

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO R. JIMENEZ,
Appellant,
vs.
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS, JACKIE
CRAWFORD,
Respondent.

No. 47330

FILED

AUG 25 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On November 16, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count each of second-degree murder and attempted murder.¹ The district court sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison for second-degree murder and a concurrent term of eight to twenty years for attempted murder. Appellant did not file a direct appeal.

On September 27, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition. Appellant opposed the motion to dismiss. Pursuant to NRS 34.750 and 34.770, the district court declined to

¹A corrected judgment of conviction was entered on November 29, 1999.

appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 26, 2006, the district court dismissed appellant's petition. This appeal followed.²

In his petition, appellant contended that his due process rights were violated because he was not awarded the work good time credits he is entitled to under NRS 209.4465(2) for taking educational classes. Appellant also contended that NRS 209.4465 does not allow the Nevada Department of Corrections (NDOC) to distinguish between types of educational coursework that is performed by an inmate to determine if the inmate should receive credit. Finally, appellant contended that the NDOC awards work good time credits under NRS 209.4465(2) in a discriminatory manner because individuals taking college courses through correspondence school are not awarded the monthly credit, while those taking high school courses and other career development courses offered through the institution are awarded the credit. Our review of the record on appeal reveals that the district court did not err in denying the petition.

NRS chapter 209 governs education and vocational training relating to inmates. NRS 209.389 gives the Board of State Prison Commissioners (Board) the power to establish programs of general and vocational education and training. NRS 209.4465(2) allows the Director of the Department of Corrections (Director), at her discretion, to award no more than ten days credit each month for an inmate whose diligence in

²To the extent that appellant appeals from the district court's denial of his motion to strike exhibit B to the State's motion to dismiss his petition, we conclude that the district court did not err in denying this motion.

participating in those programs merits such credits. NRS 209.391 gives the Director the authority to manage the programs the Board establishes. Pursuant to that authority, the Director has promulgated Administrative Regulations (NDOC A.R.s). NDOC A.R. 105 gives each institution's warden the authority to promulgate Institutional Procedures (I.P.s) for that institution.

NRS chapter 209 makes clear that its provisions, including the credits contemplated by NRS 209.4465(2), are directed only at education programs actually administered by the NDOC through its Director. For example, NRS 209.391 states that the Director shall "administer" the educational and vocational training programs set up by the Board. Accordingly, the A.R.s and I.P.s implementing the provisions of NRS chapter 209 at issue here also only relate to programs being administered by the Director. Therefore, when determining if an inmate is eligible for the discretionary credit allowed under NRS 209.4465(2), distinguishing educational courses that are administered by the Director from educational courses that are not is proper and does not constitute discrimination.

Appellant's coursework through Blackstone Paralegal Studies and Ashworth College did not constitute programs being "administered by the Director." Appellant was therefore not entitled to credit under NRS 209.4465(2) for this work. Because appellant was not entitled to credit for taking educational courses that are not administered by the Director, appellant cannot demonstrate a liberty interest sufficient to invoke the protections of the Due Process Clause. Accordingly, we conclude the district court did not err in denying appellant's petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
Fernando R. Jimenez
Attorney General George Chanos/Carson City
White Pine County Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance. We deny appellant's motion to proceed and file documents in proper person with this court. See NRAP 46(b).