for filing a grievance, except as noted in 740.05, where the action did not reasonably advance a legitimate correctional goal.
 - A. Retaliation is a grievable issue.
 - B. An unfounded claim of retaliation will be handled as an abuse of the grievance procedure and a disciplinary action may be taken.
10. Comprehensive responses are required for inmate grievances. Statements such as "Your grievance is denied" are not acceptable. An explanation is necessary.

740.04 ABUSE OF THE INMATE GRIEVANCE PROCEDURE

1. Inmates are encouraged to use the Grievance Procedure to resolve addressable claims where the inmate can define a specific loss or harm, however, they are prohibited from abusing the system by knowingly, willfully or maliciously filing excessive, frivolous or vexatious grievances, which are considered to be an abuse of the Inmate Grievance Procedure. Any of the below listed violations will result in the grievance being not accepted and disciplinary action may be taken.

2. It is considered abuse of the inmate grievance procedure when an inmate files a grievance that contains, but is not limited to:
 - A. A threat of serious bodily injury to a specific individual.
 - B. Specific claims or incidents previously filed by the same inmate.
 - C. Filing two (2) or more emergency grievances in a seven (7) day week period, Monday through Sunday which is deemed not to be emergencies may result in disciplinary action against the inmate for abuse of the grievance system. Disciplinary action may be generated by the Warden or designee for abuse of the emergency grievance process.
 - D. Obscene, profane, and derogatory language.
 - E. Contains more than one (1) appropriate issue, per grievance.
 - F. The claim or requested remedy changes or is modified from one level to another.
 - G. More than two (2) continuation forms (DOC 3097) per grievance.
 - H. Alteration of the grievance forms or continuation forms. This includes writing more than one line, on each line provided on the grievance form.
3. If an inmate files a grievance as listed in (2), the Grievance Coordinator shall:
 - A. Return the original improper grievance with a Form DOC-3098, Improper Grievance Memorandum, noting the specific violation.
 - B. A copy will be put in the inmate's grievance file.
4. An inmate who satisfies the criteria contained in 740.04 Section 2 above should:
 - A. Be brought to the attention of the Grievance Coordinator as soon as possible.
 - B. The Grievance Coordinator should review all documentation supporting the alleged abuse to determine if abuse has occurred and forward a written recommendation to the Warden.
 - C. If the recommendation is approved the Warden can assign the appropriate level supervisor or administrator to write a Notice of Charges on the inmate.
 - D. The supervisor or administrator will forward the Notice of Charges to the Warden for processing through the inmate disciplinary process.

- E. A conduct violation of this nature is not a form of retaliation.
- F. An inmate may not be disciplined for filing a grievance related to alleged sexual abuse unless the Department has demonstrated that the inmate filed the grievance in bad faith.
- G. NDOC will not respond to an improper grievance that results in a DOC-3098 under AR 740.

740.05 REMEDIES TO GRIEVANCES

1. Grievance remedies should be determined with the goal of appropriately resolving legitimate claims at the lowest level of review possible, considering each institution's particular operational, security and safety concerns.
2. Remedies available for grievances may include, but are not limited to, the following:
 - A. Resolve unsafe or unsanitary conditions of confinement.
 - B. Address the violation of an inmate's constitutional, civil or statutory rights.
 - C. Protect inmates from criminal or prohibited acts committed by Departmental employees and staff or other inmates.
 - D. Revise, clarify and implement written Departmental and institutional rules or procedures necessary to prevent further violations.
 - E. To provide a disabled or physically impaired inmate with reasonable accommodation or reasonable modification.
 - F. Monetary reimbursement for property loss, damage, personal injury, tort, or civil rights claims arising out of an act or omission of the Department of Corrections or any of its agents, former officers, employees or contractors.
3. The staff person rendering a decision on a grievance for a proposed monetary remedy may be submitted to the Deputy Director of Support Services who may award monetary damages at any level of the Inmate Grievance. Once approved:
 - A. A Form DOC-3096, Administrative Claim Release Agreement, will be completed and submitted by the inmate on all monetary claims, except for personal property damage or loss.

- B. A Form DOC-3027, Property Claim Release Agreement, will be completed and submitted by the inmate on all monetary claims for personal property damage or loss.
 - C. When property claims are settled informally at an institution, DOC-3027 Property Release Agreement will be completed.
4. Compensation for loss of personal property, property damage, personal injury or any other claim arising out of a tort shall not exceed five hundred (\$500.00).

740.06 INMATE TRANSFERS

1. Inmates transferred to another institution pending the resolution of a filed grievance shall have the grievance completed at the sending institution at all levels.
- A. The receiving institution is responsible for logging in and tracking the grievance through NOTIS.
 - B. All responses and correspondence shall be conducted via first class mail to the Grievance Coordinator at the receiving institution.
2. Timeframes do not apply if the inmate has been transferred. Grievances shall be processed as soon as practicable and timeframes shall be adhered to as closely as possible. If an inmate's sentence expires or leaves the Department on parole, the grievance will be finalized on the current level. No further appeal may occur. It is the responsibility of the inmate to provide a forwarding address during the release process in order to receive a grievance response.

740.07 EMERGENCY GRIEVANCE PROCEDURE

1. An emergency shall be considered life threatening for the inmate or a Safety and Security risk for the institution.
2. An Emergency Grievance (Form DOC-1564) received by any staff member shall be immediately delivered to the nearest supervisor no later than is reasonable and necessary to prevent serious injury or a breach of security. The Emergency Grievance shall be reviewed within 24-hours of receipt and documented in NOTIS.
3. Any emergency grievance alleging that an inmate is subject to substantial risk of imminent sexual abuse shall be immediately forwarded to the highest ranking staff member on duty so that corrective action may be taken immediately which may include moving the inmate to administrative segregation for protective custody.
- A. The inmate shall receive a response to the emergency grievance within 24-hours, with a final facility decision about whether the inmate is in substantial risk of imminent sexual abuse within two (2) regular calendar days.

- B. The response, final decision and the action taken in response to the emergency grievance will be documented. Action taken can include, but is not limited to:
 - (1) Refer the information to the Inspector General's Office;
 - (2) Afford the inmate appropriate medical, mental health care; and
 - (3) Address any safety considerations.
- 4. The shift supervisor may confer with the on duty medical staff, Warden or Associate Warden, to determine whether the grievance constitutes an emergency.
- 5. The highest-ranking staff member on duty, with the aid of an authorized Department official, shall immediately take any corrective measures necessary to prevent a substantial risk of injury or breach of security.
- 6. The Department official receiving the Emergency Grievance should respond to the filing inmate no later than is necessary to prevent serious injury or a breach of security.
- 7. In the event the inmate requests further review of a claim not deemed an emergency, the inmate may file a grievance appeal commencing at the Informal Level.
- 8. A copy of the emergency grievance will be forwarded to the Grievance Coordinator for entry into NOTIS for processing and tracking purposes.

740.08 INFORMAL GRIEVANCE

- 1. At the Informal Level, an inmate shall file a grievance (Form DOC-3091) after failing to resolve the matter by other means such as discussion with staff or submitting an inmate request form (DOC 3012).
- 2. Grievances should be reviewed, investigated and responded to by the Department Supervisor that has responsibility over the issue that is being grieved or designated person.
 - A. High Risk Prisoner (HRP) status. HRP is a high risk potential offender that creates risk to inmates and staff.
 - (1) Informal Level grievances will be responded to by the Warden or designee.
 - (2) First Level grievances will be responded to by the Deputy Director or designee.
 - (3) Second level grievances will be responded to by the Director or designee.
 - B. Informal grievances addressing medical or dental issues should be responded to by a charge nurse or designee of the Director of Nursing at the institution.

