

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ROY TAYLOR,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 71038

FILED

MAY 17 2017

ELIZABETH EMMAN
CLERK OF THE COURT
BY *A. Wilcap*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Roy Taylor 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; James Todd Russell, Judge.

Taylor argues the district court erred in denying his April 15, 2016, petition. In his petition, Taylor first claimed the Nevada Department of Corrections (NDOC) has improperly declined to apply his statutory credits toward his minimum terms. The district court concluded Taylor was not entitled to relief because Taylor was convicted of category B felonies, committed the offenses in 2012, and for those reasons, the NDOC may only apply Taylor's statutory credits toward his maximum terms pursuant to NRS 209.4465(8).² Given these circumstances, we conclude the district court did not err in dismissing this claim.

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

²The record demonstrates Taylor is serving terms for two burglary convictions, category B felonies. See NRS 205.060(2).


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Second, Taylor argued failure to apply credits toward his minimum terms violates his equal protection rights. Taylor 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 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, Taylor 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, Taylor 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 Taylor did not demonstrate there was 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 dismissing this claim.

Third, Taylor argues failure to apply statutory credits toward his minimum term violates the Ex Post Facto Clause. Taylor did not raise this claim before the district court and we decline to consider it in the first instance on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Having concluded Taylor is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Michael Roy Taylor
Attorney General/Carson City
Carson City Clerk