

Case No. 27CV-WR1-2023-0230

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

IN THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

Electronically Filed
Feb 07 2024 08:45 AM
Elizabeth A. Brown
Clerk of Supreme Court

DUSTIN BARRAL,

Plaintiff,

VS.

NOTICE OF APPEAL

TIM GARRETT, WARDEN LCC,

Respondent.

NOTICE IS GIVEN that the Plaintiff, Dustin Barral, in pro se, hereby appeals to the Nevada Supreme Court the ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS (TIME COMPUTATION) filed/entered on or about the 24th day of January 2024, in the above entitled court.

Dated this 2nd day of February 2024.



Dustin Barral
1661 E 6th St 254
Reno, NV 89512
7755129060
dustinbarral2169@gmail.com

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Dustin Barral
1661E 6th St. 254
Reno, NV 89512
Plaintiff in Pro Se

Case No. 27CV-WR1-2023-0230

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

DUSTIN BARRAL,

Appellant,

vs.

TIM GARRETT, WARDEN LCC,

Respondent.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Dustin Barral

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

Honorable Jim C. Shirley

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

Dustin Barral, Pro Per
1661 E. 6th Street #254
Reno, NV 89512

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

5 Respondent: Tim Garrett, Warden
6 Counsel: Elsa Felgar
7 Office of the Attorney General
8 100 North Carson Street
9 Carson City, NV. 89701-4717

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

14 N/A

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

17 No, Pro Per

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

20 No

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

23 No

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

Petition for Writ of Habeas Corpus (Computation of Time) was filed on
8/22/2023.

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:

Petition for Writ of Habeas Corpus (Computation of Time) was filed on
8/22/2023. Response to Petition for Writ of Habeas Corpus was filed
10/9/2023. Order Denying Petition for Writ of Habeas Corpus (Time

Computation) was filed 1/24/2024. Notice of Entry of Order was filed
1/24/2024. Notice of Appeal was filed 2/1/2024.

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

Dated this 2nd day of February 2024.

/s/ Adriana Ramos
Deputy Court Clerk
P.O. Box H
Lovelock, NV. 89419
(775) 273-2410

Case Snapshot: Fri Feb 02 08:37:50 PST 2024

Case Number: 27CV-WR1-2023-0230

Case Name: DUSTIN BARRAL vs TIM GARRETT, WARDEN LCC

Date Filed: 08-22-2023

Disposition: Closed

Parties:

RESP: TIM GARETT, WARDEN

Atty: Elsa Felgar

NEVADA ATTORNEY GENERAL'S OFFICE

PETR: DUSTIN BARRAL

Address: 1661 E. 6th St #254, Reno Nv 89512

J: Judge Shirley

Hearings:

09-25-2023 02:30 PM Show Cause

Status: Held

Dockets:

02-02-2024 Case Appeal Statement

02-02-2024 31.1 Case Appeal Statement

02-01-2024 Notice of Appeal

02-01-2024 30.1 Notice of Appeal

01-24-2024 Notice of Entry of Order

01-24-2024 29.1 Notice of Entry of Order

01-24-2024 29.1.1 Exhibit

01-24-2024 Order Denying Petition for Writ of Habeas Corpus (Time Computation)

01-24-2024 28.1 Order Denying Petition for Writ of Habeas Corpus (Time Computation)

12-08-2023 Request for Submission

12-08-2023 27.1 Request for Submission

12-08-2023 Motion for Forma Pauperis

12-08-2023 26.1 Motion for Forma Pauperis

11-16-2023 Notice of Change of Address

11-16-2023 25.1 Notice of Change of Address

10-30-2023 Notice of Change of Address

10-30-2023 23.1 Notice of Change of Address

10-19-2023 Response to Response to Petition for Writ of Habeas Corpus

10-19-2023 22.1 Response to Response to Petition for Writ of Habeas Corpus

10-09-2023 Response to Petition for Writ of Habeas Corpus

10-09-2023 21.1 Response to Petition for Writ of Habeas Corpus

10-09-2023 21.1.1 Exhibit A

10-09-2023 21.1.2 Exhibit B

10-09-2023 21.1.3 Exhibit C

10-09-2023 21.1.4 Exhibit D

10-09-2023 21.1.5 Exhibit E

10-09-2023 21.1.6 Exhibit F

10-09-2023 21.1.7 Exhibit G

09-28-2023 Affidavit of Mailing

09-28-2023 19.1 Affidavit of Mailing

09-28-2023 Amended Order After Hearing on September 25, 2023

09-28-2023 18.1 Amended Order After Hearing on September 25, 2023

09-26-2023 Order After Hearing on September 25, 2023

09-26-2023 17.1 Order After Hearing on September 25, 2023

09-15-2023 Affidavit of Mailing

09-15-2023 15.1 Affidavit of Mailing

09-15-2023 Order Regarding Telephonic Appearance Request

09-15-2023 14.1 Order Regarding Telephonic Appearance Request

09-12-2023 Request for Telephonic Appearance

09-12-2023 13.1 Request for Telephonic Appearance

09-12-2023 Index of Exhibits in Support of Petition for Writ of Habeas Corpus (Computation of Time)

09-12-2023 12.1 Index of Exhibits in Support of Petition for Writ of Habeas Corpus (Computation of Time)

09-12-2023 12.1.1 Exhibit

09-12-2023 Notice of Appearance

09-12-2023 11.1 Notice of Appearance

08-31-2023 Affidavit of Mailing

08-31-2023 9.1 Affidavit of Mailing

08-31-2023 Order to Produce/ Transport Prisoner
08-31-2023 8.1 Order to Produce/ Transport Prisoner

08-30-2023 Affidavit of Mailing
08-30-2023 7.1 Affidavit of Mailing

08-30-2023 Order to Show Cause for Dismissal
08-30-2023 6.1 Order to Show Cause for Dismissal

08-28-2023 Affidavit of Mailing
08-28-2023 5.1 Affidavit of Mailing

08-25-2023 Affidavit of Mailing
08-25-2023 4.1 Affidavit of Mailing

08-25-2023 Order to Respond
08-25-2023 3.1 Order to Respond

08-22-2023 Petition for Writ of Habeas Corpus (Computation of Time)
08-22-2023 1.1 Petition for Writ of Habeas Corpus (Computation of Time)

Case No. 27CV-WR1-2023-0230

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

DUSTIN BARRAL,

Petitioner,

vs.

TIM GARRETT, WARDEN LCC,

Respondent.

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS (TIME
COMPUTATION)**

THIS MATTER comes before the Court on Petitioner, DUSTIN BARRAL's, Petition for Writ of Habeas Corpus (Time Computation). This Court has reviewed all pleadings, documents and exhibits on file in the above-entitled matter. Based on this review, the Court makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner was sentenced on September 18th, 2017 to an aggregated sentence of 124 months to 312 months for Count 1: Attempted Sexual Abuse, under 14 years of age and Count 2: Child Abuse, Neglect or Endangerment; both Category B Felonies. Petitioner is

1 currently released on Parole and not incarcerated with the Nevada Department of Corrections
2 (NDOC).

3 In Eleventh Judicial District Court Case No. 27CV-WR1-2023-0059, The Petitioner
4 filed his first Petition for Writ of Habeas Corpus on February 21, 2023, and subsequently
5 filed a Supplemental Brief. That matter is currently on appeal before the Nevada Supreme
6 Court in Case No. 87139.

7 While The Petitioner's other state habeas case remained pending, Petitioner filed this
8 Writ of Habeas Corpus (Computation of Time) on August 22nd, 2023. Petitioner's complaint
9 alleges that the NDOC failed to credit time off his sentence with regard to his earning of an
10 advanced degree, specifically an associate degree in Pastoral Ministry from the International
11 Christian College and Seminary. The Petitioner's latest associate degree in Pastoral Ministry
12 is the subject of his challenge in the instant Petition. The Petitioner obtained this degree from
13 the International Christian College and Seminary, which is not an accredited college.
14 Furthermore, NDOC did not approve The Petitioner to receive credit for his associate degree
15 from that institution.

16 **ARGUMENT**

17 Petitioner further claims that NDOC is required through NRS 209.4465 to credit his
18 time based on his accumulation of Advanced degrees. Petitioner argues that this is
19 mandatory and not discretionary; that the legislature has drafted the Statutes and the NDOC
20 does not have the authority to alter them.