- C. Informal grievances addressing mental health issues should be responded to by the Psychologist III, or Mental Health Supervisor at each facility.
 - D. If the person who would normally respond to a grievance is the subject of the grievance, the Supervisor over the person should respond to the Informal Grievance.
3. The response to the grievance should be substantial, referencing all policies, procedures, rationale, and/or circumstances in finding for or against the inmate.
 4. The inmate shall file an informal grievance within the time frames noted below:
 - A. Within six (6) months, in compliance with NRS 209.243, if the issue involves personal property damage or loss, personal injury, medical claims or any other tort claims, including civil rights claims.
 - B. Within ten (10) calendar days if the issue involves any other issues within the authority and control of the Department including, but not limited to, classification, disciplinary, mail and correspondence, religious items, and food.
 - C. When a grievance cannot be filed because of circumstances beyond the inmate's control, the time will begin to start from the date in which such circumstances cease to exist.
 - D. Time frames are waived for allegations of sexual abuse regardless of when the incident is alleged to have occurred.
 5. An inmate shall use Form DOC-3097, Grievant Statement Continuation Form, if unable to present the details of their claim in the space provided, limited to two continuation form pages or a maximum of two continuation form pages. All documentation and factual allegations available to the inmate must be submitted at this level with the grievance.
 6. All grievances submitted should also include the remedy sought by the inmate to resolve this claim. Failure to submit a remedy will be considered an improper grievance and shall not be accepted.
 7. If the inmate's remedy to their grievance includes monetary restitution or damages, then the inmate will get the following forms from unit staff, unit caseworker, or law libraries:
 - A. Form DOC-3026, Inmate Property Claim, which shall be completed and submitted in addition to the grievance for all property loss or damage claims.
 - B. Form DOC-3095, Administrative Claim Form, which shall be completed and submitted in addition to the grievance for all personal injury, tort, or civil rights claims.

8. Failure by the inmate to submit a proper Informal Grievance form to the Grievance Coordinator or designated employee, within the time frame noted in 740.08, number 4, shall constitute abandonment of the inmate's grievance at this, and all subsequent levels.
 - A. When overdue grievances are received, they will be logged into NOTIS.
 - B. The grievance response Form DOC-3098 will note that the inmate exceeded the timeframe and no action will be taken.
9. If the issue raised is not grievable, or the grievance is a duplicate of a prior grievance, the Grievance Coordinator will return the grievance to the inmate with Form 3098 noting the reason.
10. The inmate shall file an Informal Grievance form that states "for tracking purposes" when an issue goes directly to the Warden (first level) for a decision such as disciplinary appeals, visiting denials, any allegation of sexual abuse or mail censorship.
11. Grievances alleging staff misconduct pursuant to *Administrative Regulation (AR) 339 "Employee Ethics and Conduct, Corrective or Disciplinary Action, and Prohibitions and Penalties"* will be reviewed by the Warden and if deemed appropriate will be forwarded to the Office of the Inspector General through NOTIS.
 - A. The Informal Response will reflect this action being initiated.
 - B. The Inspector General's Office will have 90 calendar days to respond to this allegation.
12. The time limit for a response to the informal grievance is forty-five (45) calendar days from the date the grievance is received by the grievance coordinator to the date returned to the inmate.
 - A. The inmate must file an appeal within five (5) calendar days of receipt of the response to proceed to the next grievance level.
 - B. Transmission of the grievance to another institution may result in exceeding this timeframe.

740.09 FIRST LEVEL GRIEVANCE

1. A First Level Grievance (Form DOC-3093) should be reviewed, investigated and responded to by the Warden at the institution where the incident being grieved occurred, even if the Warden is the subject of the grievance.
 - A. The Warden may utilize any staff in the development of a grievance response. The grievance will be responded to by a supervisor that has authority over the issue claimed in the grievance.

- B. First Level medical/dental issues should be responded to by the highest level of Nursing Administration at the institution (DONs I or II).
 - C. First Level mental health issues should be responded to by the Psychologist IV or highest ranking Psychologist at the institution.
 - D. First Level property issues should be responded to by the Associate Warden of Operations.
2. All grievances containing allegations of sexual abuse will be referred to the Inspector General's Office for investigation.
- A. Allegations of sexual abuse will not be referred to a staff member who is the subject of the accusation of sexual abuse.
 - B. The Inspector General's Office shall make a final decision on the merits of any portion of the sexual abuse grievance within 90 calendar days of the initial filing of the grievance and if applicable the matter assigned for official investigation.
 - C. The Inspector General's Office may claim an extension of time to respond to a sexual abuse grievance of up to an additional 70 calendar days if the normal time period for response is insufficient to make an appropriate decision.
 - D. The Inspector General's Office shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.
 - E. Upon the completion of the investigation into sexual abuse the inmate shall be informed of the outcome of the investigation by the Inspector General's Office.
3. At this level the inmate shall provide a justification to continue to the first level.
4. A First Level Grievance that does not comply with procedural guidelines shall be returned to the inmate, with instructions using Form DOC-3098.
- A. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates shall be permitted to assist inmates in filing a grievance(s) relating to allegations of sexual abuse.

- B. If a third party files on behalf of the inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf.
 - C. If a third party files on behalf of the inmate, the facility may also require as a condition of processing the grievance, the alleged victim to personally pursue any subsequent steps in the grievance process.
5. The time limit for a response to the inmate for the First Level grievance is forty-five (45) calendar days from the date the grievance is received by the grievance coordinator to the date returned to inmate.
- A. The inmate must file an appeal within five (5) calendar days of receipt of the response to proceed to the next grievance level.
 - B. Transmission of the grievance to another institution may result in exceeding this timeframe.

740.10 SECOND LEVEL GRIEVANCE

1. A Second Level Grievance (Form DOC - 3094) should be reviewed and responded to by the:
 - A. Deputy Director of Operations for facility custody or security operations that do not include programs.
 - B. Deputy Director of Programs for all program issues such as education, visiting, or religious programming.
 - C. The Deputy Director of Support Services for fiscal, property and telephone issues.
 - D. The Offender Management Administrator (OMA) for classification and timekeeping issues.
 - E. The Medical Director for medical/ dental issues, including medical co-pays or charges.
 - F. The Mental Health Director for mental health issues.
 - G. The inmate may appeal the decision related to a sexual abuse grievance response from the Inspector General's Office within five (5) calendar days of the grievance, with a subsequent response from the Deputy Director for security, program, religious and operations.
2. The Grievance Coordinator shall forward copies of all related documents and the appeal to the Deputy Director for review and distribution to other Appointing Authorities and Division Heads.

3. The time limit for a response to the inmate for the Second Level grievance is sixty (60) calendar days, not including transmittal time, from the date the grievance is received by the grievance coordinator to the date it is returned to inmate.
4. Administrators shall respond to the Second Level Grievance, specifying the decision and the reasons for the decision, and return it to the Grievance Coordinator.

APPLICABILITY

1. This regulation requires an operational procedure for each institution and facility.
2. This regulation requires an audit.

REFERENCES

ACA Standards, 4th Edition and 2008 Supplement, 4-4105, 4-4276, 4-4284, 4-4344, 4-4394, 4-4429, 4-4429-1


James Dzurenda, Director

11/20/18
Date

1. CASE NO. 27CV-WR1-2021-0255.

2. PURSUANT TO NRS 239B.030 The undersigned

3. affirms that this document does not contain

4. social security numbers.

5.

6. IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7. IN AND FOR THE COUNTY OF PERSHING

8.

9. MARQUISE BELLAMY,

10. Petitioner,

11.

12. v.

13.

14. WARDEN GARRETT OF LCC,

15. STATE OF NEVADA, ET AL

16. Respondents.

17.

BELLAMY'S MOTION IN OPPOSITION

TO WARDEN GARRETT'S MOTION TO

DISMISS SAID PETITION FOR WRIT

OF HABEAS CORPUS CHALLENGING HIS

COMPUTATION OF TIME & PURSUANT

TO PETITIONER'S FIRST AND FOUR-

TEENTH AMENDMENT RIGHTS TO THE

UNITED STATES CONSTITUTION.

