

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY JAMES NGAUE,
Appellant,
vs.
DWIGHT NEVEN, WARDEN,
Respondent.

No. 60871

FILED

DEC 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angela*
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; Kathy A. Hardcastle, Judge.

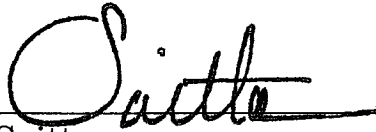
In his petition filed on October 6, 2009, and amended on January 18, 2012, appellant first claimed that NRS 209.4465(8) violated the Equal Protection Clause. We conclude that the district court did not err in rejecting this argument as appellant was not a member of a suspect class, and there is a rational basis for treating more serious offenders differently from less serious offenders when applying credits that accelerate parole eligibility dates. See Gaines v. State, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000) (recognizing that the first step in an equal protection analysis is to determine the level of scrutiny to be applied, that strict scrutiny analysis is only applied in cases involving fundamental rights or cases involving suspect classes, and that under a lesser standard of review, legislation will be upheld if the challenged classification is

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

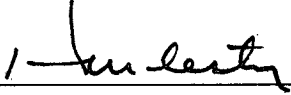
rationally related to a legitimate government interest); see also Graziano v. Pataki, 689 F.3d 110, 117 (2d Cir. 2012) (recognizing that prisoners, whether in the aggregate or specified by offense, are not a suspect class and rational basis test will apply) (citation omitted); Glauner v. Miller, 184 F.3d 1053, 1054 (9th Cir. 1999) (recognizing that prisoners are not a suspect class and applying rational basis test).² Appellant's separation of powers challenge to this statutory provision was patently without merit and based upon a misunderstanding of the separation of powers doctrine.

Next, appellant claimed the Nevada Department of Corrections failed to implement a 2005 memorandum from the Director indicating that work credits should be awarded to prisoners who were ready and willing to work. We conclude that the district court did not err in denying this claim as appellant failed to demonstrate that implementation of the memorandum was required by law and that he was deprived of any credits actually earned. Notably, NRS 209.4465(2) requires work or study to earn work credits. Appellant failed to demonstrate that he had a right to be employed while incarcerated. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.


Pickering, J.


Hardesty, J.

²Remarkably, and contrary to appellant's implicit argument, appellant was not similarly situated to offenders who committed less serious offenses.

cc: Hon. Kathy A. Hardcastle, District Judge
Ricky James Ngaue
Attorney General/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk