

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD D. ECKERT,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 53875

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

In his petition, filed on December 7, 2007, appellant claimed that the Nevada Department of Corrections improperly calculated his good time credits for his primary offenses and the deadly weapon enhancements based on separate sentences rather than one sentence, thereby applying this court's holding in Nevada Dep't Prisons v. Bowen, retroactively and to his detriment. 103 Nev. 477, 745 P.2d 697 (1987) (overruling Biffath v. Warden, 95 Nev. 260, 593 P.2d 51 (1979), and

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Director, Prisons v. Biffath, 97 Nev. 18, 621 P.2d 1113 (1981)) (holding that primary and enhancement sentences must be treated as separate sentences for all purposes, rather than treating them as one continuous sentence).

Appellant failed to demonstrate he was entitled to relief. Preliminarily, we note that appellant failed to provide an explanation for his approximately 20-year delay in filing the instant petition and appears to have acquiesced to the Department's treatment of his sentences.² See NRS 34.810(1)(a). This delay makes a response and court review nearly impossible. Most importantly, appellant failed to demonstrate that he was prejudiced by the application of Bowen to his case or that Bowen had even been applied because appellant failed to support his claim with sufficient factual allegations which, if true, would have entitled him to relief. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in dismissing the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

²Appellant appears to claim that his being housed out of state for several years until 1998 excuses his delay in filing. However, appellant does not explain why he was unable to file this petition in the nine years since he returned to Nevada.

cc: Hon. Steve L. Dobrescu, District Judge
Edward D. Eckert
Attorney General/Ely
White Pine County Clerk