18. "Come now," Petitioner "Marquis Bellamy" and moves the court
19. To Grant Petition For Writ of Habeas Corpus Computation of
20. Time Pursuant to [A-B, 125] IF APPLICABLE. See Exhibits (A, B, C and C
21. D). "Further," This Action is based on all Points and Authorities
22. Papers and documents on file with this court. Petitioner was
23. Provided with this information through the Family lawyer and
24. the information found in the legal documents and books from
25. the Love Lock Correctional Center's law library. This was also
26. also brought to the attention of the previous (I-B) caseworker
27. Castro, "whom I requested information as to this bill. The case-
28. worker stated that he had heard something about the BIL, but"-

1 Was not too familiar at that, Respondent's claims that my
2 Petition for Writ of Habeas Corpus challenging my computation
3 of time, should be dismissed as Unexhausted and in the alternative,
4 Warden Garrettt moved for dismissal with Prejudice for failing
5 to state a claim upon which relief may be granted. A Jurist
6 of reason could find it debatable, "that Petitioner's action(s) were
7 presented in good faith. Petitioner's actions also arrived from the
8 fact that the Love Lock Correctional Center's Law Library —
9 contains the legal documents with the language relevant to (A.B. 125).
10 The questions are, "IF A.B. 125 IS NOT A legal and binding law —"
11 why would it be stored in the Law Library to be checked out to —
12 Prison inmates?" This could be considered misleading further, "
13 Warden Garrette seeks a Referral for forfeiture of good time
14 credits for filing a Frivolous Petition," Is far-reaching and reflects
15 civil actions by Judicial and Administrative bodies under oath of —
16 office, and Sworn in to uphold the tenets of the United States,"
17 Federal and State Constitutions, treaties and statutes. Petitioner
18 did not deliberately nor intentionally file such a Petition if in fact
19 [A.B. 125] is found to be a law that's inactive or never passed
20 or signed by the Government, and the documents are mere mis-
21 leading. If this Bill did not pass, The information relevant to it should
22 not have been broadcast over the internet nor posted in the L.C.C.'s
23 Law Library. "Nonetheless", if a forfeiture of my statutory good-
24 time credits are negatively interrupted, "I will respectfully file —
25 grievances to exhaustion and follow up with Civil Actions.
26 Pursuant to NRS 209.451 (1)(d) Petitioner has not Violated —
27 any Court rules, held in Contempt of Court, nor intentionally —
28 Submitted False documents or False Statements. A habeas —
2.

1. action under Nevada law is not civil in nature. See: Hill v. Warden,
2. 96 Nev. 38, 40, 604 P.2d 808 (1980). (holding that a habeas
3. corpus is a proceeding which should be characterized as -
4. neither civil or criminal for all purposes. IF sanctions
5. under any law criminal or administratively were intended to -
6. execute the provisions of NRS 209.451 which only penalizes -
7. civil actions, then it should not be used to penalize conduct -
8. in a state action which is clearly not a civil action. IF -
9. Petitioner's Goodtime credits are negatively attacked or taken -
10. will be considered Retaliation and a violation of my 1st &
11. 14th Amendment rights under the U.S. Constitution. Prisoners -
12. have a right under the First and Fourteenth Amendments to -
13. litigate claims challenging their sentences or the conditions -
14. of their confinement [to conclusion] without active interference
15. by prison and or state officials. Silva v. Di Vittorio, 658 -
16. F.3d 1070, 1103 (9th Cir. 2011). Litigating a claim to conclusion -
17. includes exercising the right to file documents, defend the actions -
18. and appeal up through the date the U.S. Supreme Court denies -
19. dismisses or grants a petition for writ of Certiorari or the
20. date when the time to file such a petition expires Id. at -
21. 1078-1100 [Pursuing] sanctions under (N.J. 48) or any other
22. form of laws before the action has been litigated to conclusion -
23. can be construed as a form of retaliation under the First -
24. Amendment. To state a claim of retaliation under the First -
25. Amendment. A Prisoner must allege the following elements:
26. (1) a state actor took an adverse action against him (2) The -
27. prisoner's protected conduct, and that the action taken against
28. him chilled the prisoner's exercise of his First Amendment -
3-

1 rights, and (3) did not reasonably advance a legitimate
2 correctional goal. See Rhodes v. Robinson, 408 F.3d 559, 567-
3 68 (9th Cir. 2005). Prisoners have a right to appeal a habeas
4 action under NRS 34.575(1) and a civil rights action pursuant-
5 to NRS 34.575(1) and a civil rights action pursuant-
6 to NRS 34.575(1). Sanctions initiated under any laws or Administrative
7 rules after a prisoner exercises those rights plainly chill their
8 First Amendment right to litigate a claim to conclusion without
9 active interferences. Substantial apprehensions prevent the
10 prisoner from effectively or meaningfully pursuing appeals-
11 or to otherwise litigate their claims to conclusion out of -
12 fear from additional sanctions. Petitioner does not have
13 access to the internet to keep up with personal knowledge
14 of laws that are actually passed by legislation and signed
15 off by the Governor. Even with the passage of AB 420 amending-
16 NRS 209.417 in (2017) which allows a prisoner to use a computer-
17 to do legal [research] The Prison's Policy only permits such access
18 by an inmate law library research Assistant. A prisoner's ability-
19 to research a subject is reduced to written requests to the -
20 research assistance/assistant to do a word or phrase search.
21 For a court opinion or other law, the sealed down Lexis system-
22 without effective or meaningful research references materials,
23 it is not certain what words or phrases will return the desired -
24 result. A search can yield hundreds of hits of which only a few-
25 may be provided to the requesting prisoner based on the research
26 assistant's subjective judgment. The merit of any claim, defense,
27 and conclusion is not necessarily based on the pro se prisoner's-
28 research efforts on the subject matter but rather on the research
assistant assigned by prison authorities. The same authorities-
4.

1. should not Pursue Sanctions under MJ48 when they directly
2. Contribute to inadequate law libraries or otherwise create
3. an environment that actively interferes or otherwise obstructs-
4. the ability to make a potentially meritorious claim, defense-
5. or Conclusion. Petitioner agree that although grievance
6. was filed after the Petition was filed he is willing to
7. Voluntarily Withdraw the Petition until after exhaustion.
8. It is very well known that Administration has not been
9. following their own rules, by failing to answer the
10. inmate's grievances in a timely fashion. It has been found
11. that a huge variety of inmates receive responses
12. as late as three months to a year, very unreasonable."
13. So what sanctions should they receive? "Further, if it's
14. determined by the Court that AB125 is in fact a false
15. and of Law that was not signed in or passed by Petitioner
16. again, Petitioner withdraws the Petition Voluntarily.

17.

18. CONCLUSION

19. Petitioner's intentions in filing this Petition for writ
20. of habeas Corpus computation of time was done in
21. good faith, and not for any intentions to frustrate the
22. Court or the Attorney General's office. Furthermore,"
23. that would be a waste of my own time, that could
24. be used in other fruitful ways. Petitioner awaits for
25. the Judge's ruling as a matter of truthful law.

26. Dated this 30th Day of Dec 2021

27.

28.

CERTIFICATE

I hereby certify that I mailed a true and correct
copy of the foregoing Motion in opposition to Warden
Garrette's Motion to Dismiss said Petition for writ of
Habeas Corpus Challenging his computation of time,
by presenting the documents to the Law Library
Free Staff Clerk for mailing, Addressed Below,
and dated on the 30th day of Dec-2021

11th Jud. Dist. Court

P.O. Box H

LOVELOCK, NV 89419

BARBAR FORD A.G.

