

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOESAPH ELY BENNETT A/K/A  
JOESAPH E. BENNETT,  
Appellant,

vs.

WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 48928

**FILED**

**MAY 31 2007**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On September 28, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 11, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant challenged the computation of time served. Specifically, appellant claimed that he was deprived of work and meritorious credits for his participation in and completion of a correspondence course in paralegal studies. Appellant claimed that he had a liberty interest in 140 days of work credit and 90 days of meritorious credit pursuant to NRS 209.4465, N.D.O.C. 563 and Ely Institutional Procedure 7.13. Appellant claimed that by disallowing credit for his

correspondence course, but allowing credit for high school courses, the prison violated his equal protection rights.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant was not entitled to the relief requested. Appellant failed to demonstrate that he was entitled to receive additional work or meritorious credit for his correspondence courses. NRS 209.4465(2) provides that the Director of the Department of Corrections may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. Notably, this language does not require the Director to award any credits for labor or study and does not create a liberty interest in these credits.<sup>1</sup> Appellant did receive work credits sporadically throughout this period, including months wherein he received 10 days of credit, and yet, appellant did not indicate why he should be allowed additional credits for those same months.<sup>2</sup> Ely Institutional procedure 7.13 does not provide

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<sup>1</sup>See Neal v. Hargrave, 770 F. Supp. 553, 557-58 (D. Nev. 1991) (determining that the Nevada statute regarding work credits was discretionary and did not create a liberty interest); see also Reynolds v. Wolff, 916 F. Supp. 1018, 1023 n.3 (D. Nev. 1996) (recognizing that Nevada statutes do not create a liberty interest in the accumulation of work credits).

<sup>2</sup>The documents provided by the State indicate that appellant received 76 days of work credit during the period in which appellant argued he was entitled to 140 days of additional work credit—appellant's calculation based upon the maximum of 10 days of credit for each month of the correspondence course.

any entitlement to work credit as it does nothing more than state that inmates taking courses that require special training to be assigned as a law clerk are permitted to earn work credits, and appellant did not demonstrate that his correspondence course was one such course allowing him to earn work credits.<sup>3</sup> Appellant further failed to demonstrate that he was entitled to or had a liberty interest in meritorious credit because such an award of credit is discretionary. N.D.O.C. 563 provides no relief in the instant case as N.D.O.C. 563 provides that meritorious credits will be given for satisfactory completion of a certified program of vocational education and training which is listed in the approved curriculum.<sup>4</sup> The course that appellant took was not listed in the approved curriculum. Finally, appellant's equal protection claim was without merit as he failed to demonstrate any purposeful discrimination.<sup>5</sup> Therefore, we affirm the order of the district court dismissing appellant's petition.

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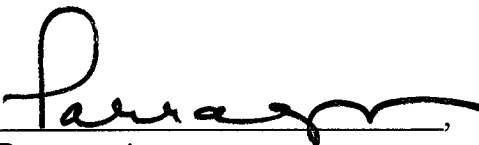
<sup>3</sup>Ely Institutional Procedure 7.13.05 5.2. We further note that the Ely Institutional Procedure 7.13 specifically states that the procedures set forth do not create a liberty interest in favor of any inmate.

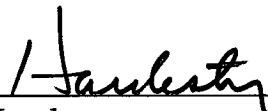
<sup>4</sup>N.D.O.C. 563.05 1.1.2.


<sup>5</sup>See generally Lane v. State, 110 Nev. 1156, 881 P.2d 1358 (1994) (holding that a defendant who alleges an equal protection violation has the burden of demonstrating purposeful discrimination or discriminatory effect), vacated on other grounds on rehearing 114 Nev. 299, 956 P.2d 88 (1998); see also McCleskey v. Kemp, 481 U.S. 279, 292 (1987).

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Dan L. Papez, District Judge  
Joesaph Ely Bennett  
Attorney General Catherine Cortez Masto/Carson City  
White Pine County Clerk

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<sup>6</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We 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.