IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER BERNARD BAYOT,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 71366



*ORDER OF AFFIRMANCE*

Appellant Alexander Bernard Bayot appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.[1] First Judicial District Court, Carson City; William A. Maddox, Senior Judge.

Bayot first argues the district court erred in denying his July 11, 2016, petition. In his petition, Bayot claimed he was entitled to receive credits applied towards his minimum terms in the manner discussed by the Nevada Supreme Court in *Vonseydewitz v. Legrand*, Docket No. 66159 (Order of Reversal and Remand, June 24, 2015). At issue in that case was the deduction of statutory good-time credits pursuant to a version of NRS 209.4465 that applied to crimes committed before July 1, 2007. *See* 1997 Nev. Stat., ch. 641, § 4, at 3175. The district court denied Bayot's petition, finding Bayot did not allege specific facts to demonstrate he was entitled to relief and Bayot was not entitled to relief due to application of the pre-

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

2007 version of NRS 209.4465 because he committed his crimes in 2010. Given these circumstances, we conclude the district court did not err in denying this claim.[2]

Second, Bayot argued denying application of his credits toward his minimum terms violates his equal protection rights. Bayot asserted certain inmates with convictions similar to his, but who committed their crimes prior to the 2007 amendments to NRS 209.4465, have credits applied toward their minimum terms and the disparate treatment of those inmates as compared to him violated his equal protection rights. *See* 1997 Nev. Stat., ch. 641, § 4, at 3175. "The Equal

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[2]Bayot was convicted of 11 counts of forgery and one count of conspiracy to commit forgery and was sentenced under the small habitual criminal enhancement. *See* NRS 199.480(3); NRS 205.090; NRS 207.010(1)(a). NRS 205.090 categorizes forgery as a category D felony, but NRS 207.010(1)(a) states defendants who are adjudicated habitual criminals under the small habitual criminal enhancement "shall be punished for a category B felony." Accordingly, Bayot was convicted of category D felonies for his forgery convictions, but is being punished for category B felonies pursuant to the small habitual criminal enhancement.

We note NRS 209.4465(8)(d) states that credits do not apply to the minimum terms of offenders that have "been convicted of . . . [a] category A or B felony." The Nevada Supreme Court had previously held the habitual criminal enhancement does not constitute a separate crime, but rather an increased punishment. *See Hollander v. Warden*, 86 Nev. 369, 373, 468 P.2d 990, 992 (1970); *Howard v. State*, 83 Nev. 53, 56, 422 P.2d 548, 550 (1967); *Lisby v. State*, 82 Nev. 183, 189, 414 P.2d 592, 595 (1966). Because the credit application limitations in NRS 209.4465(8)(d) apply to those "convicted" of category A or B felonies, it is not clear that such restrictions also apply to those convicted of lesser felonies who receive enhanced punishments due to their status as habitual criminals. However, because this issue was not specifically raised in this matter, we decline to consider it in this appeal.

Protection Clause of the Fourteenth Amendment mandates that all persons similarly situated receive like treatment under the law." *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000). When a classification does not affect fundamental rights, the "legislation at issue will be upheld provided the challenged classification is rationally related to a legitimate governmental interest." *Id.*

Here, Bayot did not demonstrate he and the other inmates were similarly situated given their differing offense dates and different statutes governing application of credits during the different offense dates. Further, Bayot did not demonstrate he was a member of a suspect class, or that this issue involved the type of fundamental rights requiring strict scrutiny review. *See id.*; *see also Graziano v. Pataki*, 689 F.3d 110, 117 (2d Cir. 2012) (recognizing prisoners, whether in the aggregate or specified by offense, are not a suspect class and rational basis test will apply); *Glauner v. Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999) (recognizing prisoners are not a suspect class and applying rational basis test). And Bayot did not demonstrate there is no rational basis for applying credits in a different manner based upon offenses and offense date. Therefore, we conclude the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. William A. Maddox, Senior Judge
Alexander Bernard Bayot
Attorney General/Carson City
Carson City Clerk