100 N Carson Street

CARSON CITY, NV 89701

Petitioner's NAME: MARQUISE BELLAMY 1102898

Petitioner's Signature: 

Petitioner

IN Pro se

EXHIBIT A

Amendment No. 141

Assembly Amendment to Assembly Bill No. 125	(BDR 16-233)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

JDK/BAW



Date: 4/11/2021

A.B. No. 125—Revises provisions relating to credits against sentences of offenders.
(BDR 16-233)



EXHIBIT B

ASSEMBLY BILL NO. 125—ASSEMBLYMEN DURAN, NGUYEN, FLORES, WATTS; PETERS
AND TORRES

FEBRUARY 15, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to credits against sentences of offenders.
(BDR 16-233)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to offenders; allowing certain offenders ~~[convicted of Category B felonies]~~ to have credits deducted from the minimum term or minimum aggregate term imposed by a sentence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that under certain circumstances an offender may earn credits to reduce his or her sentence of imprisonment, which must be deducted from the maximum term or the maximum aggregate term imposed by a sentence. For certain offenders, credits must also be deducted from the minimum term or the minimum aggregate term imposed by a sentence. However, credits earned by offenders convicted of certain offenses, such as a category B felony, may not be deducted from the minimum term or the minimum aggregate term imposed by a sentence. (NRS 209.4465)

Section 1 of this bill eliminates the restriction against deducting credits from the minimum term or the minimum aggregate term imposed by a sentence for an offender who has been convicted of a category B felony ~~++~~, but provides that an offender who has been convicted of certain offenses remains ineligible to deduct credits from the minimum term or minimum aggregate term imposed by a sentence. Section 1 also revises the applicability of this provision to offenses committed on or after July 1, 2007. Section 2 of this bill makes the changes in section 1 retroactive for offenders who committed offenses before October 1, 2021, the effective date of this bill ~~++~~, unless doing so would violate the ex post facto clause of the United States Constitution or Nevada Constitution.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 209.4465 is hereby amended to read as follows:
209.4465 1. An offender who is sentenced to prison for a crime committed on or after July 17, 1997, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement or the laws of the State recorded against the offender, and who performs in a faithful, orderly and peaceable manner the duties assigned to the offender, must be allowed:

EXHIBIT- B,

EXHIBIT C

(a) For the period the offender is actually incarcerated pursuant to his or her sentence;

(b) For the period the offender is in residential confinement; and

(c) For the period the offender is in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888,

↳ a deduction of 20 days from his or her sentence for each month the offender serves.

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 or an equivalent document, 60 days.

(b) For earning a high school diploma, 90 days.

(c) For earning his or her first associate degree, 120 days.

3. The Director may, in his or her discretion, authorize an offender to receive a maximum of 90 days of credit for each additional degree of higher education earned by the offender.

4. The Director may allow not more than 10 days of credit each month for an offender who participates in a diligent and responsible manner in a center for the purpose of making restitution, program for reentry of offenders and parolees into the community, conservation camp, program of work release or another program conducted outside of the prison. An offender who earns credit pursuant to this subsection is eligible to earn the entire 30 days of credit each month that is allowed pursuant to subsections 1 and 2.

5. The Director may allow not more than 90 days of credit each year for an offender who engages in exceptional meritorious service.

6. The Board shall adopt regulations governing the award, forfeiture and restoration of credits pursuant to this section.

7. Except as otherwise provided in subsections 8 and 9, credits earned pursuant to this section:

(a) Must be deducted from the maximum term or the maximum aggregate term imposed by the sentence, as applicable; and

(b) Apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole.

8. Credits earned pursuant to this section by an offender who committed the offense on or after July 1, 2007, and who has not been convicted of:

(a) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim;

(b) A sexual offense or an attempt to commit a sexual offense that is punishable as a felony;

(c) A violation of NRS ~~484C.110, 484C.120, 484C.130 or 484C.430~~ that is punishable as a felony; ~~or~~

(d) A residential burglary pursuant to paragraph (a) of subsection 1 of NRS 205.060 that was committed on or after July 1, 2020;

(e) A habitual criminal adjudication pursuant to paragraph (a) of subsection 1 of NRS 207.010; or

(f) A category A ~~for B~~ felony,

↳ apply to eligibility for parole and, except as otherwise provided in subsection 9, must be deducted from the minimum term or the minimum aggregate term imposed

EXHIBIT C,

EXHIBIT D

1 by the sentence, as applicable, until the offender becomes eligible for parole and
2 must be deducted from the maximum term or the maximum aggregate term
3 imposed by the sentence, as applicable.

4 9. Credits deducted pursuant to subsection 8 may reduce the minimum term
5 or the minimum aggregate term imposed by the sentence, as applicable, by not
6 more than 58 percent for an offender who:

7 (a) Is serving a sentence for an offense committed on or after July 1, 2014; or

8 (b) On or after July 1, 2014, makes an irrevocable election to have his or her
9 consecutive sentences aggregated pursuant to NRS 213.1212.

10 10. In addition to the credits allowed pursuant to this section, if the Governor
11 determines, by executive order, that it is necessary, the Governor may authorize the
12 deduction of not more than 5 days from a sentence for each month an offender
13 serves. This subsection must be uniformly applied to all offenders under a sentence
14 at the time the Governor makes such a determination.

15 **Sec. 2. 1. Except as otherwise provided in subsection 2:**

16 (a) The amendatory provisions of this act apply to offenses committed before,
17 on or after October 1, 2021.

18 (b) For the purpose of calculating credits earned by a person pursuant to NRS
19 209.4465, as amended by section 1 of this act, the amendatory provisions of this act
20 must be applied retroactively.

21 **2. The amendatory provisions of this act do not apply to offenses**
22 **committed before, on or after October 1, 2021, and for the purpose of**
23 **calculating credits earned by a person pursuant to NRS 209.4465, as amended**
24 **by section 1 of this act, must not be applied retroactively if applying the**
25 **amendatory provisions of this act in such a manner would constitute a**
26 **violation of Section 10 of Article 1 of the United States Constitution or Section**
27 **15 of Article 1 of the Nevada Constitution.**

EXHIBIT-D.

CASE NO. 27CV-WR1-2021-0255

*Pursuant to NRS 239B.030, the undersigned affirms that
This document does not contain social security numbers.*

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

MARQUIS BELLAMY,

Petitioner,

v.

WARDEN GARRETT of LCC,
STATE OF NEVADA, et al.,

Respondents.

**WARDEN GARRETTE'S REPLY IN
SUPPORT OF THE MOTION TO DISMISS
BELLAMY'S PETITION FOR WRIT OF
HABEAS CORPUS CHALLENGING
COMPUTATION OF TIME**

Respondents, Warden Garrette and the State of Nevada, et al. (collectively Warden Garrette), by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, reply in support of the motion to dismiss Petitioner Marquise Bellamy's (Bellamy) petition for writ of habeas corpus challenging the computation of time as unexhausted, for failing to state a claim upon which relief may be granted, and for a referral for forfeiture of credits for filing a frivolous petition. This reply is based on the following points and authorities, the attached exhibits, and all papers and pleadings on file.

POINTS AND AUTHORITIES

I. INTRODUCTION AND ISSUE STATEMENT

Bellamy argues the Nevada Department of Corrections (NDOC) refuses to apply AB 125, which he claims removed category B felonies from the exceptions to earning good time credits under NRS 209.4465(8), to his sentences. Petition.

On December 20, 2021, Warden Garrette moved to dismiss Bellamy's petition, arguing: (1) he failed to exhaust his claim; (2) he failed to state a claim upon which relief may be granted; and (3) this Court should refer Bellamy for consideration of the forfeiture of credits. Motion. Bellamy filed his opposition on January 5, 2022. Warden Garrette now files the reply in support of the motion to dismiss.

II. DISCUSSION

A. Bellamy Failed to Exhaust His Available NDOC Administrative Remedies.

In the motion to dismiss, Warden Garrette argued Bellamy failed to exhaust his available administrative remedies before filing his petition. Motion at 3-5. Specifically, Bellamy failed to exhaust the NDOC grievance system. *Id.*

In response, Bellamy argues that when he requested information on AB 125, a caseworker stated they heard something about the bill but was not familiar with it. Opposition at 1-2. He further argues he presented his claim in good faith. *Id.* at 2.

This response fails to address exhaustion. As noted in the motion to dismiss, the NDOC has a three-tier grievance system that an inmate must utilize to exhaust his claim prior to filing a state petition. Motion at 3-5, citing NRS 34.724(1); Administrative Regulation 740. Bellamy fails to demonstrate he utilized any portion of the grievance system to address his claim regarding AB 125. As a result, he failed to provide the NDOC the opportunity to address his claim prior to him initiating litigation. Therefore, his petition is unexhausted, and this Court may dismiss it without prejudice. NRS 34.810(4).

B. Bellamy Failed to State a Claim Upon Which Relief Can Be Granted Because AB 125 Never Became Law.

Warden Garrette also argued that, in an alternative to dismissal based upon failure to exhaust, Bellamy's claim that the NDOC refused to apply credits to his category B felonies pursuant to AB 125 failed to state a claim upon which relief may be granted. Motion at 5.

First, Bellamy argues that he received notice of the bill from a family lawyer and that information regarding AB 125 was "broadcast over the internet." Opposition at 1, 2. However, Bellamy fails to explain why that lawyer could not provide him additional information as to whether the bill passed as the status of AB 125 was available on the internet; and why he or his family lawyer could not determine whether it was signed into law. *See* Motion at Exhibit 3 (legislative history for AB 125).

Second, the document Bellamy apparently obtained from the Lovelock Correctional Center (LCC) law library is the bill – AB 125. *See* opposition at Exhibits A-D. However, nothing in the bill provides that it was signed into law. In his Exhibit D, which contains the last page of AB 125, he highlights the enactment provision of the bill. That section does not demonstrate the bill was signed into

1 law but instead contains information regarding enactment *if* signed into law. Further, the enactment
2 language itself states that the amendment does not apply to crimes committed on or before October 1,
3 2021. Exhibit D. Bellamy committed his crimes in 2012. *See* Motion at Exhibit 2. Therefore, the bill
4 would not be applicable to Bellamy even if it was signed into law.

5 That LCC had a copy of the bill available is not a defense for Bellamy. The information provided
6 by the law library was not misleading – LCC only provided Bellamy a copy of AB 125. The bill itself
7 did not demonstrate it was signed into law or the date the Governor may have signed the bill.

8 Bellamy sought relief based upon a bill that was never made into law. Therefore, he failed to state
9 a claim upon which relief may be granted. This Court should dismiss his petition with prejudice.

10 **C. This Court Should Refer Bellamy for Forfeiture of Credits Based Upon His**
11 **Frivolous Petition.**

12 Finally, Warden Garrette requested this Court refer Bellamy for forfeiture of credits. Motion at
13 5-6.

14 In response, Bellamy argues he “did not deliberately nor intentionally file such a petition if in fact
15 [AB 125] is found to be a law that’s inactive or never passed or signed by the Government, and the
16 documents or mere misleading.” Opposition at 2.

17 Bellamy’s petition is frivolous and wholly without merit. NRS 209.451(1); *Hosier v. State*, 121
18 Nev. 409, 412, 117 P.3d 212, 214 (2005). Despite providing Bellamy with proof that AB 125 was never
19 signed into law (Motion at Exhibit 4), he does not concede or recognize that he failed to state a claim
20 upon which relief may be granted.

21 Rather, Bellamy blames the LCC law library and the internet for containing information about
22 AB 125. Opposition at 2. Bellamy fails to demonstrate the LCC law library provided him information
23 that AB 125 was signed into law; rather, it appears that the library provided him with a copy of AB 125.
24 *Id.* at Exhibits A-D. While the bill itself contained an enactment clause as to when it would become
25 effective, Bellamy fails to demonstrate that the enactment clause demonstrated that the Governor signed
26 the bill. Nor does he demonstrate what information he requested from the law library. And if information
27 on the bill was available on the internet, Bellamy fails to explain why he was unable to obtain information
28 that the bill did not pass.

1 Bellamy also argues forfeiture is not available for state habeas matters. Opposition at 2-3, citing
2 *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 808 (1980) (habeas neither civil nor criminal). While habeas is
3 neither civil nor criminal in nature, NRS 209.451(5) specifically permits referral for forfeiture of credits
4 for filing frivolous habeas corpus actions.

5 In his final argument, Bellamy argues that a referral would be retaliation Opposition at 3-5.
6 However, claims of retaliation are beyond the scope of a post-conviction habeas petition because such a
7 claim challenges Bellamy's conditions of confinement, not the calculation of his time credits. See NRS
8 34.720, 34.724(1); *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also *Sandin v.*
9 *Conner*, 515 U.S. 472, 484 (1995).

10 CONCLUSION

11 Warden Garrette demonstrated that Bellamy failed to exhaust his NDOC administrative remedies
12 before filing his habeas petition challenging the computation of his time. This bars his petition. In the
13 alternative, this Court should dismiss Bellamy's petition as he fails to state a claim upon which relief
14 may can be granted because AB 125 never became law. For that reason, this Court should also refer
15 Bellamy to the Director of the NDOC for consideration of forfeiture of credits for filing a frivolous
16 petition.

17 This Court should dismiss Bellamy's petition for writ of habeas corpus with prejudice and enter
18 an order referring him for consideration of credit forfeiture.

19 RESPECTFULLY SUBMITTED this 7th day of January, 2022.

20 AARON D. FORD
21 Attorney General

22 By: /s/ Heather D. Procter
23 HEATHER D. PROCTER (Bar No. 8621)
24 Chief Deputy Attorney General
25 State of Nevada
26 Office of the Attorney General
27 100 North Carson Street
28 Carson City, Nevada 89701-4717
(775) 684-1271

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 7th day of, 2022, I caused to be deposited for mailing a true and correct copy of the foregoing **WARDEN GARRETTE'S REPLY IN SUPPORT OF THE MOTION TO DISMISS BELLAMY'S PETITION FOR WRIT OF HABEAS CORPUS CHALLENGING COMPUTATION OF TIME**, to the following:

Marquise Bellamy, #1102898
Lovelock Correction Center
1200 Prison Road
Lovelock, NV 89519

/s/ Lisa M. Clark

CASE NO. 27CV-WR1-2021-0255

*Pursuant to NRS 239B.030, the undersigned affirms that
This document does not contain social security numbers.*

**IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING**

MARQUIS BELLAMY,

Petitioner,

v.

WARDEN GARRETT OF LCC,
STATE OF NEVADA, ET. AL,

Respondents.

REQUEST FOR SUBMISSION

Respondent, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, respectfully requests that the above referenced matter be submitted to the Court for decision upon Respondent's motion to dismiss, filed on December 20, 2021. This request is based upon the provisions of Rule 13(4) of the Rules of Practice of the District Courts of the State of Nevada. Accordingly, the instant matter may be submitted upon the pleadings and other documents on file in this matter.

RESPECTFULLY SUBMITTED this 12th day of January, 2022.

AARON D. FORD
Attorney General

By: /s/ Heather D. Procter
HEATHER D. PROCTER (Bar No. 8621)
Chief Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1271

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General and that on the 13th day of
3 January, 2022, I will cause to be deposited for mailing a true and correct copy of the foregoing
4 **REQUEST FOR SUBMISSION**, to the following:

5
6 Marquise Bellamy, #1102898
7 Lovelock Correction Center
8 1200 Prison Road
9 Lovelock, NV 89519

10 /s/ Lisa M. Clark

CASE NO. 27CV-WR1-2021-0255

*Pursuant to NRS 239B.030, the undersigned affirms that
This document does not contain social security numbers.*

**IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING**

MARQUIS BELLAMY,

Petitioner,

v.

WARDEN GARRETT of LCC,
STATE OF NEVADA, et al.,

Respondents.

**ORDER GRANTING WARDEN
GARRETTE'S MOTION TO DISMISS
BELLAMY'S PETITION FOR WRIT OF
HABEAS CORPUS**

THIS MATTER comes before the Court on Respondents, Warden Garrette and the State of Nevada, et al. (collective Warden Garrette) motion to dismiss Petitioner Marquise Bellamy's (Bellamy) petition for writ of habeas corpus as unexhausted, fails to state a claim upon which relief may be granted, and seeking referral for the forfeiture of credits. Having reviewed all pleadings, motions, documents, and exhibits on file, the Court makes the following findings of fact, conclusions of law, and order.

Bellamy is an inmate in the lawful custody of the NDOC pursuant to a judgment of conviction in the Eighth Judicial District Court. On September 23, 2015, the court adjudged Bellamy guilty following entry of a plea agreement of one count of attempt sexual assault, a category B felony committed on December 13, 2012. The court sentenced Bellamy to 84-240 months consecutive to an unrelated matter.

Bellamy filed his petition for writ of habeas corpus computation of time (petition) on October 6, 2021. He challenges the computation of his sentence based upon Assembly Bill (AB) 125 (2021). He alleges Warden Garrette and the Nevada Department of Corrections (NDOC) refuse to comply with AB 125, which he alleges became effective October 1, 2021.

///

1 AB 125 was a legislature in 2021 that proposed changing the restrictions contained in NRS
2 209.4465(8)(d) that prohibited the application of good time credits to the minimum sentences for category
3 B felonies committed after July 1, 2007. However, that bill failed in committee and was never signed
4 into law.

