

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK NEWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70053

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Patrick Newell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 3, 2015.¹ Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Newell claims the district court erred by denying his petition seeking additional statutory work and study credits. First, he claims he should receive an additional 285 days of work credit because he was willing to work, but he was unable to do so due to a disability. We conclude Newell had no right to employment while in prison; therefore, he fails to demonstrate lack of employment and opportunity to earn statutory work credit violated any protected right. See NRS 209.461(1), (6); *Collins v. Palczewski*, 841 F. Supp. 333, 336-37 (D. Nev. 1993) (recognizing a prisoner has no independent constitutional right to employment and the

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

Nevada statutes do not mandate employment). Therefore, the district court did not err by denying this claim.

Second, he claims he should have received an additional 60 meritorious credits for maintaining a 3.5 grade point average in his HVAC classes. The award of meritorious credits is discretionary and Newell fails to demonstrate the Nevada Department of Corrections (NDOC) abused its discretion by failing to award him the credits. See NRS 209.4465(5); AR 803.01(4) ("the Director has discretion to award exceptional meritorious service and achievement credits"). Therefore, the district court did not err by denying this claim.

Third, to the extent he claims the prison is required to provide him with a qualifying job or education opportunity and to make reasonable accommodations based on his disability, this claim challenges the conditions of confinement and is outside the scope of a postconviction petition for a writ of habeas corpus. See *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, the district court did not err by denying this claim.


Fourth, he claims the State deleted work credits previously awarded to him after he filed his petition. Newell fails to demonstrate it was error to remove these credits from his report. By his own admission, Newell did not work during the months where the credits were removed. Therefore, the district court did not err in denying this claim.

Finally, Newell claims that by producing credit sheets that include credits that are not yet earned, the NDOC has created a liberty interest in those credits. Newell did not raise this claim in the petition and other documents filed below, and we decline to address it for the first

time on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Eric Johnson, District Judge
Patrick Newell
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk