

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEREK ANTHONY COSTANTINO,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 67869

FILED

OCT 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

In his September 29, 2014, petition appellant Derek Anthony Costantino claimed the Nevada Department of Corrections (NDOC) improperly calculated his sentence. Costantino was convicted of second-degree murder with the use of a deadly weapon. The district court sentenced Costantino to serve a term of 25 years for the primary offense and a consecutive term of 25 years for the deadly weapon enhancement.

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).


Costantino received an institutional parole for the primary offense and began serving the term for the deadly weapon enhancement.

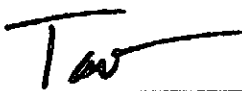
First, Costantino claimed due to the institutional parole, his enhancement term combined with his primary term to form concurrent sentences and he should have been released upon expiration of the primary term. Costantino also asserted his primary sentence and his deadly-weapon-enhancement sentence should be treated as one for purposes of earning and applying good-time credits. Costantino's claims lacked merit. The Nevada Supreme Court has already stated "the penalty for a primary offense and the enhancement penalty imposed pursuant to NRS 193.165 are separate and distinct, and the consecutive sentences imposed must be treated as separate sentences for all purposes." *Nevada Dep't of Prisons v. Bowen*, 103 Nev. 477, 481, 745 P.2d 697, 699 (1987). Accordingly, the NDOC has properly treated Costantino's primary and enhancement terms as separate sentences for all purposes. Therefore, the district court did not err in denying these claims.


Second, Costantino claimed serving the enhancement sentence separate from the primary sentence violated his right against double jeopardy. Costantino's claim lacked merit. The deadly weapon enhancement constitutes an additional penalty for the primary offense and imposition of the enhancement does not violate the double jeopardy clause. *See Woofter v. O'Donnell*, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975); *see also Bowen*, 103 Nev. at 479, 745 P.2d at 698

(explaining there is "no conflict between the penalty imposed by NRS 193.165 and the double jeopardy clause of the United States Constitution."). Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Steve L. Dobrescu, District Judge
Derek Anthony Costantino
Attorney General/Carson City
White Pine County District Attorney
Attorney General/Ely
White Pine County Clerk

²We have reviewed all documents Costantino has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Costantino has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.