5 First, this Court finds that Bellamy failed to exhaust his claim. Effective January 1, 2020, an
6 inmate must exhaust all available administrative remedies before initiating a state habeas petition
7 challenging NDOC's computation of time credits against his or her sentence. NRS 34.724(1).
8 Consequently, as of that date, an inmate must exhaust all available administrative remedies prior to filing
9 a habeas petition pursuant to NRS 34.720, et seq. *See Berry v. Fell*, 131 Nev. 339, 341-42, 357 P.3d 344,
10 345 (Nev. App. 2015). This Court properly dismisses a complaint without prejudice when the plaintiff
11 fails to exhaust his administrative remedies. NRS 810(4); *Rosequist v. Int'l Ass'n of Firefighters Local*
12 *1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), *overruled on other grounds by Allstate Ins. Co. v.*
13 *Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007).

14 To exhaust administrative remedies related to the NDOC's calculation of time credits, an inmate
15 must first avail themselves of the NDOC grievance process. NDOC Administrative Regulation (AR) 740
16 sets forth the grievance procedures applicable to all Nevada inmates. There are three levels of grievances
17 within AR 740: an informal grievance (AR 740.08), a first-level grievance (AR 740.09), and a second-
18 level grievance (AR 740.10). Once a merits decision is rendered on a second-level grievance, the NDOC
19 administrative grievance process is exhausted.

20 Although Bellamy filed his petition after January 1, 2020, he failed to exhaust his administrative
21 remedies through the NDOC before filing his petition challenging the computation of his time credits.
22 This Court finds Bellamy's failure to exhaust all his administrative remedies is a complete bar to his
23 current petition. NRS 34.724(1); NRS 34.810(4).

24 Pursuant to NRS 34.810(4), dismissal of a habeas petition challenging time credits must be
25 dismissed without prejudice. However, this Court also finds in favor of Warden Garrette on his alternative
26 argument.

27 Second, this Court finds Bellamy fails to state a claim upon which relief can be granted. NRCPC
28 12(b)(5). This court must presume all factual allegations in the petition are true and draw all inferences

1 in favor of the petitioner. *See Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013).
2 Dismissal is appropriate when it appears beyond a doubt that petitioner can prove no set of facts which,
3 even if true, would entitle them to relief. *Id.*

4 NRS 209.4465(8) applies to crimes committed on or after July 1, 1997, and prohibits application
5 of good time credits towards the minimum sentences of various offenses, including all category B
6 felonies. AB 125 sought to amend NRS 209.4465(8) by removing the prohibition for category B felonies.
7 Bellamy solely relies upon AB 125 for relief.

8 However, AB 125 was never signed into law by the Governor. While Bellamy alleges he received
9 notice of the bill from a family lawyer and the Lovelock Correctional Center (LCC) law library, he fails
10 to demonstrate that the information he obtained – a copy of AB 125 – demonstrated it passed the
11 necessary committees and was signed into law. Nor does Bellamy explain why, if he received information
12 regarding the bill from a family lawyer and that there was information regarding the bill on the internet,
13 he could not obtain information that it never passed.

14 As Bellamy fails to state a claim upon which relief can be granted, and it is beyond a doubt that
15 he cannot prove any set of facts to the contrary, this Court finds Bellamy failed to state a claim upon
16 which relief may be granted and will dismiss the habeas petition with prejudice.

17 Finally, based on the foregoing, this Court finds that Bellamy based his habeas petition on claims
18 that are not warranted by existing law or by a reasonable argument for a change in existing law or a
19 change in the interpretation of exiting law. *See* NRS 209.451(1); *Hosier v. State*, 121 Nev. 409, 412, 117
20 P.3d 212, 214 (2005). Referrals for forfeiture of credits apply to habeas corpus petitions. NRS 209.451(5).
21 While Bellamy argues a referral would be retaliation, a claim of retaliation is not cognizable in a habeas
22 corpus petition. *See* NRS 34.720, 34.724(1); *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250
23 (1984); *see also Sandin v. Conner*, 515 U.S. 472, 484 (1995). The petition is frivolous and wholly without
24 merit, and the Court refers Bellamy to the NDOC Director for consideration of a forfeiture of credits as
25 deemed appropriate.

26 The Court deeming itself fully informed,

27 IT IS HEREBY ORDERED that Warden Garrette's motion to dismiss is **GRANTED** and
28 Bellamy's petition for writ of habeas corpus is dismissed with prejudice.

1 IT IS FURTHER ORDERED that Bellamy is referred to the NDOC Director for consideration of
2 forfeiture of credits as deemed appropriate.¹

3
4
5 Submitted by:

6 Dated this 7th day of January, 2022.

7 /s/ Heather D. Procter
8 Heather D. Procter
9 Chief Deputy Attorney General
10 State of Nevada
11 Office of the Attorney General
12 100 North Carson Street
13 Carson City, NV 89701-4717
14 (775) 684-1271 (phone)
15 (775) 684-1108 (fax)
16 hprocter@ag.nv.gov
17
18
19
20
21
22
23
24
25

26 ¹ 11JDCR 3.13(c)(2)(A) requires a proposed order to include an order that the party submitting
27 the affirmation will serve a notice of entry of the order on the opposing party within seven days of the
28 filing of the order. However, this rule conflicts with NRS 34.830(3), which requires the clerk of the
court to prepare a notice for an order finally disposing of a habeas petition. As this order is a final
disposition of a habeas petition, Warden Garrette was not required to comply with 11JDCR
3.13(c)(2)(A).

**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: Marquise Bellamy vs Warden Garrett of Lovelock Correctional Center,
State of Nevada, et al.
Case Number: 27CV-WR1-2021-0255
Type: Order - Decision

It is so Ordered.

Judge Shirley

Electronically signed on 2022-01-18 10:17:42 page 5 of 5

1 CASE NO. 27CV-WR1-2021-0255

2 *Pursuant to NRS 239B.030, the undersigned affirms*
3 *that this document does not contain social security numbers.*

4
5
6
7 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF PERSHING

9
10 MARQUIS BELLAMY,
11 Petitioner,

NOTICE OF ENTRY
OF ORDER

12 vs.

13 WARDEN GARRETT OF LCC,
14 STATE OF NEVADA, et al,
15 Respondents.

16 PLEASE TAKE NOTICE that the Court entered the following: **ORDER**
17 **GRANTING WARDEN GARRETTE'S MOTION TO DISMISS BELLAMY'S**
18 **PETITION FOR WRIT OF HABEAS CORPUS** in this matter, on January 18 2022, a
19 true and correct copy of which is attached to this notice.

20 If this is a final order and if you wish to appeal to the Nevada Supreme Court, you
21 must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this
22 notice is mailed/electronically served to you.

23 DATED this 18th day of January 18, 2022.

24 KATRENA M. MARTIN
25 CLERK OF THE COURT

26 By 
27 Deputy
28

1
2
3 **CERTIFICATE OF SERVICE**
4

5 Pursuant to NRCP 5(b), I certify that I am an employee of the Eleventh Judicial District
6 Court, and that on the date below, I caused to be served through the United States Postal Service,
7 hand delivery and/or by electronic mail, a true and correct copy of the **ORDER GRANTING**
8 **WARDEN GARRETTE'S MOTION TO DISMISS BELLAMY'S PETITION FOR WRIT**
9 **OF HABEAS CORPUS** on the following:

10 Heather D. Procter
11 Chief Deputy Attorney General
12 State of Nevada
13 Office of the Attorney General
14 100 North Carson Street
15 Carson City, NV 89701

16 Marquis Bellamy #1102898
17 Lovelock Correction Center
18 1200 Prison Road
19 Lovelock, NV 89519

20
21 DATED this 18th day of January 2022.
22
23
24
25
26
27
28



Deputy Clerk

1 CASE NO. 27CV-WR1-2021-0255

2 *Pursuant to NRS 239B.030, the undersigned affirms that*
3 *This document does not contain social security numbers.*

4
5
6 **IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF PERSHING**

8
9 MARQUIS BELLAMY,

10 Petitioner,

11 v.

