

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRENCE BROTHERS,
Appellant,
vs.
DWIGHT NEVEN, WARDEN,
Respondent.

No. 60772

FILED

DEC 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Handwritten Signature*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; David B. Barker, Judge.


In his petition filed on January 24, 2012, appellant challenged the sentence structure as calculated by the Nevada Department of Corrections. 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 relief because appellant was serving a sentence of life without the possibility of parole—the controlling term of his sentence structure.² See NRS 176.035(2) (providing that if a prisoner is sentenced to a term of life without the possibility of parole, that sentence must be executed

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).


²The fact that appellant may apply for a pardon from his sentence of life without the possibility of parole does not alter the present-day application of NRS 176.035(2) to his sentence structure.

without reference to the unexpired term of imprisonment and without reference to eligibility for parole).³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

³NRS 176.035 was amended to include this language in 2001 and was made effective in 2001. 2001 Nev. Stat., ch. 403, § 2, at 1936. This explains why appellant received a parole hearing in 2000 from one of the fixed-term sentences. Application of the 2001 amendment to appellant is not an ex post facto violation because the possibility of increased punishment is speculative at best, the amendment applies to a class of prisoners for whom the likelihood of release on parole is very remote, and the amendment does not extend appellant's actual confinement period in light of the two consecutive sentences of life without the possibility of parole. See Cal. Dept. of Corrections v. Morales, 514 U.S. 499, 509-10, 512-13 (1995).

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.

cc: Hon. David B. Barker, District Judge
Terrence Brothers
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk