

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD MICHAEL SAVAGE,  
Appellant,  
vs.  
JAMES DZURENDA, DIRECTOR,  
NDOC; AND HAROLD WICKHAM,  
WARDEN, WARM SPRINGS  
CORRECTIONAL CENTER,  
Respondents.

No. 71356

**FILED**

JUL 12 2017

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

*ORDER OF AFFIRMANCE*

Donald Michael Savage appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> First Judicial District Court, Carson City; James E. Wilson, Judge.

Savage argues the district court erred in denying his July 1, 2016, petition. In his petition, Savage first claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward the minimum terms he is serving for his burglary convictions. The district court concluded Savage was not entitled to relief because the burglary convictions were for category B felonies pursuant to NRS 205.060(2), Savage committed the offenses in 2013 and 2014, and for those reasons, the NDOC may only apply the statutory credits Savage earns toward his maximum terms for those convictions pursuant to NRS

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

209.4465(8). Given these circumstances, we conclude the district court did not err in dismissing this claim.


Second, Savage argued failure to apply credits toward his minimum terms violates his equal protection rights. Savage 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, Savage 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, Savage 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 Savage 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 denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James E. Wilson, District Judge  
Donald Michael Savage  
Attorney General/Carson City  
Carson City Clerk