12 WARDEN GARRETT of LCC,
13 STATE OF NEVADA, et al.,

14 Respondents.

**ORDER GRANTING WARDEN
GARRETTE'S MOTION TO DISMISS
BELLAMY'S PETITION FOR WRIT OF
HABEAS CORPUS**

15 THIS MATTER comes before the Court on Respondents, Warden Garrette and the State of
16 Nevada, et al. (collective Warden Garrette) motion to dismiss Petitioner Marquise Bellamy's (Bellamy)
17 petition for writ of habeas corpus as unexhausted, fails to state a claim upon which relief may be granted,
18 and seeking referral for the forfeiture of credits. Having reviewed all pleadings, motions, documents, and
19 exhibits on file, the Court makes the following findings of fact, conclusions of law, and order.

20 Bellamy is an inmate in the lawful custody of the NDOC pursuant to a judgment of conviction in
21 the Eighth Judicial District Court. On September 23, 2015, the court adjudged Bellamy guilty following
22 entry of a plea agreement of one count of attempt sexual assault, a category B felony committed on
23 December 13, 2012. The court sentenced Bellamy to 84-240 months consecutive to an unrelated matter.

24 Bellamy filed his petition for writ of habeas corpus computation of time (petition) on October 6,
25 2021. He challenges the computation of his sentence based upon Assembly Bill (AB) 125 (2021). He
26 alleges Warden Garrette and the Nevada Department of Corrections (NDOC) refuse to comply with AB
27 125, which he alleges became effective October 1, 2021.

28 ///

1 AB 125 was a legislature in 2021 that proposed changing the restrictions contained in NRS
2 209.4465(8)(d) that prohibited the application of good time credits to the minimum sentences for category
3 B felonies committed after July 1, 2007. However, that bill failed in committee and was never signed
4 into law.

5 First, this Court finds that Bellamy failed to exhaust his claim. Effective January 1, 2020, an
6 inmate must exhaust all available administrative remedies before initiating a state habeas petition
7 challenging NDOC's computation of time credits against his or her sentence. NRS 34.724(1).
8 Consequently, as of that date, an inmate must exhaust all available administrative remedies prior to filing
9 a habeas petition pursuant to NRS 34.720, et seq. *See Berry v. Fell*, 131 Nev. 339, 341-42, 357 P.3d 344,
10 345 (Nev. App. 2015). This Court properly dismisses a complaint without prejudice when the plaintiff
11 fails to exhaust his administrative remedies. NRS 810(4); *Rosequist v. Int'l Ass'n of Firefighters Local*
12 *1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), *overruled on other grounds by Allstate Ins. Co. v.*
13 *Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007).

14 To exhaust administrative remedies related to the NDOC's calculation of time credits, an inmate
15 must first avail themselves of the NDOC grievance process. NDOC Administrative Regulation (AR) 740
16 sets forth the grievance procedures applicable to all Nevada inmates. There are three levels of grievances
17 within AR 740: an informal grievance (AR 740.08), a first-level grievance (AR 740.09), and a second-
18 level grievance (AR 740.10). Once a merits decision is rendered on a second-level grievance, the NDOC
19 administrative grievance process is exhausted.

20 Although Bellamy filed his petition after January 1, 2020, he failed to exhaust his administrative
21 remedies through the NDOC before filing his petition challenging the computation of his time credits.
22 This Court finds Bellamy's failure to exhaust all his administrative remedies is a complete bar to his
23 current petition. NRS 34.724(1); NRS 34.810(4).

24 Pursuant to NRS 34.810(4), dismissal of a habeas petition challenging time credits must be
25 dismissed without prejudice. However, this Court also finds in favor of Warden Garrette on his alternative
26 argument.

27 Second, this Court finds Bellamy fails to state a claim upon which relief can be granted. NRCP
28 12(b)(5). This court must presume all factual allegations in the petition are true and draw all inferences

1 in favor of the petitioner. *See Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013).
2 Dismissal is appropriate when it appears beyond a doubt that petitioner can prove no set of facts which,
3 even if true, would entitle them to relief. *Id.*

4 NRS 209.4465(8) applies to crimes committed on or after July 1, 1997, and prohibits application
5 of good time credits towards the minimum sentences of various offenses, including all category B
6 felonies. AB 125 sought to amend NRS 209.4465(8) by removing the prohibition for category B felonies.
7 Bellamy solely relies upon AB 125 for relief.

8 However, AB 125 was never signed into law by the Governor. While Bellamy alleges he received
9 notice of the bill from a family lawyer and the Lovelock Correctional Center (LCC) law library, he fails
10 to demonstrate that the information he obtained – a copy of AB 125 – demonstrated it passed the
11 necessary committees and was signed into law. Nor does Bellamy explain why, if he received information
12 regarding the bill from a family lawyer and that there was information regarding the bill on the internet,
13 he could not obtain information that it never passed.

14 As Bellamy fails to state a claim upon which relief can be granted, and it is beyond a doubt that
15 he cannot prove any set of facts to the contrary, this Court finds Bellamy failed to state a claim upon
16 which relief may be granted and will dismiss the habeas petition with prejudice.

17 Finally, based on the foregoing, this Court finds that Bellamy based his habeas petition on claims
18 that are not warranted by existing law or by a reasonable argument for a change in existing law or a
19 change in the interpretation of exiting law. *See* NRS 209.451(1); *Hosier v. State*, 121 Nev. 409, 412, 117
20 P.3d 212, 214 (2005). Referrals for forfeiture of credits apply to habeas corpus petitions. NRS 209.451(5).
21 While Bellamy argues a referral would be retaliation, a claim of retaliation is not cognizable in a habeas
22 corpus petition. *See* NRS 34.720, 34.724(1); *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250
23 (1984); *see also Sandin v. Conner*, 515 U.S. 472, 484 (1995). The petition is frivolous and wholly without
24 merit, and the Court refers Bellamy to the NDOC Director for consideration of a forfeiture of credits as
25 deemed appropriate.

26 The Court deeming itself fully informed,

27 IT IS HEREBY ORDERED that Warden Garrette's motion to dismiss is **GRANTED** and
28 Bellamy's petition for writ of habeas corpus is dismissed with prejudice.

1 IT IS FURTHER ORDERED that Bellamy is referred to the NDOC Director for consideration of
2 forfeiture of credits as deemed appropriate.¹

3
4
5 Submitted by:

6 Dated this 7th day of January, 2022.

7 /s/ Heather D. Procter

8 Heather D. Procter
9 Chief Deputy Attorney General
10 State of Nevada
11 Office of the Attorney General
12 100 North Carson Street
13 Carson City, NV 89701-4717
14 (775) 684-1271 (phone)
15 (775) 684-1108 (fax)
16 hprocter@ag.nv.gov
17
18
19
20
21
22
23
24
25

26 ¹ 11JDCR 3.13(c)(2)(A) requires a proposed order to include an order that the party submitting
27 the affirmation will serve a notice of entry of the order on the opposing party within seven days of the
28 filing of the order. However, this rule conflicts with NRS 34.830(3), which requires the clerk of the
court to prepare a notice for an order finally disposing of a habeas petition. As this order is a final
disposition of a habeas petition, Warden Garrette was not required to comply with 11JDCR
3.13(c)(2)(A).

**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: Marquise Bellamy vs Warden Garrett of Lovelock Correctional Center,
State of Nevada, et al.
Case Number: 27CV-WR1-2021-0255
Type: Order - Decision

It is so Ordered.

Judge Shirley

1 CASE No 27CV-WR1-2021-0255

2 Pursuant to NRS 239B.030, the

3 undersigned affirms that this document

4 does not contain social security numbers.

5

6 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF PERSHING

8

9 MARQUISE BELLAMY,

10 Petitioner,

11

NOTICE OF APPEAL

12 v.

13

14 WARDEN GARRETT OF L.C.C.,

15 STATE OF NEVADA, et al.,

16 Respondents / Defendant

17

18 NOTICE IS GIVEN that Petitioner, Marquise Bellamy in Pro-

19 se, hereby appears to the Nevada Supreme Court, the Court's

20 ORDER that Bellamy is referred to the NDOC Director for

21 consideration of forfeiture of credits as deemed appropriate.

22 filed/entered on or about the 18th day of JAN 2022,

23 in the above-entitled Court.