21 **CONCLUSIONS OF LAW**

22 NRS 209.4465 applies to the Petitioner. NRS 209.4465 explicitly specifies that
23 educational and meritorious credit for additional higher education degrees is not an automatic
24

1 award of time credits; rather, such credit is subject to the restrictions and regulations
2 implemented by the Director. The following indicates the case:

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

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

7 The Director set forth the requirements to receive educational and meritorious credits
8 in NDOC Administrative Regulation (“AR”) 803. AR 803 reiterates that credit for “each
9 additional higher educational degree is at the Director’s discretion,” and that credit awards
10 for “exceptional meritorious service and achievement credits” such as GPA are also at the
11 Director’s discretion. AR 803.01(1)(A); AR 803.01(4). Only programs/degrees from
12 accredited correspondence courses are eligible for credit. AR 803.01(1)(B). Even “approved
13 classes and programs” credits are subject to the Director’s discretion. AR 803.01(8). AR
8.03.01 specifically provides:

14 1. Educational Degree Credits will be awarded per the requirements of
15 Nevada Revised Statutes (NRS) 209.433- 209.4465.

16 A. Credit for each additional higher educational degree is at the
17 Director’s discretion. If granted, a maximum of 90 credits will be
awarded.

18 B. Non-accredited correspondence courses are not eligible for
19 credit awards.

20 The Petitioner therefore cannot receive credit for his additional associate degree and
21 GPA. Since The Petitioner’s additional degree is from an unaccredited and unapproved
22 institution, he may not receive educational or meritorious credit for his degree and GPA. See
23 NRS 209.4465(3); AR 803.01(1)(B); AR 803.01(04).

1 The Court further has determined that the Petitioner’s argument regarding entitlement
2 to educational degree credits is misguided, as he has no constitutionally protected liberty
3 interest in earning such credits. In Nevada, the statutes relating to work/study credits create
4 only the possibility of earning an earlier release; they create no constitutionally protected
5 liberty interest. Inmates must actually perform work or complete approved study programs to
6 earn work/study credits. *See Vickers v. Dzurenda*, 433 P.3d 306, 308 (Nev. App. 2018)
7 (stating that “to be diligent in labor, one must actually apply oneself to the labor.”). Thus, the
8 NDOC is not violating The Petitioner’s constitutional rights in imposing restrictions on
9 educational/meritorious credits from unapproved study programs.

10 The Petitioner’s request for a Court order to force the NDOC to change its
11 Administrative Regulations is non-cognizable. The Director possesses discretion over
12 policies and procedures regarding educational/meritorious credit awards, which includes the
13 Administrative Regulations. See NRS 209.4465(3), (5); see also NRS 209.4465(6). The
14 Administrative Regulations are permitted under the law and governed by the Director, not the
15 Court. As such, a petition for writ of habeas corpus – which is specifically limited to
16 challenges regarding an inmate’s judgment, conviction, or the NDOC’s computation of time
17 – is not an appropriate vehicle for The Petitioner to seek a change to the Administrative
18 Regulations.

19 Petitioner argues that it is universally known that the state government creates laws and
20 codifies them as statutes and that it is also common that the state government will assign
21 organizations to create rules by which to implement these statutes.

22 That is the case here. NRS 209.4465(6) specifically directs the ‘Board’ to adopt
23 regulations by which to administer credits earned by inmates while incarcerated. The Board
24

1 shall adopt regulations governing the award, forfeiture and restoration of credits pursuant to
2 this section. NRS 209.4465(6). Board is defined by NRS 209.021 as the Board of State
3 Prison Commissioners and NRS 209.101 creates the Department of Corrections and Board.
4 The statutes being created through the power of the Nevada Constitution Section 21, Article
5 5.

6 These rules have manifested as Nevada Department of Corrections Administrative
7 Regulations, known as AR's. AR 803.01 (1) A & B directly contradicts Petitioner's claim
8 that applying credit to time served is mandatory.

9 **ORDERS**

10 The Court deeming itself fully informed,

11 **IT IS HEREBY ORDERED** that The Petitioner's petition for Writ of Habeas
12 Corpus is denied.

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**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: DUSTIN BARRAL VS TIM GARRETT, WARDEN LCC

Case Number: 27CV-WR1-2023-0230

Type: Order

It is so Ordered.

Judge Shirley

CASE NO. 27CV-WR1-2023-0230

*Pursuant to NRS 239B.03-0, 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

DUSTIN BARRAL,

Petitioner,

vs,

TIM GARRETT, WARDEN LCC,

Respondent.

**NOTICE OF ENTRY
OF ORDER**

PLEASE TAKE NOTICE that the Court entered ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS on January 24, 2024, a true and correct copy of which
is attached to this notice.