24 DATED THIS 26 DAY OF JAN, 2022

25

25 Sgt. Major [Signature]

26

26 Marquise Bellamy #1102898

27

27 L.C.C. 1200 Prison Road

28

28 Lovelock, Nevada 89419-Petitioner-IN PRO SE

CERTIFICATE OF SERVICE

I do Certify that I mailed a true and correct copy of the foregoing Notice of Appeal to the below address(es) on this 26 day of Jan 2022, by placing same in the U.S. Mail via Prison law library staff addressed as follows:

ELEVENTH JUD-DIST-COURT OFFICE OF THE A.G. OF NV.
P.O. Box H. Pershing County NV 100 N. Carson Street
Love Lock, Nevada 89419 Carson City, NV 89701

s/s: *Margi Bury*

Marguise Bellamy #1102898

LCC-1200 Prison Rd. Lovelock, NV, 89419

Petitioner IN PRO SE

AFFIRMATION PURSUANT TO A.R.S. 239B-030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL Filed in the District Court Case No. — 27CV-WRI-2021-0255 does not contain the Social Security number of any person. DATED this 26 day of JAN 2022

s/s: *Margi Bury*

Marguise Bellamy #1102898

Petitioner IN PRO SE

1 Case No. 27CV-WR1-2021-0255

2 *Pursuant to NRS 239B.030, the undersigned affirms that this*
3 *Document does not contain social security numbers.*

4
5
6 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF PERSHING
8

9 Marquise Bellamy,

10 Petitioner,

11 vs.

12 Warden Garrett of L.C.C., State of Nevada, et

13 al.,

14 Respondents/Defendant.
15

16 **CASE APPEAL STATEMENT**

17 1. Name of appellant filing this case appeal statement:

18 Marquise Bellamy

19 2. Identify the judge issuing the decision, judgment or order appealed from:

20 Honorable Jim C. Shirley

21 3. Identify each appellant and the name and address of counsel for each
22 appellant:

23 Marquise Bellamy

24 Pro Per
1200 Prison Road/LCC

1 Lovelock, NV. 89419

- 2 4. Identify each respondent and the name and address of appellate counsel, if
3 known, for each respondent (if the name of a respondent's appellate counsel
4 is unknown, indicate as much and provide the name and address of that
5 respondent's trial counsel):

6 Warden Garrett of L.C.C.
7 State of Nevada

8 Office of the Attorney General
9 100 North Carson Street
10 Carson City, NV. 89701

- 11 5. Indicate whether any attorney identified above in response to question 3 or
12 4 is not licensed to practice law in Nevada and, if so whether the district
13 court granted that attorney permission to appear under SCR 42 (attach a
14 copy of any district court order granting such permission):

15 N/A

- 16 6. Indicate whether appellant was represented by appointed or retained counsel
17 in the district court:

18 No, Pro Per

- 19 7. Indicate whether appellant is represented by appointed or retained counsel
20 on appeal:

21 No, Pro Per

- 22 8. Indicate whether appellant was granted leave to proceed in forma pauperis,
23 and the date of entry of the district court order granting such leave:

24 No Order to Proceed in Forma Pauperis was granted.

9. Indicate the date the proceedings commenced in the district court (e.g., date
complaint, indictment, information, or petition was filed):

A Petition for Writ of Habeas Corpus Computation of Time was filed on
10/06/21.

10. Provide a brief description of the nature of the action and result in the
district court, including the type of judgment or order being appealed and
the relief granted by the district court:

Petitioner filed a Petition for Writ of Habeas Corpus Computation of Time on 10/06/21. Warden Garrette's Motion to Dismiss Bellamy's Petition for Writ of Habeas Corpus Challenging Computation of Time was filed on 12/20/21. An Order Granting Warden Garrette's Motion to Dismiss Bellamy's Petition for Writ of Habeas Corpus was filed on 01/18/22. A Notice of Appeal was filed on 02/02/22, which resulted in this instant appeal.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

This case has not previously been appealed to the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation: No

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: No, an Order Granting Warden Garrette's Motion to Dismiss Bellamy's Petition for Writ of Habeas Corpus Challenging Computation of Time was filed.

Dated this 2nd day of February 2022.

/s/ Carol Elerick
Carol Elerick
Senior Court Clerk
P.O. Box H
Lovelock, NV. 89419
(775) 273-2410

1 Case No. 27CV-WR1-2021-0255

2 *Pursuant to NRS 239B.030, the undersigned affirms that this*
3 *Document does not contain the social security numbers.*

4
5
6 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF PERSHING

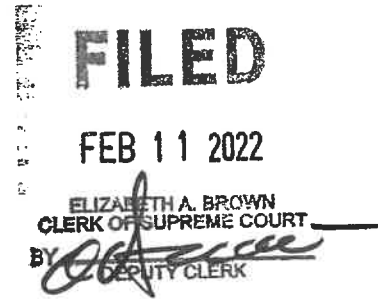
8
9 MARQUISE BELLAMY,
10 Appellant,
11 vs.
12 TIM GARRETT, WARDEN OF LCC;
13 AND THE STATE OF NEVADA,
14 Respondents.

**ORDER DIRECTING
TRANSMISSION OF RECORD AND
REGARDING BRIEFING**

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARQUISE BELLAMY,
Appellant,
vs.
TIM GARRETT, WARDEN OF LCC;
AND THE STATE OF NEVADA,
Respondents.

No. 84196



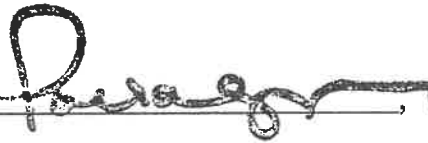
*ORDER DIRECTING TRANSMISSION OF RECORD
AND REGARDING BRIEFING*

Having reviewed the documents on file in this pro se appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g). Respondent need not file a response to any brief filed by appellant, unless ordered to do so by this court. NRAP

46A(c). This court generally will not grant relief without providing an opportunity to file a response. *Id.*

It is so ORDERED.

 C.J.

cc: Marquise Bellamy
Attorney General/Carson City
Clerk of the Court/Court Administrator

Case No. 27CV-WR1-2021-0255

IN THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING


Marquise Bellamy,)
 Appellant,)
 vs.)
Warden Garrett of L.C.C.,)
State of Nevada, et al.,)
 Respondents/Defendant.)

C E R T I F I C A T E

State of Nevada)
 : ss.
County of Pershing)

I, Carol Elerick, Deputy Court Clerk, do hereby certify that the forgoing are true and correct copies of the originals, (with the exception of the page numbers in the lower righthand corner) of the documents filed in the above-entitled case, which were ordered to the Supreme Court for the purpose of appeal.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Lovelock, Nevada, this 17th day of February, A.D., 2022.

Katrena M. Martin
Eleventh Judicial District Court Clerk
By  _____
Deputy Clerk

**ELEVENTH JUDICIAL
DISTRICT COURT**

Jim C. Shirley
District Judge
Tel. (775) 273-2105
Fax (775) 273-4921



Kate Martin
Court Administrator
Tel. (775) 273-5128
kmartin@11thjudicialdistrictcourt.net

February 17, 2022

Elizabeth Brown
Supreme Court Clerk
201 South Carson Street
Carson City, NV 89701-4702

Re: Case #27CV-WR1-2021-0255
Marquise Bellamy vs Tim Garrett, Warden of LCC; and The State of Nevada

Dear Ms. Brown,

Enclosed please find the Record on Appeal for the above-entitled case, which was ORDERED to be sent to the Supreme Court, which was appealed to the Supreme Court.

If you have any questions regarding this matter, please call our office at (775) 273-2410.

Sincerely,


Carol Elerick
Deputy Clerk

ce
Encl.

☐ **Pershing County**
P.O. Box H
Lovelock, NV 89419
Tel. (775) 273-2410
Fax: (775) 273-2434

☐ **Lander County**
50 State Route 305
Battle Mountain, NV 89820
Tel. (775) 635-1332
Fax: (775) 635-0394

☐ **Mineral County**
P.O. Box 1450
Hawthorne, NV 89415-0400
Tel. (775) 945-0738
Fax: (775) 945-0706