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

DATED this 24th day of January 2024.

KATRENA M. MARTIN
CLERK OF THE COURT

By /s/ Adriana Ramos
Deputy

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Eleventh Judicial District Court, and that on the date below, I caused to be served through the United States Postal Service, hand delivery and/or by electronic mail, a true and correct copy of the ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS on the following:

Dustin Barral, Petitioner
Electronic Service

Elsa Felgar
Nevada Attorney General's Office
Electronic Service

DATED this 24th day of January 2024.

/s/ Adriana Ramos
Deputy Clerk

INDEX OF EXHIBITS

Exhibit 1

Copy of order

6 pages

EXHIBIT 1

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Case No. 27CV-WR1-2023-0230

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IN AND FOR THE COUNTY OF PERSHING

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Petitioner,

vs.

TIM GARRETT, WARDEN LCC,

Respondent.

**ORDER DENYING PETITION FOR
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3 Prison Commissioners and NRS 209.101 creates the Department of Corrections and Board.
4 The statutes being created through the power of the Nevada Constitution Section 21, Article
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6 These rules have manifested as Nevada Department of Corrections Administrative
7 Regulations, known as AR's. AR 803.01 (1) A & B directly contradicts Petitioner's claim
8 that applying credit to time served is mandatory.

9 **ORDERS**

10 The Court deeming itself fully informed,

11 **IT IS HEREBY ORDERED** that The Petitioner's petition for Writ of Habeas
12 Corpus is denied.

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**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: DUSTIN BARRAL VS TIM GARRETT, WARDEN LCC

Case Number: 27CV-WR1-2023-0230

Type: Order

It is so Ordered.

Judge Shirley

COURT MINUTES. NOT AN OFFICIAL TRANSCRIPT OF ANY PROCEEDING.

DUSTIN BARRAL vs TIM GARRETT, WARDEN LCC

Case No. 27CV-WR1-2023-0230

Judge: Jim C. Shirley

Law Clerk:

Clerk: Adriana Ramos

Date of Hearing:	9/25/2023 Show Cause Hearing
Present:	Dustin Barral, Petitioner
Not Present:	Elsa Felgar OBO Respondent
Sworn & Provided Testimony:	
Exhibits:	

MINUTE SUMMARY:

Matter set for a Show Cause hearing. (Court called on to the telephonic number assigned to the hearing and the attorney for the respondent was not on the line. Court proceeded with the hearing.)

Court advised the petitioner that there is an order to show cause against him for possible dismissal due to claims in this petition being similar to others filed by the petitioner. Petitioner explained that these claims are different. Petitioner argued this petition involved the Nevada Department of Corrections not accepting his credits from ICC. Court dismissed the show cause and will issue an order to respond to the attorney general.

COURT ORDERED:

Show cause dismissed.

Order to Respond to be issued for the attorney general's office.

Court to prepare the order.

COURT MINUTES. NOT AN OFFICIAL TRANSCRIPT OF ANY PROCEEDING.

Case No. 27CV-WR1-2023-0230

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

DUSTIN BARRAL,

Appellant,

vs.

TIM GARRETT, WARDEN LCC,

Respondent.

CERTIFICATE

State of Nevada)
 : ss.
County of Pershing)

I, KATE MARTIN, Clerk of the Court, do hereby certify that the following are true and correct copies of the original documents in the above-entitled case, which was appealed to the Supreme Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Lovelock, Nevada, this 2nd day of February 2024.

KATE MARTIN
Eleventh Judicial District Court Clerk

By: /s/ Adriana Ramos
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 2, 2024

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

Re: Notice of Appeal / 27CV-WR1-2023-0230
Dustin Barral, Appellant vs Tim Garrett, Warden LCC, Respondent

Enclosed, please find the following documents as it relates to an Appeal filed on
February 2, 2024:

- Certification
- Exhibit List (if applicable)
- Minutes (if applicable)
- Notice of Entry of Order (with Order)
- Judgement / Order
- District Court Docket
- Case Appeal Statement
- Notice of Appeal

Should you have any questions or require additional information, please do not
hesitate to contact the Court.

KATE MARTIN
Eleventh Judicial District Court Clerk

By: *Adriana Ramos*
Deputy Clerk

/km
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 2390
Hawthorne, NV 89415-0400
Tel. (775) 945-0738
Fax: (775) 945-0706